

Drunkenness and traffic crimes

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ABSTRACT

The topic addressed in this paper is the relationship between drunkenness and traffic crimes, highlighting the relevance of the indiscriminate use of alcohol as one of the main factors of high mortality in Brazilian traffic. The study analyzes recent changes to the National Traffic Code and its effectiveness, using a deductive methodological approach to understand the legal and social implications of this problem. It also investigates the impact of alcohol abuse on violence and traffic accidents, seeking to establish a clear causal link between these phenomena.

Keywords: Drunkenness, Traffic crimes, Social impact.

INTRODUCTION

The importance of choosing the theme drunkenness and traffic crimes is due to the Brazilian reality in which traffic crimes kill more than wars, and one of the main factors of this high mortality is the indiscriminate use of alcohol by drivers.

The changes to the National Traffic Code will be addressed in this work with the scope of understanding its true legal motivations in such changes, in the same way that it will seek to understand its legal nature and other aspects.

However, the focus of the present research, with a brief and superficial approach to this problem only as an illustration, demonstrating a direct correlation between drunkenness and traffic crimes and the attempt of the legislation to try to solve this demand.

The work presented here aims to verify the existence of a causal link between the effects of alcohol and the high mortality rates, in cases of accidents motivated by improper use of alcohol or psychoactive drugs that cause effects that make it impossible for the driver to be in minimum conditions for driving.

Since the Traffic Code has recently been amended, it is necessary to seek to understand the reason for the change and its main applicability and effectiveness within the social context, seeking to assess the real need for its change.

For the success of the research, it is evident that there is a need for a more in-depth study about the definitions of the effects of alcohol on the human body, in order to bring them to the specific case that presents itself as problematic.

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For these reasons, the deductive method was adopted as the methodology of approach, which allows bringing the general overview of concepts – legal and medical – to the concrete case, providing the necessary basis for then being able to reach a safe conclusion.

Regarding the methodology of procedure, being the subject broad, but with a single focus, the best alternative is the monographic method, with a division into seven chapters.

The research aims to address drunk driving in general, demonstrating the impacts of alcohol abuse, the violence of traffic accidents, seeking to understand the patterns of alcohol consumption in the Brazilian population, in order to reach the impacts of alcohol use on traffic accidents.

The effects of alcohol on the body are also demonstrated, as well as the characteristics of the legislation and positive understandings through judgments and jurisprudence.

In the end, the research demonstrates that it has collected enough information to be able to verify that there is a direct and intimate link between violence and crime and traffic and the use of psychoactive drugs.

OBJECTIVE

Objective to assess the degree of influence of alcohol and other narcotics in traffic crimes and to verify the level of culpability of the agent who consciously assumes the risk of driving under the influence of psychoactive drugs. We also sought to try to understand the functioning of alcohol and other psychoactive substances in the body, in analysis of the clinical definitions of drunkenness.

METHODOLOGY

The methodology used to proceed with the study in question was the bibliographic survey, which consisted of working on the subject through materials already prepared, using existing theories, comparing and improving them.

The research was carried out from the analysis of data through bibliographic review, doctrine, current legislation and research in digital material on the proposed theme, without the intention of exhausting it due to the extension and importance of the subject analyzed.

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DEVELOPMENT

DRUNK DRIVING

In modern times, new motivations and various ways to obtain substances such as alcohol have emerged, whether by young people or even adults, regardless of social class and, even with the presence of new and different patterns of consumption of legal or non-legal narcotics, they are ingested recreationally by almost everyone, even if they do not cause harm to the user or people.

The first traffic legislation in Brazil appeared on October 27, 1910, seventeen years after the arrival of the first automobile in the country. This legislation took place through Decree No. 8,324, which approved the regulation for subsidized car transport services (Leite, 2009).

It may be that alcohol is a substance widely used in most of the world and it is possible that, depending on the dose, frequency and circumstances, it can be consumed in greater problems, considering that the consumption of alcoholic beverages consists of a behavior, in a way that is adapted to most cultures, where its use is related to celebrations, business and social situations, religious ceremonies and cultural events (Melcop, 2004).

