


SISTEMA PENAL BRASILEIRO, DUPLA IMPOSIÇÃO DE DORES E A INVISIBILIDADE DAS MULHERES ENCARCERADAS**THE BRAZILIAN PENAL SYSTEM, THE DOUBLE IMPOSITION OF PAIN AND THE INVISIBILITY OF INCARCERATED WOMEN****EL SISTEMA PENAL BRASILEÑO, LA DOBLE IMPOSICIÓN DEL DOLOR Y LA INVISIBILIDAD DE LAS MUJERES ENCARCELADAS**

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RESUMO

O sistema penal brasileiro impõe outras formas de penalização às mulheres encarceradas, além da pena privativa de liberdade? Dessa pergunta surgiu a presente pesquisa, realizada através da metodologia da revisão bibliográfica e documental. Inicialmente objetivou-se analisar o sistema penal e a sua origem essencialmente desenhada para receber o gênero masculino, e a consequente invisibilidade das mulheres encarceradas. Em um segundo momento, foi proposta uma análise dos aspectos interseccionais que afetam o gênero feminino no âmbito do cárcere e como isso resulta na privação de outros direitos. Ao final foi constatado o caráter opressor do sistema penal brasileiro, restando demonstrada a sua capacidade de aplicar, para além da sanção penal, outras punições às mulheres presas.

Palavras-chave: Sistema penal brasileiro. Mulheres encarceradas. Invisibilidade.

ABSTRACT

Does the Brazilian penal system impose other forms of punishment on incarcerated women, apart from custodial sentences? This question gave rise to this research, which was carried out using a bibliographical and documentary review methodology. Initially, the aim was to analyze the penal system and its origins, which were essentially designed to accommodate the male gender, and the consequent invisibility of incarcerated women. Secondly, an analysis was proposed of the intersectional aspects that affect the female gender in prison and how this results in the deprivation of other rights. In the end, the oppressive nature of the Brazilian penal system was revealed, demonstrating its capacity to apply other punishments to women prisoners in addition to criminal sanctions.

Keywords: Brazilian penal system. Incarcerated women. Invisibility.

RESUMEN

¿Impone el sistema penal brasileño otras formas de penalización a las mujeres presas, además de la pena privativa de libertad? Esta pregunta dio origen a esta investigación, que se llevó a cabo utilizando una metodología de revisión bibliográfica y documental. Inicialmente, se buscó analizar el sistema penal y sus orígenes, esencialmente concebidos para acoger al género masculino, y la consecuente invisibilidad de las mujeres encarceladas. En segundo lugar, se propuso un análisis de los aspectos interseccionales que afectan al género femenino en prisión y cómo esto se traduce en la privación de otros derechos. Al final, se reveló la naturaleza opresiva del sistema penal brasileño, demostrando su capacidad de aplicar a las mujeres presas otros castigos además de las sanciones penales.

Palabras clave: Sistema penal brasileño. Mujeres encarceladas. Invisibilidad.

INTRODUCTION

According to data contained in RELIPEN (BRASIL, 2024, p. 60), in the period from July to December 2024 the female incarcerated population in Brazil was 29,137 women, excluding the number of the Federal Penitentiary System. The same report shows that, in this same universe, there were a total of 180 pregnant women and 98 breastfeeding women (BRASIL, 2024, p. 61/62), while only 59 dormitories for pregnant women were registered, unevenly distributed among the Brazilian states, and there were even some places where there were none of these spaces, such as Bahia, Maranhão and Roraima (BRASIL, 2024, p. 62).

Thus, considering this scenario, the present work starts from the concern about the possibility of the Brazilian penal system becoming a mechanism capable of creating new forms of state violence against women who are subject to the control of punitive power, in addition to making invisible the intrinsic characteristics of this group when inserted in the prison space.

In the case of imprisoned women, the criminal justice system seems to act as an instrument of rights violation, which replicates gender violence and perpetuates institutional violence, in order to subject them to a double process of pain and violations. In addition, this system does not consider the particular experiences of women, making their needs invisible, treating them from a presumption of formal equality, without making the necessary social cuts of gender, race and class, so present in the Brazilian reality.

