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Human Rights and Incarcerated Women: Between the Norms of the Law and a Reality to Endure¹

Direitos Humanos e mulheres encarceradas: entre as normas da lei e uma realidade para suportar

Derechos Humanos y mujeres encarceladas: entre las normas de la ley y una realidad que soportar

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Abstract

This article problematizes the situation of incarcerated women, drawing attention to the multiple violations of their basic rights within the penitentiary system, including the disregard of norms specifically directed at the female gender in prison. The purpose of this article is to highlight the difficulties faced by women in incarceration, emphasizing social markers such as economic-patriarchal dependency, skin color, age, level of education, and motherhood in prison. In the current context of expanding female incarceration, women face a reality even harsher and more cruel than that of incarcerated men, since, from the beginning of the construction of modern prisons, the prison system was designed to house male inmates, without considering the specificities of the female body and its needs. The article identifies certain variables that violate rights and, based on them, calls attention to the need for decarcerating public policies in line with the promotion of Human Rights.

Keywords: incarcerated women; prisons; human rights.

Resumo

O artigo problematiza a situação das mulheres encarceradas, chamando a atenção para as múltiplas violações de seus direitos básicos no sistema penitenciário, em detrimento, inclusive, às normas direcionadas ao gênero feminino no cárcere. O propósito do artigo é apontar as dificuldades enfrentadas no encarceramento feminino, ressaltando marcadores sociais como dependência econômico-patriarcal, cor da pele, idade, escolaridade e mães encarceradas. No atual contexto de expansão do encarceramento feminino, as mulheres enfrentam uma realidade ainda mais dura e cruel que a dos homens encarcerados, uma vez que, desde o início de construção das prisões modernas, o sistema prisional foi idealizado para abrigar os encarcerados do gênero masculino, não se atentando às peculiaridades que envolvem o corpo e as necessidades femininas. O artigo identifica algumas variáveis que violam direitos e, a partir delas, chama a atenção para a necessidade de políticas públicas desencarceradoras, condizentes com a promoção dos Direitos Humanos.

Palavras-chave: mulheres encarceradas; prisões; direitos humanos.

Resumen

El artículo problematiza la situación de las mujeres encarceladas, llamando la atención sobre las múltiples violaciones de sus derechos básicos en el sistema penitenciario, en detrimento incluso de las normas dirigidas al género femenino en el encierro. El propósito del artículo es señalar las dificultades enfrentadas en el encarcelamiento femenino, resaltando marcadores sociales como la dependencia económico-patriarcal, el color de piel, la edad, el nivel educativo y la maternidad en prisión. En el actual contexto de expansión del encarcelamiento femenino, las mujeres enfrentan una realidad aún más dura y cruel que la de los hombres encarcerados, ya que, desde los inicios de la construcción de las prisiones modernas, el sistema penitenciario fue idealizado para albergar a personas del género masculino, sin considerar las peculiaridades que implican el cuerpo y las necesidades femeninas. El artículo identifica algunas variables que violan derechos y, a partir de ellas, llama la atención sobre la necesidad de políticas públicas desencarceradoras, coherentes con la promoción de los Derechos Humanos.

Palabras clave: mujeres encarceladas; prisiones; derechos humanos.

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1 Introduction

In the context of prisons, it is possible to say that, from a gender point of view, violations of the rights of incarcerated women are more intense and profound, since they are made invisible by the state, persisting with public policies and conditions that do not take into account the particularities and specificities of the female gender. This ranges from the lack of adequate food in quantity and quality, overcrowding of cells, lack of adequate infrastructure, shortage of basic hygiene and health products, to abandonment and loneliness, among other factors. In relation to the female population involved in crime and incarcerated, data provided by the Department of Penal Execution (DEPEN) between 2000 and 2023 indicate a significant increase in the rate of women in situations of deprivation of liberty, rising from 5,600 women in 2000 to more than 27,000 in 2023.

The absence and/or inefficiency of public policies in relation to women prisoners makes it urgent to carry out empirical studies and research in order to demonstrate the social and theoretical relevance of the situations and specificities that need to be taken into account when, for various reasons, women are convicted and imprisoned in Brazil. In everyday prison life, many incarcerated women and those in the custody of the penal state are faced with basic shortcomings/violations of their rights, such as a lack of hygiene products. Social and academic projects can contribute to public policies to defend and promote the human rights of incarcerated women, such as promoting work activities that occupy idle time and result in the production of disposable sanitary pads, an indispensable product for women.