However, some studies have pointed out that a percentage of the population replaces such recreation with others and, therefore, is considered risky or harmful, since they are likely to generate serious physical, psychological and social consequences. Therefore, this consumption considered harmful is represented by 3% of the deaths that occur worldwide, from cirrhosis to liver cancer, falls, and much more (Meloni; Laranjeira, 2004).

It is also worth noting that in developing countries, including Brazil, alcoholic beverages are considered one of the main factors of diseases and deaths, more precisely 8% to 14.9% of all existing health problems (Laranjeira, 2007, p. 28).

In this sense, according to Laranjeira (2007), it is natural that in countries that allow the consumption of alcohol they are divided into wet ones, considering that this typology is increasingly losing strength and is being replaced by a constant and growing homogenization regarding the patterns of drinking alcohol and the preferences for forms of alcoholic beverages.

According to Laranjeira (2007), traditionally, the countries where alcohol consumption is allowed are divided into "wet" countries (cultures in which abstinence rates are low and wine is the main drink of choice) and "dry" countries (abstinence is more common, but those who drink usually consume large quantities). This typology has been losing strength and being replaced by a growing homogenization of drinking patterns and preferences for the type of alcoholic beverage. Currently, researchers direct their attention to other behaviors related to drinking.

Drunkenness in traffic has been a cause of concern among people and the agencies responsible for health and also by the Governments, in a meeting held by all the Secretaries of Health of the States of the



Federation in 2007, a document called "CONASS 15" was issued, in which violence was the main theme and the causes of death in traffic were fully addressed. According to Melcop (2004):

The harmful use of drugs and violence in transport are complex and dynamic phenomena in community life that permeate social, economic and political issues and are related to human subjectivity. Therefore, the space for the circulation of people and vehicles is the arena of power relations, reflecting the conflict of inequalities in our society. These conflicts and social tensions manifest themselves as conflicts and tensions in traffic (Melcop, 2004, p. 85).

In the study carried out by the National Council of Health Secretaries (Conass) (2007) they called it an "infectious pandemic" or a silent epidemic, because violence takes over the whole world. Without a specific cause, attributed to all kinds of lack or insufficiency, having been concentrated in the great wars or in the most remote colonial wars to the centers in conflict. Violence is becoming more widespread every day and thus an epidemic is becoming commonplace that becomes a known endemic of all traffic violence in the cities of the world and in Brazil mainly.

Within the Conass study (2007) it is notorious that the level of stress among people in traffic has been constant both on the part of drivers and pedestrians. The flow of cars on the streets is also causing inconvenience, combined with the accidents that commonly happen as reported in the press.

In the name of economic growth, of transforming everything into a commodity, civilization grows under the aegis of global capitalism and with that violence grows and people get sick as victims of it.

In the relationships that people are adopting, an important reading was sought, which was Sigmund Freud (1929) who said that "to contain the aggressions of the individual against humanity there was only one way, civilization" (Conass, 2007, p. 145).

In the beginning, people lived in the elements, suffering all forms of aggression from nature, threatened by lightning and flooding, by volcanic eruption and snowfall, if not exposed to the attack of animals, to the poison of plants or to metazoan parasitism, to the infestation of protozoa and to bacterial or viral infection. Inherited diseases were not even manifest, as there was not enough life expectancy for them to be identified.

Now the civilization advocated as a remedy for all barbarism manifests itself as such, compromising healthy lives, when it increases the death of lives in vain, without assuring them how to be full in the periphery, in the metropolises and even in rural villages.

Violence is becoming naturalized and it is a way of returning to the era through which people lived in the name of progress, it is worth distinguishing these conditions of growth. Man looks to technology for ways to live longer and meet the needs of fighting the diseases and illnesses that are susceptible to them, but with traffic violence there are evils such as: immobilized people, paraplegics, when they do not succumb and die.

In the statements exposed by doc. L5 of Conass (2017) is:



The health services do not act directly on the objective causes of violence, they have no perceptible influence on its determination, they are still considering the prevalence of the epidemic, they are constantly helping the victims, and their recovery is uncertain and often unsatisfactory, but always and every. It costs more for jobs, intensive care, beds, and material resources.