The methodology used for the development of this research was the bibliographic and documentary review, with emphasis on books, articles and dissertations focused on the analysis of the treatment given to women incarcerated by the penal system. To this end, preference was given to works made by academics, such as the productions of Elaine Pimentel and Soraia Mendes, in order to critically understand the analysis of women themselves on the theme addressed here.

PENAL SYSTEM AND THE INVISIBILITY OF WOMEN IN PRISON

The penal system can be understood as the set formed by agencies and institutions, legal systems and individuals who contribute to the exercise of penal power (ZOCCAL, 2018, p. 578). It can be seen that this is a system exercised from formal social control, as well as from informal social control, in which, in the understanding of Andrade (2007, p. 57), social groups such as family, religion, media, among others, are included.

Since it is then formed by society itself, it is not possible to see it as a system external to it. In this way, the penal system is not only a reflection of the society in which it is

inserted, but also reproduces its behaviors (FIGUEIREDO, 2018, p. 169). From this understanding, it can be understood that a criminal justice system developed in a capitalist, patriarchal and racist context is not shielded from the influences of these factors in its performance, on the contrary, it reproduces and consolidates the behaviors and ideals of the very scenario in which it is inserted.

It is noted, therefore, that gender directly influences the treatment that a person receives from the State when committing a crime and entering a prison institute, with greater vulnerability for women. However, it is not only gender that is relevant in this equation. As with male incarceration, the penal system acts through the selectivity of race and class (MENDES, 2020, p. 119) when dealing with female imprisonment⁴. This means that there are several aspects that add up and make the person more or less vulnerable.

This phenomenon can be explained by the concept of intersectionality, created by Kimberlé Crenshaw in 1989, defined by her as a way of perceiving the human experience from the understanding that all social and political circumstances in a person's life, as well as their achievements, are determined by multiple factors that are interconnected (HILL-COLLINS and BILGE, 2019, p. 13-14). Falquet (2017, p. 05) brings this same concept from the idea of communicating vessels, explaining how factors such as gender, race, and class behave in social dynamics.

Thus, incarceration reaches each individual in a different way. As for women, this occurs in a singular and even more perverse way, since there is a scenario of double punishment, to the extent that the practice of the crime translates into the violation of criminal norms and also of gender norms (PIMENTEL, 2013, p. 58). Women, by infringing the rules of a criminal nature, violate the patriarchal imaginary that establishes *standards* that the female gender is incompatible with the practice of crimes, as they are expected to be kind, loving, calm and understanding (PIMENTEL, 2013, p. 60). Thus, when committing a crime, the woman moves away from the behavior expected by patriarchal society to be correct, that is:

⁴ According to data gathered by the National Survey of Penitentiary Information, updated in 2016, 64% of the Brazilian prison population is made up of black people. Regarding the female prison population, according to INFOPEN Women 2014, 68% are black women. With regard to the age group, 50% of the incarcerated women are between 18 and 29 years old and 50% of the prisoners did not even complete elementary school. In addition, analyzing the 2016 Survey, 62% of women are in a situation of deprivation of liberty for the practice of the crime of trafficking. Such data demonstrate how the Brazilian penal system is selective and moves through specific markers of race and class. In the case of female imprisonment, the application of the prison sentence, in addition to the imposition of gender violence by the State, in the case of black women, who are the majority in this scenario, also means the perpetuation of race and class violence so present in the Brazilian reality, which places them in an even more perverse context when subjected to punitive power and imprisonment.

[...] the woman is punished twice, because, in the first place, when committing a crime, logically there is a social reaction and the application of legal sanctions. However, the incarcerated woman still suffers punishment for having failed to fulfill her traditional social role of conforming to the private space by invading the public space in the commission of the crime. (MIYAMOTO, KROHLING, 2014. p. 230)

This gender stereotype comes from the patriarchal system, a system that is responsible for fostering relations of domination of men and subordination of women, accentuating social roles "regarding the superiority of men over women, the inferiority of women over men, the precise and insurmountable demarcation of social spaces, from the public to the man and from the private space to the woman" (MIYAMOTO, KROHLING, 2014. p. 228). In other words, the stigmas created from patriarchy strengthen the imposition of social roles, with men being assigned the public and productive space and women being the private and dominating place (ANDRADE, 2012, p. 142).