In terms of theory and a survey of available official data, the article seeks to understand a certain type of moral outlook and the factors that cause the imprisonment of women, prioritizing the analysis of two situations that condition the entry of women into the practice of crime: i) emotional dependence linked to gender stigma in the context of patriarchal societies and; ii) the occurrence of crimes committed by women associated with financial dependence. With regard to the article's method of exposition, the first section analyzes the actions of the official repression and control apparatuses aimed at imprisoned women. The second section discusses the situation of women in prison and draws attention to the dehumanization related to petty drug trafficking. The third section describes a series of markers that violate human rights in the daily life of women's prisons. In its concluding remarks, the article emphasizes the importance of implementing constitutional provisions related to women's rights in prisons, stressing the urgent need for alternative political and legal mechanisms to women's prisons.

2 The Political-Criminal Apparatus Of Prison Control Over Women Considered To Be Outside The Law

According to Andrade (2011: 196), the first women's prisons were located in convents and received religious guidance from nuns. The role associated with prison is to train women and return to society the ideal of good mothers and wives, capable of fulfilling their social role, reinforcing the need to reintegrate them into the role of good housewives, dedicated mothers, good wives, careful and correct professionals. Gurger (2017: 147) points out that the role of prisons is to divert the path of crime by learning the roles assigned to women. The moral reconstitution of the inmates was on the agenda and under the mission of the Catholic sisters (Angotti, 2012: 156). According to a report by one of the inmates at the time:

The prison was run by the madres it was the time of the hard lock. The food was terrible and we were forced to do manual labor and didn't get paid a penny. Mass at 5am was compulsory. We were forced to pray so much that I don't think God even heard us pray. Compared to back then, today this place is a paradise (Lemgruber, 1999: 66).

The need for more prison places and the creation of a shelter for women considered to be criminals was a topic of discussion. In Brazil, writes Pedrosa, in an order dated 1932, the then president of the penitentiary council of the Federal District, Cândido Mendes de Almeida, asked the Minister of Education and Public Health, Francisco Antunes Maciel Jr, to cede the Santa Maria farm in Jacarepaguá/RJ - previously destined for the installation of an agricultural penitentiary for women offenders (Pedrosa, 1997: 134).

The political and legal debate of the time warned against separating the accused, taking into account their sex and age, and also the production of knowledge of specific categories for the purposes of discipline

and control. The isolation of specific categories of prisoners was aimed at obtaining better knowledge about individuals and control over their bodies became more direct and elaborate (Pedroso, 1997: 127).

With regard to women's prisons, in 1937 Brazil inaugurated the first prison exclusively for women in the city of Porto Alegre, called the Reformatory for Criminal Women and later the Women's Institute for Social Rehabilitation (Angotti, 2018: 26).

The creation of prison institutions and their late division based on the gender marker was due to the need to separate men and women in order to apply different treatments and correctives to them. The Brazilian Penal Code (1940) established the first legislative guideline for the physical separation of men and women. The CP determined in Art. 29, 2nd paragraph, that: «Women shall serve their sentence in a special establishment or, failing that, in an appropriate section of a penitentiary or common prison.» Based on the provisions of the Code in question, the «Women's Prison» was opened in 1942 on the grounds of the State Penitentiary under the care of the nuns of the Congregation of the Good Shepherd of Angers (Artur, 2009: 1).

During the 1940s, new women's prisons were created in other regions of the country, such as the São Paulo Women's Prison, through Decree-Law no. 12.116/41 and, in the Federal District (1942), through Decree-Law no. 3.971/41, called the Federal District Prison.

It is known that in the context of patriarchal societies, women were placed on the margins and subordinated to domestic chores. This patriarchal worldview manifests itself in the criminal justice system. In moral terms, writes Espinoza (2004: 17), while for men «the values to be reawakened by punishment were legality and the need to work, deviant women needed to recover their modesty with the punishment imposed».

Despite the recurring situations of precariousness and violation of human rights that afflict male prisoners, the treatment of women prisoners can be worse than that of men.

Although the main objective of criminal law is to guarantee security and social order, its application is not always impartial and equitable, often perpetuating gender stereotypes and reinforcing social inequalities. Karyna Batista (2011: 89) points out that «[...] when it comes to women and their criminalization, we see that criminal law not only helps to resolve certain issues, but also gives rise to new discrimination and reinforces old ones».

In the context of prisons, sexism has an impact on women prisoners, denying their particularities and their status as human beings. According to Gurger (2017: 144), imprisoned women have their own demands and needs, aggravated by a history of family violence and specific conditions such as motherhood, financial loss, emotional turmoil resulting from the breakdown of emotional ties and dependence on licit and illicit drugs.

Rampim¹ reveals that:

The adoption of a masculine, absolute and unified paradigm when drawing up public prison policies violates and violates the citizenship of women prisoners and contributes to the increase of a progressive and increasingly intensive process of their invisibilization, to the point of denying them one of the goods most dear to any person: dignity. This is exacerbated by the fact that the way in which the prison system is conceived and designed contributes to an increase in this type of violation, institutionalizing violence (in its various forms: physical, emotional, psychological, etc.) as an intrinsic factor in its operation (Rampim, 2011: 30).