"Caring is the primary mission of doctors and hospitals even if there is nothing more to be done, was the conclusion of the members of CONASS and one must always take care". This is the best response for a society that suffers from the borders of endemic violence, because only care is capable of identifying the subject that resides in each of the human beings and reifying the person in us. This is the message conveyed by the Secretaries of Health of the Brazilian States, who complete by saying:

Violence has been a frequent topic of discussion in the media and in Brazilian society, and is often seen as a security issue. It has its historical and social roots, has multiple causal factors and, therefore, can only be addressed through the convergence of the public power and the various sectors and institutions of society. Because it profoundly affects the health sector, resulting in death, injuries, disabilities, emotional changes, and reduced quality of life, the need is growing not only in the emergency room, emergency, and rehabilitation, but in all areas of care, monitoring, and promotion. Health, which is an important theme for the sector, calls for violence to also be considered a public health issue, Ministry of Health (Brasil, 2007, p. 391).

ACTIO LIBERA IN CAUSA

The theory of Actio libera in causa, as highlighted by Capez (2009), establishes that non-accidental drunkenness never excludes imputability, whether voluntary, complete or incomplete culpable.

This is because, at the time he ingested the substance, he was free to decide whether or not to do so. The conduct, even when practiced in a state of complete intoxication, originated from the act of free will of the subject, who chose to ingest the substance when he had the possibility of not doing so (Capez, 2009, p. 339).

Nelson Hungria (1958) stated that "in the becoming or making oneself become a means currently unconscious of one's own will, at first conscious, there is the concomitance of intent with a moment of the execution of the crime – which is sufficient for the imputation of the latter."

In the view of Mirabete (2009), the theory of Actio libera in causa is valid "when the agent assumed the risk of drunkenly committing the crime, or at least, when the practice of the crime was foreseeable, but not in cases in which the agent does not want or does not foresee that he will commit the unlawful act".

From these understandings, it can be inferred that, if the perpetrator of a crime has been voluntarily, culpable, preordained, complete or incomplete, he will be liable for the criminal offense he commits, even if this state of complete torpor makes him not understand the illicit nature of the criminal act.

Although these understandings are held, on the contrary, Damásio de Jesus (2010) manifests himself by rejecting the strict liability adopted in the modern penal system, arguing that the agent cannot



be held responsible if he was not, at the time he was drunk, able to foresee the emergence of the situation that led to the commission of the crime.

The doctrinaire argues that "drunkenness cannot be considered an act of execution of the crime that the agent did not foresee". Because it is not compatible with the Principle of Presumption of Innocence enshrined in the Federal Constitution of 1988 provided for in article 5, item LVI, in verbis: "no one shall be considered guilty until the final and unappealable criminal sentence of conviction".

Therefore, this interpretation has been applied in such a way as not to hold the agent objectively liable, but only when he may be able to foresee, or want the criminal result, while intoxicated.

IMPACT OF ALCOHOL ABUSE ON VIOLENCE AND TRAFFIC ACCIDENTS

The consumption of psychoactive substances accompanies the history of humanity, being present throughout the process of civilization. The circumstances of this consumption vary greatly over time and are still different today depending on the context in which this consumption takes place. Drug use in modern societies reflects the important social and economic changes of the last few centuries.

At the other pole of plants that are transformed by hand into psychoactive substances, we have tandem drugs today, the products of laboratory transformations that are produced legally or secretly on a repetitive scale, like any other generic consumer product (Melcop, 2004, p. 27).

In almost all countries where this phenomenon has been studied, drinking, even if sporadic, has caused more exorbitant costs and health damage than continuous, dependent use. This is due to the fact that important neurophysiological changes occur during the episode of this type of drinking, such as: behavioral disinhibition, cognitive impairment, decreased attention, worsening of judgment capacity, decreased motor coordination, etc. (Laranjeira, 2007, p. 28).

The dimension and severity of the impact of violence has also been highlighted in the media, considering only the absolute number of deaths (which correspond to the "tip of the iceberg", since the number of victims with sequelae is much higher) the Mortality Information System of the Ministry of Health showed that in 2005 there were 47,578 deaths by homicide, 35,994 deaths from traffic violence (road traffic accidents) and 8,550 suicides. These numbers correspond to approximately 130 deaths by homicide, 99 by traffic accidents and 23 by suicide each day the sum of these numbers, 252 daily deaths, is higher than the deaths caused by a recent air accident, which had great repercussion in the press, according to Conass (2007, p. 32).

