




WOMEN'S ACCESS TO THE FUNDAMENTAL RIGHT TO HEALTH

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ABSTRACT

In this article, I analyze the impacts of overcrowding in the Brazilian women's prison system on the realization of the fundamental right to health of women deprived of liberty. Understanding health as a constitutionally provided social right, I seek to highlight how the precariousness of prison conditions compromises access to medical services, especially those aimed at gynecological and reproductive health. I adopt a qualitative approach, based on bibliographic review and documentary analysis of legal norms, institutional reports and official data. I identify the main obstacles faced by the inmates, such as the scarcity of basic supplies and the absence of health professionals. Based on this, I propose a critical reflection on selectivity in the guarantee of fundamental rights, highlighting the urgency of public policies that ensure minimum conditions of dignity in the fulfillment of sentences. I conclude that the violation of the right to health in prison represents a serious deficit of citizenship and demands urgent structural measures.

Keywords: Women's prison system. Right to health. Incarcerated women. Fundamental rights. Public policies.

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INTRODUCTION

This article aims to study the realization of the fundamental right to health of women in situations of deprivation of liberty in Brazil. The theme gains relevance in the face of the precarious conditions of the prison system, historically structured for the male population and which, therefore, does not contemplate the specificities of women's needs, especially with regard to gynecological and reproductive health.

The Federal Constitution of 1988, in its article 6, lists health as a fundamental social right and a duty of the State, ensuring its provision to all citizens, regardless of the condition of freedom (Brasil, 1988). However, it is observed that the female prison population faces significant barriers to the materialization of this right, especially due to the overcrowding of prison units, the shortage of health professionals, and the lack of basic supplies, such as sanitary pads. Studies indicate that this precariousness directly impacts the dignity of inmates, exposing them to health risks and aggravating existing health problems (Brasil, 2023).

The overcrowding of women's prison units is a determining factor in the precariousness of access to health, as it compromises physical infrastructure, hygiene and the provision of medical care, including gynecological and obstetric follow-up. In addition, the low number of health professionals makes it difficult to carry out preventive exams, prenatal consultations, and adequate care for diseases common among the female population, such as urinary infections and sexually transmitted diseases (Mendes, 2021).

In view of this scenario, the present study has as a research problem the following question: **how does the overcrowding of the female prison system compromise the realization of the fundamental right to health of inmates?**

To respond to this problem, the general objective of this article is to analyze the impacts of overcrowding on access to health care for women deprived of liberty. As specific objectives, we seek: (i) to examine the normative context of the right to health in the Brazilian prison system; (ii) identify the main difficulties faced by inmates in accessing health services; and (iii) discuss alternatives and public policies that can improve this reality.

Methodologically, the research adopts a qualitative and exploratory approach, based on bibliographic review and documentary analysis, comprising legislation, institutional reports and academic studies on the subject. In this way, it is intended to contribute to the debate on the need for reforms in the prison system that guarantee minimum conditions of dignity to incarcerated women, ensuring them the full enjoyment of their fundamental rights.

THE FUNDAMENTAL RIGHT TO HEALTH IN THE BRAZILIAN PRISON SYSTEM

The right to health is one of the fundamental pillars of the Brazilian Democratic State of Law. The Federal Constitution of 1988 expressly recognizes health as a social right, provided for in article 6, and establishes in article 196 that "health is a right of all and a duty of the State", being guaranteed through public policies that reduce the risk of diseases and promote universal and equal access to health services (Brasil, 1988).

This constitutional provision reinforces the centrality of the dignity of the human person in the organization of fundamental rights in Brazil, especially when it comes to vulnerable populations, such as people in deprivation of liberty.

The realization of social rights, although provided for in the Federal Constitution, still faces significant obstacles in the Brazilian scenario, especially when analyzed from the perspective of the incarcerated population. Despite the existence of public policies and budget forecasts aimed at health, education and social assistance, real and continuous access to these rights is often neglected. The right to health, in particular, assumes a central role due to its nature as an essential right and a condition for the exercise of other fundamental guarantees, such as life and dignity (Oliveira, 2022). This reality is even more sensitive within the prison system, where the distance between norm and practice widens in the face of structural vulnerability and the invisibility of women's demands.

The 1988 Constitution attributed to health the status of a right of all and a duty of the State, recognizing it as a service of public relevance, whose provision cannot be conditioned to the freedom of the individual (Brasil, 1988). However, the inefficiency in the execution of public policies demonstrates that the formalization of rights is not enough to guarantee their full enjoyment. The prison environment exposes this disconnection, because, even though there is a legal provision for medical care and universal access to SUS services, the state provision is often precarious and omissive. In this context, discussing the health of women deprived of liberty is also denouncing the selectivity in the realization of social rights in Brazil (Oliveira, 2022).