The author's statements help to demonstrate that the criminal justice system in relation to gender issues reinforces inequality and a series of vulnerabilities that afflict women. The social and prison inequalities that have been evident throughout the process of formation of patriarchal societies find, in the criminal justice system, a kind of crowning achievement in the sense that the system works on the basis of selectivity and punishment that falls preferentially on poor and vulnerable women, condemning them to the loss of their liberties.

2.1 The Dilemma Of Incarcerated Women In The Context Of Prisons Subject To Patriarchy

When looking at the situation of incarcerated women in Brazil, information available from the Penitentiary Department (DEPEN) shows that only 7% of prisons in Brazilian territory are intended for the detention of women (Brazil, 2014). According to information from DEPEN, the majority of women's prisons are mixed, with wards and

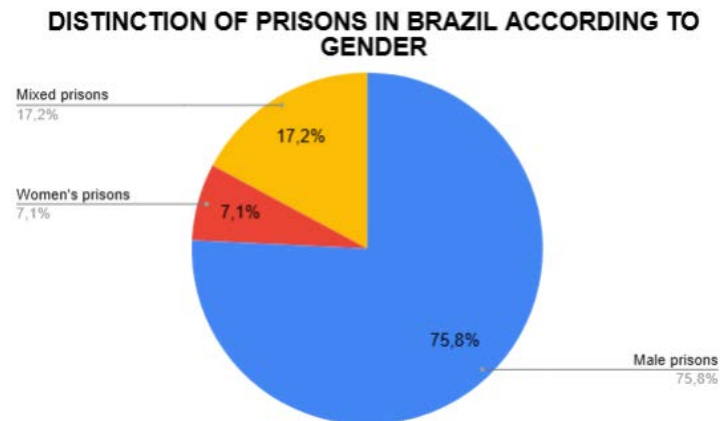
1 Talita Tatiana Dias Rampim, in her text "Women and the Prison System".

cells adapted for women. The lack or precariousness of treatment modalities aimed at the resocialization of female prisoners, such as crèches or nurseries for their children, shows the degradation of incarcerated women.

The prison census produced by the Foundation for the Support of Prisoners (FUNAP/2002) found that the state of São Paulo houses more than 41% of the country's incarcerated women, but 36% of them did not receive visits. Of those who did receive visits, 47% received their families only once a month (CEJIL, 2007). The situation of precariousness and denial of human rights becomes more explicit when it is noted that only 6 of the 73 inmates received visits frequently (Brazil, 2008).

The massive increase in the custody of women is very worrying and has been one of the concerns of the National Criminal and Penitentiary Policy Plan.

Graph 1 - Division by gender of prisons in Brazil



Source: Infopen, 2014

Elaboration: authors (2024)

Despite the fact that women are a minority in the world of crime, the rate of female incarceration is growing rapidly in the country. Data provided by the Brazilian Public Security Forum - FBSP (FBSP, 2018) shows that the rate of imprisonment of women per 100,000 inhabitants (2014) places Brazil in third place, behind only the United States and Thailand. In terms of the world's female population, Brazil is characterized by the paradox of having 2.7% of the world's population and 5.2% of the world's incarcerated women.

In the daily life of prisons, Jocenir (2001: 20) highlights the inhumane conditions and cruel treatment faced by inmates and detainees in Brazilian prisons, stating that, from the point of view of official institutions, the deprivation of liberty, i.e. the removal of the convict from social life, does not seem to demonstrate any greater suffering on the part of the man who becomes part of the country's prison reality. While public institutions admit that prisons function normally, the author points out that police districts, public prisons, among others, go beyond restricting an individual's freedom and removing them from circulation, as they subject them to «inhumane conditions in spaces identified simply as warehouses for human beings» (Jocenir, 2001: 17-18).

With regard to the degrading conditions of prisons, Mendes describes actions and attitudes of beating and torture, lack of adequate food and the production of enemies, aggressive looks, provocations and violence. When referring to the agents responsible for the administration and internal control of the prisons, the author, who has already served time in the prison system, reports in a tone of revolt that «those who arrested us, those who kept us locked up, those who condemned us, our tormentors [in their actions] were worse than us». The difference was that «we were imprisoned (Mendes, 2001: 411-412).

Wacquant argues that punitive law is marked by purposeful selectivity, with the criminal justice system tending to apply unequal sentences to different social groups, based on factors such as race, social class and gender. The historical-legislative and operational framework of prisons in Brazil allows us to affirm that the country's prison system was designed to incarcerate and discipline people with low levels of education, who are poor and black. A survey released by the National Council of Justice (CNJ) (2020) during the Covid-19 pandemic, entitled «General Data on Prison in Flagrante», revealed that 60.9% of prisoners are black or brown, while 38.5% are white. In addition, 61.6% have not completed elementary school, 42.3% say they have children under the age of 12, 38.8% say they

are unemployed and 41.6% indicate that their income comes from informal work. With regard to the gender of inmates, the higher proportion of men in prison in the country is related to the type of more serious crime they have committed, compared to women who tend to comment on less serious crimes.