Before the invention of automobiles, there were already transport accidents, involving carriages, people and animals. In 1896, the first case of death involving a pedestrian being hit by a car was recorded in London. Since then, injuries and deaths caused by traffic have been increasing exponentially. In 1997, a cumulative total of 25 million deaths caused by traffic were estimated.



It is estimated that in 2002 1.18 million people died on public roads, with a world average of 3,242 deaths per day, which makes traffic injuries the eleventh cause of death in the world. In addition to deaths, it is estimated that between 20 and 50 million people are injured per year. The estimated number of potential years of life lost in 2002 was 38.4 million, which represents 2.6% (two point six percent) of the total number of potential years lost, which places road traffic injuries in 9th place on the list of those responsible for the global burden of disease. Data collected by the World Health Organization. World report on the prevention of road traffic trauma (WHO, 2004, p. 9).

In Brazil, in 2005, 35,994 deaths due to road traffic accidents were reported to the Mortality Information System of the Ministry of Health. Most occurred among young adults, aged 20 to 39 years (44.9%) and males (81.9%) (Conass, 2007).

Therefore, the situation of great catastrophe remains, a true epidemic that occurs silently, since some episodes stand out, but the full dimension of this serious problem with great social repercussions is not perceived, especially in the health sector.

Drinking for the first time is perhaps one of the most widespread rites of passage in Brazilian society and in many other countries where alcohol is the most consumed drug. In adolescents, the negative consequences are even greater, such as: problems in studies, social impacts, unprotected and/or unconsented sex, increased risk of suicide or homicide, and accidents related to excessive consumption.

Their brains are still forming and are more susceptible to external factors, such as alcohol and other psychoactive drugs, as well as different psychosocial factors. This is when inclusion in groups becomes essential and drinking can emerge, for example, as a means of integration. It is worth mentioning that in Brazil, alcoholic beverages are only legally allowed after the age of 18, but there are some small barriers for adolescents to buy and drink (Conass, 2007, p. 28).

CHANGES BROUGHT ABOUT BY LAW NO. 12,760/2012

The legislator's response to the facts and statistics in 2008 was the enactment and effectiveness of Law No. 12.760/2012 that changed some provisions of the Brazilian Traffic Code, which came to stiffen the treatment of drivers who drive while intoxicated.

In addition, with the new wording given by Law 12.760/2012, the crime of drunk driving is characterized when it is found that the driver's psychomotor capacity has been altered due to alcohol or other psychoactive substance, such as, for example, "marijuana" or "cocaine".

According to Duailibi; Pinsky; Laranjeira (2011, p. 37): "the reduction in the permitted alcohol level and the characterization of drunk driving, offering risk as a crime, pointed in the direction of a hardening of the Law [...]", and as Oliveira (2011, p. 102) cites, the new law brought a series of innovations in an attempt to show that the State was doing something to respond to society regarding the alarming number of victims on our highways.



It is clear that the most significant change brought about by this law was the criminalization of drunk driving, which was framed in article 34 of the Criminal Misdemeanor Law, which consisted of driving vehicles on public roads, endangering the safety of others, with the change of article 306, of the CTB, then considering the crime of drunk driving:

Article 306. Driving a motor vehicle with altered psychomotor capacity due to the influence of alcohol or other psychoactive substance that determines dependence:

Penalties - detention, from six months to three years, fine and suspension or prohibition of obtaining a permit or license to drive a motor vehicle.

Before the "dry law" came into force, the wording of the article provided that it required concrete danger to constitute the crime. With the advent of Law 12.706/12, the legislator removed the figure of the danger of concrete damage, which was configured by the need for the driver to be driving exposing to potential harm others, changing the crime to abstract danger, in which there is no need for the driver to be driving in a way that causes danger of damage. It is enough for this same driver to present himself with the amount of alcohol per liter of blood equal to or greater than six decigrams, or under the influence of another psychoactive substance, proven by the evidence admitted in these cases, for the crime to be configured.

Before the advent of Law No. 12.706/12, the criminal type of the crime of drunk driving expressly required the agent to drive the vehicle in such a way as to expose the safety of others to potential damage. Thus, if the subject was driving correctly when stopped by police officers, he would not incur a crime. The typification presupposed abnormal driving due to the influence of alcohol: zigzagging or going the wrong way, giving a "hobby horse", wheeling a motorcycle, etc. [...] (Gonçalves, 2010, p. 213).