In this sense, it should be noted that the penal system was originally designed to receive people of the male gender, since until the end of the nineteenth century crimes committed by women were more restricted to non-compliance with the moral and religious standards imposed (SANTANA, OLIVEIRA, BISPO, 2017, p.40). Thus, this system was developed through a process that places the figure of the masculine as the guiding lens to understand human experiences. However, by treating women and men from a perspective of formal equality, the penal system "superimposes an androcentric orientation in prison practices and dynamics on the feminine" (COLARES, CHIES, 2010, p. 408).

The very creation and formation of criminal norms, as well as their consequent application, are done in order to highlight the already existing relations of social inequality, and the criminal justice system is largely responsible for the reproduction and production of these relations (MIYAMOTO, KROHLING, 2014. p. 228). In this scenario, even the construction of the prison space does not take into account the particularities of women's experiences, making invisible the differences that are imposed on the female gender in Brazilian society. Thus, by "granting absolutely equal treatment to women and men in criminal and penitentiary policies" (PIMENTEL, 2013, p. 56), a series of discriminatory treatments against women within the criminal justice system are justified.

THE DEFENDANTS AND THE PUNISHMENT IN DUPLICITY

In prison, women become the target of a process of identity deconfiguration (PIMENTEL, 2013), that is, they are seen only as criminals, to the extent that all the other dimensions that make up their identities - mothers, women, among others - are silenced within the system. This occurs because prison has as its starting point the paradigm of

men's experiences, and there is also a "stratification of prisoners in a hierarchical order, with women having an inferior position" (COLARES, CHIES, 2010, p. 421).

That is, the prison structure in all its aspects (hygiene, health, organization) and even the projects aimed at the reintegration and resocialization of prisoners is designed for men. The very word "prison" implies the adjective masculine (CUNHA *apud* PIMENTEL, 2013, p. 55), as it is the universe of men that is being addressed when talking about prison, with the imprisonment of women being a mere exception.

The lack of access to minimum conditions of menstrual hygiene is a strong example of the invisibility of women in the prison space, since, in most cases, basic hygiene items are not distributed, and when they are, the quantity is insufficient for the number of inmates (DIAS; BORGES, 2023, p. 88). It is important to emphasize that menstrual poverty is considered the lack of products such as disposable pads or reusable fabrics, or menstrual cups, absence of bathrooms and basic sanitation, lack of garbage collection, and even access to medicines aimed at menstrual care (UNICEF; UNFPA, 2021, p.11). Based on this assumption, the condition of incarcerated women fits into the aforementioned concept of menstrual poverty, which is already discussed as a form of human rights violation by feminist organizations and international organizations (UN NEWS, 2022).

Another circumstance that reinforces the suffering and punitive nature of imprisonment is the violation of the right to maternity. The Universal Declaration of Human Rights recognizes that "motherhood and childhood have the right to special care and assistance" (UNITED NATIONS, 1948, art. 25.2). In Brazil, Law No. 11,942/09 establishes rights related to maternity for incarcerated people, providing that "penal establishments for women will be equipped with a nursery, where convicted women can take care of their children, including breastfeeding them at least until six (6) months of age." (BRASIL, 2009, art. 83, §2).

In addition, the legislation also deals with the need to have a section in penitentiaries for pregnant or parturient persons, as well as the existence of daycare centers to house children over 6 months to 7 years old, in order to guarantee assistance to the sons and daughters of women while they are still in prison (BRASIL, 2009, art. 89).