Wacquant's reflections show how the right to punish in the hands of the state reveals multiple violations of human rights. Under the monopoly of the state's power to punish and imprison, criminal law and its related institutions represent a powerful and selective institution of control since, as a rule, poor and vulnerable individuals and social groups are the preferred clients of the punitive apparatus of the state's institutions of repression and control.

In situations of incarceration, writes Gurger (2017: 139), the prison environment tends to reflect and reverberate a process of exclusion, pain, suffering and misery» that afflicts a considerable part of the poor and vulnerable classes, turning prison into a place and symbol of punishment in ongoing capitalist societies.

In relation to contemporary criminal law, the custodial sentence has been guided by a paradoxical and contradictory scheme: At the same time as prisons emphasize the importance of respecting human rights, a significant part of society and its institutions legitimize recurring discourses and practices of increasing the rigor of punishment, as a justification for confronting and combating crime and impunity. (Gurger, 2017: 146).

With regard to the imprisonment of women, Buglione points out that the universe of female criminality has always been related to so-called «gender crimes» within the domestic sphere. Patriarchal societies give centrality to the traditional definition of the family and link female crime to problems such as abortion, infanticide, murders of passion, exposing or abandoning a newborn child to hide one's own dishonor, theft and those related to the crimes of partners (Buglione, 2007: 146).

In the past, the participation of women in robbery gangs was irrelevant. As Varella writes, women's presence in prisons was restricted to thefts, acts of passion and one or two robberies. With the growth of cities and the economic development of recent decades, this picture has changed, because the family structure has become more dispersed and the benefits and rights that women have imposed on the patriarchal model of Brazilian society have not been distributed evenly across social classes (Varella, 2017: 257).

This spectrum of ideological determinisms and ahistorical behavioral norms, which permeate sociocultural reality, circumscribing women's lives within the private sphere, contrasts with the economic, social and political transformations that have redefined the condition and role of women in contemporary societies.

3 Expansion Of Female Incarceration As An Expression Of Human Rights Violations

The increase in the custody of women is worrying and has been one of the concerns of the National Criminal and Penitentiary Policy Plan. It is known that both genders are exposed to the same social factors, although the female condition is more vulnerable in terms of mistreatment, abandonment, sexual abuse, domestic violence, early pregnancy, among many other aggravating factors.

Information released by the Ministry of Women's Affairs - Annual Socio-Economic Report on Women - shows that Brazil has 45,259 women in prison. These figures place the country as having the third largest female prison population in the world. According to data from the National Penal Information System - SISDEPEN, of the National Secretariat for Penal Policies - SENAPPEN, the majority of women in prison in Brazil are black or brown. In 2022, they accounted for 66.9% of incarcerated women (2024: 71).

In terms of the type of crime committed, the majority of women intercepted, charged and imprisoned are involved in drug crimes and property crimes.

Information released by the Ministry of Women's Affairs (2024) shows that 29,700 of the women were imprisoned in a closed regime. According to the report presented, the «majority of women are imprisoned for drug trafficking». In 2022, 52.5% of women were imprisoned for this crime, while 26.4% of men were imprisoned for this reason (Brazil, 2024: 72).

Incarcerated women suffer rights violations for offenses considered to be minor, committed without the presence of violence or threats. Most of them are still primary defendants and have good criminal records, requirements that justify more lenient and beneficial penal treatment. In the prisons where the great mass of prisoners are confined, it is humanly impossible to abolish drug trafficking since it is more profitable, especially cocaine trafficking (Varella, 2017: 52).

According to the author, the euphoria caused by cocaine is so intense that it imprints persistent memories in the networks of neurons involved in sensations of pleasure. The intensity of the effect on the brain's reward centers

makes the joy of playing with a child, meeting a friend, the company of a loved one, a small professional success, the pleasure of a job well done, the beauty of the landscape or a work of art insignificant. In the absence of cocaine, the world pales, everyday life is gray, and life becomes a burden that is difficult to carry (Varella, 2017: 52).

With regard to drugs, the author says that it is impossible to prevent the ant-trafficking of visitors. Small quantities can be sewn into clothing, disguised inside bags of groceries, shoe heels, babies' diapers, cigarette packets, sanitary napkins, walking sticks and orthopedic devices for older women. How can you search everything?» (Varella, 2017: 53). Many are caught with drugs at the gate, article 33 of Law 11.343/2006. The sentences usually reach four years, even if they are primary defendants, they are caught trying to enter with small quantities at the request of a male relative, brother, cousin, husband, father. Some already leave the gate and go to jail, and the machine discovers hidden weed or powder. The scene is sad, I avoid looking at it (Diniz, 2015: 54).