Gonçalves (2010) emphasizes that the legislator understood that the mere fact of having the aforementioned concentration of alcohol in the blood, by itself, exposes traffic safety to danger, also pointing out that Damásio de Jesus and Luiz Flávio Gomes continue to understand that it is only a crime if the agent is driving the car abnormally, for one cannot punish an individual for an abstract crime.

There was also the issuance of Decree No. 6488 of June 19, 2008, which regulated the tolerance of alcohol in the blood, with this tolerance margin being two decigrams per liter of air expelled from the lungs in all cases, unless the measurement is made by an alcohol meter (pulmonary alveolar air device), when the margin will be one tenth of a milligram of air expelled from the lungs. Such margins will be valid until the National Traffic Council (CONTRAN) makes a resolution with these margins.

ALCOHOL CONSUMPTION PATTERNS IN THE BRAZILIAN POPULATION

To illustrate how the population behaves in relation to alcoholic beverages, Laranjeira et al (2007, p. 36) present the following data, which are important to observe:



According to the I National Survey on Alcohol Consumption Patterns in the Brazilian Population, carried out through the National Anti-Drug Secretariat of the Institutional Security Office of the Presidency of the Republic, 52% of Brazilians over 18 years of age drink (at least once a year). Among men it is 65% and among women 41%. At the other end are the 48% of abstinent Brazilians, who never drink or who drink less than once a year. In the group of adults who drink, 60% of men and 33% of women consumed 5 drinks or more at the time they drank the most in the last year. Of all adult men, 11% drink every day and 28% consume alcoholic beverages from one to four times a week, they are the ones who drink "very often" and "frequently". Although the largest percentage of people who drink is in classes A and B and in the South region, it is in the states of the North, Midwest and Northeast and in class E that the largest number of doses is consumed each time one drinks.

According to Laranjeira, (2007, p.35) the consequence that alcohol consumption causes and violent traffic accidents deserve to be highlighted, with young people mostly as the main victims of these fatalities. Among the motivating factors are the lack of responsibility for drunk driving. Alcohol is the worst drug to be ingested, because drinks such as beer, wine, brandy and others are available to the population because they are legal.

IMPACT OF ALCOHOL USE ON TRAFFIC ACCIDENTS

According to Barbosa (2005, p. 27) "drinking and driving are symbols of social achievement. Cars and drinks indicate success and wealth." Owning more or less expensive cars indicates a differentiated place between their owners and the other traffic actors (passengers, motorcyclists, cyclists, pedestrians). As there are few safety equipment (such as protective islands, walkways and retention strips, among others) the latter seem to be "second-class" citizens, without the guarantee of all their rights. Thus, these social values provoke and reinforce transgressive, aggressive and risky behaviors in traffic. Alcohol consumption appears as a villain responsible for traffic violence.

The same author Barbosa (2005) highlights data that correlate alcohol consumption in leisure situations and driving cars and motorcycles. Data obtained in 1995 by the Center for Studies and Therapy of the

Drug Abuse in Salvador showed that a large proportion of the interviewees (25.5%) reported a previous occurrence of a traffic accident while driving a vehicle, and of these, 37.7% had drunk alcohol at the time.

A survey conducted in 1996 by the Recife Institute for Integral Attention to Dependencies showed that in Recife, 23% of respondents were legally prevented from driving and, of these, 28% had been in an accident before. It was also observed that the self-assessment of alcohol status is a bad indicator of the driver's real conditions, since most of them underestimate the negative influence of drinking on driving.

The interviewees expressed an adequate perception of what should be done after drinking alcohol, such as handing over the car to someone else or taking a taxi – but they do not carry out this intention.



Barbosa (2005, p. 187) says about his observations of the research he carried out:

Another important aspect observed in both cities was the fact that drivers who did not wear seat belts had higher levels of alcohol. Another study cited by the author showed that in cases of being run over, most of those run over were under the influence of alcohol.

Barbosa (2005, p. 188), in a presentation held in Recife, at the I Northeast Seminar on Harm Reduction Related to the Consumption of Alcohol and other Drugs, cites a survey coordinated by the Brazilian Association of Detrans in 2001, in the cities of Brasília, Curitiba, Salvador and Recife, observing that 61% of the people involved in traffic accidents had ingested alcoholic beverages, this index reached 77.4% in Brasília.