Notwithstanding the provision of the right, the reality experienced by women denotes that it is not fully applied, due to the lack of adequate infrastructure in prisons, in addition to the absence of nurseries and daycare centers in several women's penitentiaries (DE OLIVEIRA AND RAMOS, 2024, p. 12). For this reason, the emotional factor here is very strong, causing these pregnant or parturient women to suffer a kind of new punishment, as observed by Moraes *et al.* (2023, p.7):



The established role of being a good mother also leads these women to feelings of guilt and incapacity, for not being able to play the role they believe to be appropriate for their children in prison and, also, for seeing that their mistakes end up affecting the child, who spends the first months of life in the penitentiary reality.

According to the Penal Information Report, for the second half of 2024, prepared from data provided by the Prison Administration Secretariats of all states, the Federal District and the Federal Penitentiary System, there were 180 pregnant women and 98 breastfeeding women in the penitentiary system, whereas, in the same period, there were only 59 cells/dormitories for pregnant women (BRASIL, 2024, p. 61/62). In addition, only 06 daycare centers were registered, present in 04 Brazilian states, which are Maranhão, Paraná, Mato Grosso do Sul and São Paulo. It is worth mentioning that of the 06, 03 are located in the State of São Paulo (BRASIL, 2024, p. 66).

The same report also showed that most states do not have specialized pediatric or gynecology care in nurseries and/or daycare centers inside prisons (BRASIL, 2024, p. 67). In fact, only 02 establishments were identified with their own team for pediatrics and 03 for gynecology.

Another point that fosters the situation of double punishment of women is social isolation. This is demonstrated by the data obtained in the research by Barbosa and Ruas (2009, p. 69): While 85% of the imprisoned men are visited by their partners, girlfriends and wives, only 8% of the women receive visits from their partners. And it is not only affective and marital relationships that tend to abandon these women, the scenario is similar regarding family members, with a greater number of women who do not receive visits from their families than those who maintain contact with them (Barbosa and Ruas, 2009, p. 70). In this context, the punishment for women is amplified (COLARES, CHIES, 2010, p. 421), since prisoners are subjected to shortcomings and punishments of a material and affective nature capable of generating more suffering and insecurities.

So, in essence, women's prisons become a true instrument for the perpetuation of gender violence by the State and its punitive power, because the phenomenon of female incarceration has as a guiding element the silencing of women's experiences, becoming a "natural place of female victimization" (PIMENTEL, 2016, p. 175), since it is through the imposition of punishment that that criminal will be returned to her original place of submission, female control and silencing. In other words, when analyzing the reality of women who are inserted in the prison system, it is noted that the criminal process not only reproduces such social inequalities, but is also capable of producing new gender inequalities (MENDES, 2020, p. 96).

FINAL CONSIDERATIONS

From the bibliographic and documentary review carried out, it is possible to conclude that in the way it is designed, the Brazilian penal system reveals itself to be an instrument of oppression capable of applying, in addition to the criminal sanction resulting from the crime committed, a new punishment to incarcerated women, multiplying their pain through institutional violence, while prioritizing the male reality, making invisible the specificities of the female gender within a context that discusses their conflicts.

Although the deprivation of liberty penalty has an equally punitive character for those to whom it is applied, it is possible to see that it does not affect everyone equally. In a society like the Brazilian one, it cannot be ignored that factors such as class, race, gender, etc., directly interfere in how each person experiences experiences, so that such factors cannot be seen in isolation, but rather as communicating elements. An incarcerated man will not suffer the same vulnerabilities as a woman, even if the penitentiary system was designed in such a way as to be able to receive both in the same way, just as a white woman and a black woman are also affected by different vulnerabilities, and so on.

Thus, through the application of the prison sentence, the Brazilian State manages to relocate that woman stigmatized as a criminal back to her "natural" place of submission to the rules of patriarchy, in addition to reproducing the violence typical of race and class relations. Women are subjected to the control of punitive power, while they are placed in a position of inferiority within the prison space. Such a space should also be perceived as a structure created from the experiences of men and thought only for their imprisonment, so that the experiences and needs of women become invisible in this scenario, being silenced as they are outside the prison environment.

Thus, it is possible to conclude that the format in which the prison system works in Brazil not only reproduces the gender stereotypes present in society, but is also responsible for causing new violations of the rights of incarcerated women.

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