Hundreds or thousands of bridges that bring illicit drugs into the country's prisons. Not all of them, however, are professional drug dealers; many do it for more noble reasons. They get into crime on behalf of family members or prisoners who swear that they will be condemned to death if they don't pay debts contracted with ruthless killers, blackmail. This is the case of Mrs. Liomar, who had been visiting her son for thirteen years. Her son was sworn to death for an unpaid debt, and his mother would be the savior. Either the marijuana went in or she wouldn't save her son. An experienced visitor, Mrs. Liomar believed that marijuana protected by natural cavities would be invisible to the black vest. From a visitor, the grandmother is now an inhabitant (Diniz, 2015: 186).

The woman can't deny the request since she knows that in that environment, as advocated by «drugs become part, directly or indirectly, of the scheme of domination of prisoners, and yet another torture of the body». As a rule, the woman sympathizes with the suffering of her relative, who often has an addiction or is coerced into paying for some punishment with drugs, etc. (Pinto, 2007: 38). Surprised at the gate, they are taken to the police station and from there to a prison. Many women don't return home that night or in the following days. They almost always leave the older children at home to look after the younger ones (Varella, 2017: 200).

In view of this dramatic and inhumane context, various measures are being proposed to reduce the incarceration of women, because, as Gurger (2017: 145) reveals, this is an urgent policy, mainly due to the impact that this segregation has on the family nucleus of each incarcerated woman. Strictly speaking, they are the ones who, in most homes on the periphery, are responsible for supporting and caring for their young children, who also end up suffering the same punishment as their mothers, being relegated to abandonment and poverty.

Márcia de Alencar, general coordinator of the Program to Promote Alternative Sentences and Measures at the Ministry of Justice's DEPEN, comments: alternative penal treatment is aimed at people who do not pose a risk to society, taking into account their degree of guilt, their background, their social conduct and their personality. Alternative sentencing does not expose the offender to the evils of the prison system, since it does not remove the individual from society, it does not exclude them from social life and their families.

The alternative penalty aims, without rejecting the illicit nature of the fact, to hinder, avoid, replace or restrict the application of the prison sentence or its execution, or at least to reduce the sentence. In other words, to impose political-legal measures of an educational and socially useful nature on the perpetrator of a criminal offense, in place of a custodial sentence (Pinto, 2007: 120).

4 Some Markers Of Human Rights Violations Against Incarcerated Women

Among the types of violation of the human rights of incarcerated women, it is common to see their rights denied in relation to intimate visits, access to healthcare, maternity in prison, abandonment and mental health problems.

Violation of the right to *intimate visits* is one of the problems that plague the daily lives of inmates. There is an unequal response on the part of the system in relation to the treatment given to incarcerated people on the basis of gender. The National Council for Criminal and Penitentiary Policy (CNPCCP) recommended to the State Penitentiary Departments, or similar bodies, that prisoners of both sexes be guaranteed the right to intimate visits. This recommendation was made in Resolution 01 of March 30, 1999. However, women prisoners only gained access to this right in 2002, almost twenty years after its implementation in male prisons (Oliveira; Santos; 2012: 11).

Women's fundamental rights are restricted and, when it comes to the right to sexuality, this is ignored, resulting in difficulties in maintaining their relationships outside prison, which intensifies their feelings of loneliness.

It is necessary to provide specific treatment so that the specificities and particularities of women are respected, in order to achieve a minimum of equity.

Incarcerated women suffer various forms of gender discrimination, including moral discrimination. This issue goes beyond prison, since women are discriminated against by society in general. In a statement obtained by Varela (2017: 258), one of the inmates said: «When they go to jail, we have to go on intimate visits every weekend. If you leave or date someone else, you need a lot of luck to stay alive. When we're the ones in prison».

It is worth noting that prisons create various bureaucratic obstacles, such as imposing various rules of conduct and the need for extensive documentation, rules that are not required in male prisons. Maintaining sexual relations is a woman's right, which must be safeguarded and facilitated in order to guarantee the maintenance of the affective bond with husbands and wives.

Denial of *access to health care* is part of the daily violation of the rights of women in prison. In legal terms, we have the right to be equal when our difference makes us inferior; and we have the right to be different when our equality makes us unequal. Hence the need for an equality that recognizes differences and a difference that does not produce, feed or reproduce inequalities (Santos, 2003: 56).

Varela, when discussing the differences in health problems faced by women and men in prison environments, states that:

The health problems were very different from those I had faced in men's prisons. Instead of the poorly healed wounds, scabies, boils, tuberculosis, mycoses and respiratory infections of the men, they complained of headaches, back pain, depression, panic attacks, gynecological conditions, acne, obesity, menstrual irregularities, high blood pressure, diabetes, suspected pregnancy (Varela, 2017: 12).