In the context of penal execution, the legislation also ensures this right. Article 14 of the Penal Execution Law states that "health care is the duty of the State, including medical, pharmaceutical and dental care" for people deprived of liberty (Brasil, 1984). This norm confirms that incarceration does not imply the suspension of fundamental rights, imposing on the State the duty to maintain minimum conditions of dignity and care. The

guarantee of health in prison, therefore, is not only a legal imperative, but a requirement of justice and respect for human rights.

The protection of the rights of incarcerated women also finds support at the international level. The United Nations Rules for the Treatment of Women Prisoners, known as the Bangkok Rules, approved by the UN General Assembly in 2010, recognize the need for specific prison policies for women, especially with regard to health. The norms highlight that care must include particularities such as pregnancy, breastfeeding and care with menstrual hygiene, reinforcing the obligation of States to adopt differentiated measures that respect women's physical and psychological conditions (United Nations, 2010).

This international normative framework represents an advance in the promotion of the dignity of women deprived of liberty, by breaking with the historically masculine logic of the prison system. By requiring specific and humanized treatment, the Bangkok Rules dialogue with the constitutional principles of human dignity and the prohibition of cruel and degrading treatment, which are also applicable in the Brazilian legal system.

Therefore, the incorporation of these parameters into prison public policies in Brazil is essential to ensure the effectiveness of the fundamental rights of incarcerated women (United Nations, 2010).

Despite the existence of national and international norms that ensure the right to health of women deprived of liberty, the reality of the Brazilian prison system reveals a profound disconnection between legal theory and institutional practice. The overcrowding of the units, the precariousness of the physical facilities and the shortage of health professionals directly compromise access to basic medical, pharmaceutical and gynecological care. This situation is particularly serious in relation to women, whose specific demands, such as obstetric care, birth control, and menstrual hygiene, are often neglected (Brasil, 2021).

The persistence of these violations highlights the urgency of more effective mechanisms for monitoring and implementing structured public policies with a gender perspective.

The absence of a standardized national protocol for the health care of imprisoned women, combined with the lack of investments, makes it difficult to consolidate practices that guarantee dignity in the fulfillment of the sentence. As the National Council of Justice observes (Brasil, 2021), it is necessary to strengthen institutional monitoring and ensure intersectorality between the justice, health, and social assistance systems for the full realization of this fundamental right.

THE CONTEXT OF WOMEN'S HEALTH IN THE PRISON SYSTEM

The Brazilian prison system was, from its origin, structured based on a masculine logic, which resulted in the construction of establishments and public policies aimed mostly at men. Women deprived of liberty, as a result, remain in a situation of marginalization within a space that ignores their physiological and gender needs. This scenario is noticeable in the absence of minimum provisions for the maintenance of menstrual hygiene, which is one of the central aspects of the right to health and dignity of the human person.

The precariousness of menstrual health in prison units is a chronic and alarming problem. The distribution of sanitary pads is often irregular, and the amount made available is insufficient to meet the basic needs of the inmates. As a result, many resort to improvised materials, such as reused cloths, pieces of mattress, paper and even bread crumbs, a practice that seriously compromises intimate health and increases the risks of gynecological infections (ITTC, 2021). This reality reveals the complete absence of effective public policies aimed at menstrual health, disrespecting not only the principle of human dignity, but also the right to health guaranteed by the Federal Constitution of 1988.

This omission by the State constitutes a serious violation of human rights. According to the Land, Labor and Citizenship Institute (2021), it is urgent to implement measures that ensure the continuous and adequate supply of hygiene products to women in prison, under penalty of perpetuating inhumane and discriminatory practices. Overcoming this negligence requires the construction of penitentiary policies with an intersectional focus, which consider the specificities of gender, class and race of incarcerated women, thus ensuring the effectiveness of fundamental rights in the prison environment.

Gynecological health is a fundamental dimension of women's health and demands specific care that goes beyond the primary care common to the entire population. Issues such as vaginal infections, hormonal changes, and complications in the reproductive tract are exclusive to female biology and require adequate infrastructure and specialized care. Among these conditions, vulvovaginitis stands out, an inflammation that affects the vulva and vagina, usually caused by bacteria, fungi, or viruses, and whose incidence is strongly related to poor hygiene and the use of damp or synthetic clothing (Soares, 2021).

Another group of recurrent diseases is sexually transmitted infections (STIs), such as HPV, gonorrhea and HIV, which disproportionately affect the incarcerated female population. The lack of regular access to gynecological exams, such as the Pap smear,

and the shortage of condoms and prophylactic drugs aggravate the situation of vulnerability. Many women arrive in the prison system with a history of negligence in reproductive health, a situation that intensifies with the absence of effective public policies within prison units (Silva; Ramos, 2022). This scenario highlights the urgency of a more active state action, aimed at guaranteeing the fundamental right to health of inmates, as provided for in article 14 of the Penal Execution Law (Brasil, 1984).