The same study showed that most fatal accidents occur on weekends, especially on Saturday nights. Data corroborate the conclusion of Melcop (2004), who considers that most traffic accidents are not accidental, and can be prevented.

Traffic accidents are the result of a set of circumstances and factors linked to the individual, vehicle and public road. Among these, the harmful consumption of alcohol stands out. The high incidence of accidents directly or indirectly motivated by the use of beverages may be related to the changes in behavior caused by this use, arrogance, freedom from censorship, reduction or absence of criticism, among others, both among vehicle drivers and pedestrians (Conass, 2007).

The states with the highest rates of hospitalization for injuries caused by traffic accidents were Ceará, Roraima, Rondônia, Goiás, and Maranhão, all with rates above 100 hospitalizations per 100,000 population. All had mortality rates from road traffic accidents above the national average, except Maranhão, with a mortality rate of 15.5 per 100,000 inhabitants, one of the lowest in the country.

The state of Santa Catarina, which had the highest mortality rate, had a hospitalization rate slightly below the country's average. The state of Tocantins had the lowest rate of hospitalizations due to injuries caused by traffic accidents (10.9 per 100,000 population), despite having an above-average mortality rate (25.6 deaths per 100,000 population) (Conass, 2007).

SOURCES OF VIOLENCE

Recklessness translates into haste, lack of caution in the practice of a certain action, such as driving a car through an intersection disrespecting the rules of preference or disrespecting the Mandatory Stop signs.

According to Franch (2004, p. 49-71):

For many people, drinking is not only an important ritual of sociability, but it is one of the most enjoyable components of their weekly routine. Drinking to drunkenness, especially in young people, is part of the exaggeration of those who know that this is a social attribute of age and the process of experimentation with drinking, with one's own body and with others. For some young



people, violence is a context for survival, a language with which they express discontent or seek excitement. A response to degrading living conditions or, on the contrary, a way of inscribing contempt in relation to the other, be it black, woman, poor, homosexual, Indian. For most young people, however, violence is just a threat on the horizon that does not prevent them from enjoying life, designing projects and being citizens. It is to all these young people that harm reduction strategies should be addressed.

The same author considers that many action measures that reduce the risks of young people getting involved in violence in situations of alcohol consumption, need, first of all, to adopt the perspective of promoting young people as subjects of interventions, capable of actively participating in the definition of priorities, in the implementation of actions and in the evaluation of results.

To bring young people to the scene, it is essential to redefine attitudes that are still very rooted in school, politics, the community, the family and many other spaces of youth circulation (Franch, 2004, p. 49).

The stimulus to youth protagonism should not be done in isolation beforehand, but it needs the support of other pillars of society in the fight to reduce violence. Says Franch (2004, p. 50) that:

To be effective, harm reduction strategies need to be developed together with young people, who are the main stakeholders, but with the support of the State, promoter of public policies, civil society, communities and families, who must exercise social control over these policies.

Franch (2004, p. 49-71) also considers that several issues should be better discussed, among which the following stand out:

The legal aspects (since, as we have seen, the ingestion of alcohol is increasingly early, despite its sale being illegal before the age of 18);

Cultural issues and gender relations (patterns of masculinity make men more likely to take risks and more likely to use physical violence against other men and women);

Representation of illicit drugs versus licit drugs (society has given illicit drugs the status of the main danger, with a process of "demonization" of drugs such as marijuana, at the same time that the consumption of another drug that is alcohol becomes commonplace). Both attitudes are considered counterproductive, since they do not involve the main element for young people to be able to decide and have control over drug consumption: information;

- At school: young people, as we have seen, obtain information about drugs and alcohol from their friends or through media propaganda. The school, as one of the main institutions for secondary socialization, needs to open this debate in a non-repressive way. Actions that involve young students as subjects of educational actions in schools have proven to be very effective inside and outside Brazil;

- Bars and leisure places are privileged settings for alcohol consumption. It is possible to make these places safer, avoiding crowds, sharp objects and other elements that cause danger. Waiters and owners should be aware not to encourage alcohol consumption to the point of drunkenness. Likewise, it is necessary to discuss with these actors more effective ways to deal with the conflicts that occur in these places (Conass documenta n.15).