According to the author's professional and life experiences, in the context of prisons, the crowded waiting room ignores any possibility of professionals working in prisons listening to the problems of someone who says they suffer from «needles all over their body, thyroid problems, bronchitis, constipation, nausea, lack of appetite, kidney pain, high blood pressure, a fallen bladder and a nervous system» - complaints that were presented to me, in exactly that order, by a lady with long, evangelical hair, imprisoned on the border of Paraná (Varela, 2017: 12): 12).

The author gives more testimonies about the health problems of the inmates: Dona Sebastiana, imprisoned at the age of 68: - «It's inhuman. Not just to me, who is old enough to be cold, but to these young women, who take cold baths on those days, with colic (Varela, 2017: 21); the companions arrive here with severe cramps, migraines that throb, spinal crises, and what do we have to give them? Paracetamol. Does it work? - says one of the caretakers (Varela, 2017: 79); as a doctor, the author prescribed «an antimycotic cream» and recommended «keeping the area very dry». The inmate replied: I can't, I only have one pair of panties. I wash it, wring it out and put it on again (Varela, 2017: 90).

In her studies inside prisons, Diniz makes the following comment to describe the feelings of a doctor inside a women's penitentiary:

Dr. Paloma is amazed by the advance of the warts, a merciless sign of syphilis. Before examining her, in the way that hands become intimate with the body, the doctor struck up a conversation. «Can you feel anything?» I feel pain in my stomach, in my throat. [...] No, I thought, it would be too much for one body - mental retardation, pregnancy, syphilis, AIDS, the street (Diniz, 2015: 190).

Queiroz refers to the prisoner Gardenia who gave birth, returned to jail and had to get used to sleeping on the floor with questionable hygiene. Before long, her stitches inflated. They hurt so much that she couldn't walk properly. She even went to hospital where she was prescribed twenty anti-inflammatory injections. They took her for two and then no more. There was no car, no policeman, there was always an excuse. She concluded that it was bad will and there was no point in insisting (Queiroz, 2016: 44).

Many pregnant inmates did not receive prenatal care. Most of them arrive in prison pregnant and some, at the end of their pregnancy, have never been to an obstetrician, because they were too poor and uninformed. As there are only 39 health units and 288 beds for pregnant and breastfeeding women deprived of their liberty throughout the country, in most prisons and public jails they are mixed in with the prison population and, when the time comes to give birth, someone usually takes them to hospital. Many a child has been born inside a prison because the car didn't arrive in time, or because the police refused to take the pregnant woman to hospital, as they probably didn't

believe - or didn't care - that she was in labor pains. In some cases, Heidi says, the prisoners themselves delivered the baby, or the prison nurse (Queiroz, 2016: 42).

In the context of patriarchal societies, *motherhood* in prison is a marker of the moral classification of incarcerated women. The premise of a mother's duty is a criterion for differentiating and labeling inmates who, for various reasons or options, have not yet had children. In this case, the perception of the collective conscience predicts gayness or infertility

Table 1 - The 10 states with the highest number of pregnant women, breastfeeding women and sleeping cells for pregnant women

The 10 States with the highest number of pregnant women, nursing mothers and dormitory cells for pregnant women			
State	Pregnant women	Breastfeeding	Dormitory cells for pregnant women
SP	58	35	10
MA	0	7	1
PR	14	4	4
RS	5	1	3
MS	9	9	4
AC	0	0	3
SE	0	1	1
SC	5	5	3
RR	0	0	0
RO	1	0	2
DEMAIS ESTADOS*	93	43	38
TOTAL	185	105	69

* RN, RJ, PI, PE, PB, MT, PA, MG, GO, ES, DF, C, BA, AP, AM, AL, TO

Source: SENAPPEN (2023)
Prepared by the authors (2024).

Motherhood in prison is a particularly painful experience. There are countless records of violations of the most basic rights of pregnant women and babies who have been given birth to by their solitary mothers, in the cold and fetid soil of the cells of Brazilian dungeons and then torn from their arms, because there is no suitable accommodation to house them with their imprisoned mothers (Gurger, 2017: 141).

Another point concerning mothers in prison is the separation from their children. According to Varella, from one moment to the next, it's back to the ward of origin and the routine of repetitive days that drag on in idleness, shouting, locking up, loneliness and longing for the baby they've just lost sight of (Varella, 2017: 44). The testimony of one of the mothers incarcerated in prisons shows the drama of having to accept that her child is with relatives and «one the Guardianship Council took away, a third lives with an unknown family and three were born dead» (Diniz, 2015: 27). In the case of Margarete, who was arrested twice for receiving stolen goods, she commented with a trace of a voice: - «The only reason I'm not committing suicide is because I'm hoping to get my daughter back when I get out.» (Varella, 2017: 45)

In her studies, Mello states that participants who are mothers tend to have a higher average number of depressive symptoms than those who don't have children (Mello, 2008: 60). Diniz interviewed professionals who work in the penal system and inmates at the women's penitentiary. Among those interviewed was Dr. Jamila, a psychologist who goes to great lengths to alleviate suffering, anguish and motherhood, stating that there is not really a consulting room, but a help bay in women's prisons (Diniz, 2015: 203).

In legal terms, Law No. 11.942/2009 amended the Penal Execution Law to ensure that mothers who are deprived of their liberty and their children receive minimum care during pregnancy and the postpartum period. It is worth highlighting a few points about this law: § Paragraph 3: Women will be guaranteed medical care, especially

during prenatal and postpartum periods, extending to the newborn.» (NR) § 2 Penal establishments for women shall be equipped with a nursery, where convicted women can look after their children, including breastfeeding them for at least 6 (six) months.» (NR) Art. 89. (NR) Art. 89: In addition to the requirements referred to in art. 88, the women's penitentiary shall have a section for pregnant and parturient women and a crèche to house children over 6 (six) months old and under 7 (seven) years old, with the aim of assisting helpless children whose guardian is in prison.

In this sense, it is worth pointing out that, despite having so many laws, regulations and decrees on the subject, there is still a lack of application and effectiveness of these determinations. In reality, very few prisons follow these rules, often due to a lack of interest, and less importance is attached to these issues.

In December 2017, the daily drama of women in prison led Justice Gilmar Mendes of the Supreme Court to send a letter to the then president of the CNJ, Justice Cármen Lúcia, asking for attention to be paid to the situation of women in prison or in detention who are pregnant or have children in their care. The STF's manifestation was due to the large number of habeas corpus requests concerning women in these conditions. In Official Letter No. 10, the minister requests not only that pre-trial detention be replaced by house arrest for mothers, pregnant women and nursing mothers, but also that «the issue requires reflection on other measures» (Jardim, 2020: 6).

In addition to actions and behaviors of misogyny in the daily life of the penal system, there is a lack of daycare centers and better conditions for mothers to have their babies: the scarce financial resources available. The data shows the lack of a suitable environment for children to stay and develop.

Table 2 - Number of children and babies in the prison system

NUMBER OF CHILDREN AND INFANTS IN THE PRISON SYSTEM				
State	Daycare centers	Capacity of children in daycare centers	Nurseries	Capacity of babies in nurseries
SP	5	102	8	117
MA	1	7	1	7
PR	1	10	1	10
RS	1	23	0	0
MS	1	10	4	33
AC	0	0	2	14
SE	0	0	1	5
SC	0	0	3	35
RR	0	0	0	0
RO	0	0	1	7
OTHER STATES*	0	0	29	200
TOTAL	9	152	50	428
RN	0	0	0	20
RJ	0	0	1	0
PI	0	0	0	14
PE	0	0	2	14
PB	0	0	3	12
MT	0	0	2	28
PA	0	0	4	19
MG	0	0	3	17
GO	0	0	5	29
ES	0	0	3	10
DF	0	0	1	15
CE	0	0	1	3
BA	0	0	1	8
AP	0	0	1	2
AM	0	0	1	0
AL	0	0	1	9
TO	0	0	29	0
TOTAL	0	0	0	200

* RN, RJ, PI, PE, PB, MT, PA, MG, GO, ES, DF, C, BA, AP, AM, AL, TO

Source: SENAPPE, 2023

Prepared by the authors (2024)

The situation of *abandonment* is another marker that generates suffering and violation of women's rights in prison. According to Varela (2017: 36), while «society is able to view the imprisonment of a male relative with some complacency, a woman brings shame on the whole family. Thus, when a woman commits a crime, she mischaracterizes the female role».

Society expects women to be «in their place», obedient and modest. Sexual prejudice is part of this context. The bandit may be considered a bad character, soulless, perverse, but no one questions his sex life. On the other hand, when a woman steals, traffics or assaults, she is sexually labeled as promiscuous and receives the libertine label, even if she is a virgin (Varella, 2017: 259). In his 11 years working as a doctor in women's prisons, the author reveals that he has never seen or heard of anyone who has spent a night on watch, waiting for their visit. Data from the National Secretariat for Penal Policies (SENAPPEN, 2023) reveals that for a total of 465,551 incarcerated women there were 19,551,000 registered visits. Among the 725,054 male prisoners, there were 44,225 registered visitors. In general, the queues in women's prisons are small, with the same predominance of women and children; the male minority is made up of older men, usually fathers or grandfathers. In the case of one inmate's testimony, Diniz states that she had eight brothers; she doesn't know the biographies of some, none of whom visited her in prison (Diniz, 2015: 182).