MEASURES FOR THE PREVENTION OF TRAFFIC ACCIDENTS

As previously mentioned, policies and laws aimed at preventing traffic accidents in general are only repressive and focused on driving behavior: speed limits, limits on the consumption of alcohol and



other drugs, age limits for obtaining a license are imposed, various punishments are defined. Little, however, is done in the area of prevention, education and community intervention, with the aim of raising awareness and changing the culture and social values of the population in relation to traffic and drug consumption.

Some recent interventions, within the principles of harm reduction, have tried to make vehicles, cars, motorcycles, bicycles and public roads safer, as well as to program strategies to avoid and/or reduce risk situations in traffic for pedestrians and drivers. Melcop (2004) highlights among them:

Programs that provide transportation, free or not, for drunk people, making it easier for these people to opt for safer transportation to return to their homes; Driver designation programs. These are programs that encourage a group of people, who go out frequently, to choose – to designate a member to abstain from drinking at that time. The idea is that he will be able to lead the group, not only in traffic, but also in other risky situations. The participants of the group must rotate in this function; Educational blitz. Police officers and traffic educators, intervening in the flow of vehicles and people requesting the use of breathalyzer to measure alcohol and passing on useful information about drinking and driving.

Like Franch (2004), Melcop (2004) also considers it essential to stimulate and ensure the role of alcohol users in the planning and execution of all harm reduction actions.

TRAFFIC LEGISLATION IN BRAZIL

Concept of Traffic Crimes

With frequent occurrences of irresponsibility on the part of drivers under the influence of some narcotic while driving vehicles, the legislator, "sensitive to the evolution of social facts", Rizzardo (2004, p. 750) enacted Law No. 9,503 of September 23, 1997, which in its chapter XIX, creates traffic crimes, to try to curb and punish illegal and criminal acts committed under the driving of motor vehicles.

Within the concept of in traffic, we have the one outlined by José Frederico Marques, brought by Cássio Mattos Honorato, which defines the characteristic crime of the automobile:

It is the one in which this vehicle constitutes the cause of damage, insecurity and danger to personal safety without being removed from its normal function as a means of transport. Thus, there is the crime of the automobile, the crime by means of the automobile and the crime against the automobile (Honorato, 2000, p. 349).

Of the Criminal Type

It is essential for there to be a description of the criminal type to be aware that the target of our research is alcohol, to understand its effects on the body.

Alcohol, in addition to being a perishable product, is a psychoactive substance and therefore is susceptible to causing dependence, as well as described by Cássio Mattos Honorato, citing the Glossary of Alcohol and Drugs, distributed by SENAD, in verbis:



Alcohol is a sedative/hypnotic with effects similar to barbiturates. In addition to the social effects of use, alcohol intoxication can result in poisoning and even death; Excessive and prolonged use can result in addiction or a wide variety of organic and physical mental disorders. Mental and behavioral disorders resulting from alcohol use (F10) are classified as disorders resulting from the use of psychoactive substances in the ICD-10 (F-10-F19).

The effects of alcohol on the human body are relative, depending on each person's biological factors, some have great resistance to its effects, while others are delirious when taking small doses. This issue is very relative, each case is different.

In studies on its effects, Oswaldo Patrão cites four factors, of importance to the case of the study, on the influence of the drug on the body, namely, sensitivity, duration time, type of alcoholic beverage and dose, in the following terms:

- 1) Individual factor: in the face of alcohol, not all individuals react equally. Women are more sensitive than men and exhibit differences depending on whether they are in puberty, pregnant or menopausal [...].
 - 2) the duration of intoxication: the effects of alcohol vary according to the toxic state, whether acute or chronic.
 - 3) the type of alcoholic beverage: the type of beverage modifies the symptomatology of alcoholism. Each type of beverage conditions a distinct picture of alcoholism, due to its specific impurities, among which furol, aldehydes and, especially, acetic aldehyde stand out.
 - (4) the fatal dose of ethyl acid is 6 g per kg of body weight, but there are known cases of death at lower acetic doses [...].
- In addition, if the stomach is full of food, the absorption of alcohol is delayed (Pataro, 1976, p. 306).