For Julita Lemgruber (1999: 85), «the importance of contact with the family is manifold and represents, first and foremost, the link with the outside world. When this link cannot be maintained, the suffering is immense». The distance from society weakens the bonds that the prisoners had before they were imprisoned, making them lonelier and, consequently, more aggressive, provoking negative emotions and feelings. They feel marginalized by their families and others, showing a significant lack of affection. In this scenario, these women become dependent on the prison, both on their cellmates and on the staff, which highlights their weaknesses.

The experience of imprisonment is painful and severe for these hurt, humiliated, disillusioned, lonely and abandoned women who discover solidarity, understanding, complicity, affection and sexual pleasures in the company of other prisoners that they have never experienced in relationships with the opposite sex (Varella, 2017: 154). They enter the prison system with a heterosexual orientation, but most women are abandoned by their partners when they are imprisoned. From then on, they develop bonds of affection with other women and often start to have romantic and sexual relationships with each other, because they find in these relationships ways of making up for the absence of visits and opportunities for interaction, trust and the exchange of dreams, pains, sufferings and expectations, once again transgressing the established pattern outside prison (Gurger, 2017: 141).

The series of denials of the human rights of incarcerated women causes *mental health* problems. The process of isolating women in prison for years at a time causes behavioural disorders, psychiatric disorders and makes resocialization difficult. Diniz told the story of an inmate who learned that a fellow inmate had committed suicide: «Janete Maria wrapped herself up in that way that is taught in prison. She killed herself with madness, the sheet that accommodates her sleep was the noose attached to the window grill.» (Diniz, 2015: 165). The significant increase in incarcerated women can result in the abusive use of psychoactive substances and the appearance of past and current psychiatric symptoms (Mello, 2008: 16). The incarcerated individual goes through a process of acculturation, i.e. disqualification and desocialization, generating a process of mortification and infantilization of the self, generated by the characteristics of these institutions. These characteristics can lead to the development or intensification of symptoms of mood disorders, especially depression, and the use of psychoactive substances (Mello, 2008: 23).

Living in prison is an arduous task and some inmates never adapt to prison life. Among the narratives of women in prison, writes Diniz, it is possible to witness statements such as: Death was already destiny, I hadn't eaten or slept for a long time. This prisoner's dossier described her as «depressed and unsuited to prison». She lived in the ghetto of the old, sick and disabled (Diniz, 2015: 166).

In prison, women's humanity is diminished, mental disorders are ignored and emotional illnesses are made invisible. These factors certainly contribute to increasing the vulnerability of this population.

In terms of gender, women's prisons have a number of peculiarities. For this reason, the regulations for the female prison population are different, as they cover issues related to: the physical structure appropriate for the female gender, specific material needs, motherhood, children staying with their mothers, mother-child separation, family life, family abandonment, and others (Ministry of Justice, 2011). Considering that petty drug trafficking and crimes against property account for more than 77% of all crimes among women intercepted by the criminal justice

system, the option in favor of house arrest contributes to alleviating serious violations of the human rights of women who are serving sentences under a closed regime.

Judicial decisions in Habeas Corpus that use the International Human Rights document as a parameter, such as the Bangkok Rules, have recommended that these women serve sentences other than deprivation of liberty through house arrest and electronic monitoring, but despite the advances, the reality shows that these measures are not being widely implemented. Data available from the National Secretariat for Penal Policies (SENAPPEN, 2023: 181) shows that Brazil has 10,766 under house arrest using electronic monitoring.

5 Final Considerations

The countless situations of violation of the human rights of incarcerated women in Brazil, despite the admission and verification of data revealed by state officials, the continued disrespect for the Constitutional order and denial of human rights such as the lack of respect for women's physical, social and psychological needs, confronts the framework of the current Federal Constitution that establishes the principle of individualization of penal punishment, according to article 5, item XVIII, according to which: «the sentence will be served in different establishments, according to the nature of the crime, the age and sex of the convict».

Alongside the constitutional provisions above, there is an urgent need to consider political and legal measures to reduce the incarceration of women. Most of those presented here corroborate the impact that segregation has on the family unit. The majority of Brazilian homes are headed by women whose responsibility for supporting and caring for their children is compromised since women's imprisonment, especially when it involves the fate of poor women and those affected by multiple vulnerabilities, ends up punishing their offspring, relegating them to abandonment and misery.

In short, faced with the reality of women's prisons which, as a rule, incarcerate and collect a series of violences and denials of women's human rights, it is urgent to rethink the system of women's imprisonment. In other words, we need to think about and implement public policies for disincarceration, offer alternatives to guarantee psychosocial support for the families involved and create public social policies to reverse the socio-familial drama among women who commit crimes and are targeted for repression and criminal control by the state.

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