Before having a perfect understanding of the effects of alcohol on the human body, the wording of the National Traffic Code had established the understanding that the conducts that were caught driving under the influence of alcohol or other psychoactive substance, were framed within the criminal misdemeanor for dangerous driving, according to article 34 of the Criminal Misdemeanors Law (Law No. 3,688/1941).

Nowadays, the driver caught numbed by some psychoactive, while driving, is framed in the incriminating criminal type described in article 306 of the traffic law.

Thus, it can be seen that the wording of Law 11.705 of June 19, 2008, in its article 5, VIII, was modified the incriminating criminal type. The Brazilian legislator, aiming to impose more severe penalties for drunk drivers, introduced to the caput, of article 306 of the aforementioned law, the following words with the wording given by Law No. 12,760, of 2012.

Article 306. Driving a motor vehicle with altered psychomotor capacity due to the influence of alcohol or other psychoactive substance that determines dependence:
Penalties - detention, from six months to three years, fine and suspension or prohibition of obtaining a permit or license to drive a motor vehicle.



Alcohol Levels and Effects on Traffic

When a person drinks alcohol, the level of alcohol concentration in the blood will depend on their height, weight, and physical and emotional conditions. Depending on these factors, a given concentration may have different effects on people. In general, concentrations of up to 0.2 grams per liter of blood (a glass of beer) do not usually have any effect on traffic reflexes. From then on, most people begin to have their reflexes affected, compromising their reactions.

The risk begins to grow with any consumption and makes a first jump in the range of 0.5 – 0.9 g/l (nine times higher risk of involvement in some type of accident). Drunk drivers and pedestrians are generally not intoxicated, they are not drunk, but their circulation in traffic is seriously compromised (Brasil, 2004, p. 49-71).

FINAL CONSIDERATIONS

It is hoped that this document can facilitate the preparation of the article by the authors, as well as the review of the reviewers. (Demonstrate whether the proposed objectives have been achieved, and the final considerations of your research).

The intention of the present work was to survey elements that lead to the nexus between drunkenness and motor vehicle traffic crimes that result in death, involving drivers who have blood alcohol levels above those allowed by law.

To this end, the presentation of the problem and its nuances in its own chapter was better understood, in order to expose specific data to support the objective proposed in the work.

This made it possible to understand the correct concept of drunkenness, along with the understanding of the effects that alcohol brings to the human body, the interpretation of the rules that watch over this theme was also observed.

A large part of the understanding of the doctrines that emphasize their concepts about the legal provisions inherent to this theme was taken into account, the interpretation of the entire legal process to arrive at the current provisions were also considered.

This leads to the reflection on the legislator's intention in mortifying the devices in the search to correctly meet popular desires and try to reduce or control this unbridled situation of pandemonium that our public roads and highways find themselves in.

In addition, a considerable part of the doctrine emphasizes that, if the agent is drunk to the point that it is impossible for him to decide whether there is eventual intent or fault in his conduct, his will must be considered before entering the state of drunkenness.

Along with all the research carried out, several judgments were brought to the present work that demonstrate drunkenness as a fundamental element in traffic accidents, in order to positively demonstrate



the objective proposed in this work, which is to objectively demonstrate the intimate relationship between drunkenness and traffic crimes.

Thus, it is concluded that there is a direct relationship between drunkenness and traffic crimes, a factor that increases the danger and risk of having a higher mortality due to the effects of psychoactive drugs on the body.

It was found with the research that there is a clear violation of the accusatory system enshrined in the Constitution, a system that separates the functions of accusing, judging and defending, thus delimiting the field of action of each of the subjects, but this field of action ends up not having its effectiveness, because the legislation allowed the judge's ex officio action, who took the place of the accusation, whether in the issues concerning arrests or protective measures that proved to be a vast field for the magistrate to act.

Finally, the issue of the imputability of psychopaths, which is a universe legally and legally full of doubts and controversies, since the very condition of psychopathy is a mystery still under study. Thus, Criminal Law has its laws, theses and legal projects that imputing criminal facts to a person must pay criminally through the application of a sanction. However, the criminal sanctions provided for in the Brazilian legal system are divided into penalties and security measures. Technically, penalties are applied to mentally healthy people and security measures are applied to sick individuals who pose a social risk. Anyone who does not fit into the application of one of these sanctions is considered unimputable.



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