In addition to these common and recurrent diseases, there are essential exams to detect other gynecological diseases, such as: Pap smear (preventive exam). Blood tests: complete blood count, lipid profile (cholesterol), hormone levels and detection of existing pathologies (chlamydia, HIV, among others). Pelvic ultrasound, abdominal or transvaginal: the first being recommended for women who have not yet started their sexual life. The indispensability of these tests lies in the effectiveness that the treatment can have if there is a timely diagnosis.

Periodic gynecological examinations are essential for promoting women's health, especially in vulnerable environments such as the prison system. The Pap smear, for example, is an effective method of early detection of cervical cancer, and is recommended annually for sexually active women. In addition, laboratory tests such as blood count, hormone dosage, and screening for sexually transmitted infections, such as HIV and chlamydia, are indispensable prevention and diagnostic practices (Martins, 2021). The absence of this care in the prison environment directly compromises the reproductive health of inmates and can lead to the aggravation of pathologies that would be easily treatable if identified early.

In the Brazilian penitentiary system, negligence in carrying out basic gynecological exams is a serious violation of the right to health and human dignity. Many inmates do not even receive initial medical care or clinical screening, being deprived of imaging tests such as pelvic and transvaginal ultrasound, which are essential for the identification of fibroids, ovarian cysts, and other dysfunctions of the reproductive system (Martins, 2021). This institutional omission prevents timely diagnosis, making it difficult to initiate adequate treatment and contributing to the worsening of clinical conditions, which directly contradicts the principle of integrality of the SUS and the state's duty to guarantee health even in situations of deprivation of liberty (Brasil, 1988; Brasil, 1984).

When the focus is directed to the female prison environment, the risk of developing gynecological diseases increases considerably. The scarcity of sanitary pads, the absence of clean water, the sharing of bathrooms and the lack of privacy aggravate the

vulnerability of inmates, creating a scenario conducive to the spread of infections. In this context, state negligence is not only a violation of the right to health, but also a direct affront to the dignity of the human person (Soares, 2021). It is essential that specific public policies be formulated based on this reality, guaranteeing the existential minimum to these women, as established by the Federal Constitution (Brasil, 1988).

The lack of adequate access to health services within women's prisons has favored the advance of several diseases, many of which could be prevented or treated with basic primary care measures. Among the most recurrent are urinary and gynecological infections, which result from the precariousness of personal and environmental hygiene conditions, the scarcity of sanitary pads, soaps, and adequate underwear, in addition to the lack of periodic gynecological follow-up (Silva, 2020). Another frequent problem is the incidence of sexually transmitted diseases, such as syphilis, HIV, and hepatitis, which are often not diagnosed in time due to the absence of regular exams and prevention campaigns within prison units (Mendes, 2021). These diseases, when not treated properly, compromise not only the individual health of women, but also the collective health within the prison environment.

In addition to infectious diseases, psychological and psychiatric disorders are also common, such as anxiety, depression, and panic syndrome, aggravated by confinement in overcrowded environments, family isolation, and institutional violence. Many women arrive at prison already in a situation of mental suffering, accentuated by the experience of incarceration and the lack of adequate psychosocial support (Mallart, 2019).

According to the CNJ (2021), less than 30% of women's prison units have mental health professionals on their technical team, which reveals the negligence in meeting an essential demand. This absence of comprehensive care contributes to the worsening of clinical conditions and can even lead to suicide attempts, self-injuries or psychotic episodes not treated properly.

THE IMPACT OF OVERCROWDING ON GUARANTEEING THE RIGHT TO HEALTH FOR INCARCERATED WOMEN

Overcrowding in Brazilian prisons is one of the biggest problems faced by the penitentiary system and occurs mainly due to the excessive use of prison as a penal response. Many people, including women, are arrested for crimes of low offensive potential, such as petty theft or non-violent involvement with drug trafficking. Most of these women are in a situation of social vulnerability and end up being punished disproportionately. In addition, the high number of pretrial detentions and the slowness

of the justice system contribute to the continuous increase in the prison population (Silva, 2020; Damasio, 2021). This overcrowding makes it difficult to access basic services, especially health, as there is a lack of adequate spaces, sufficient professionals, and medical resources. Thus, the right to health of these women, guaranteed by the Federal Constitution, is constantly violated (Brasil, 1988).

According to data from the National Penitentiary Department (DEPEN), between 2000 and 2020 the female prison population increased by more than 700%, while the structure of prison units for women remained practically unchanged (Brasil, 2021). Most of these units do not have adequate spaces for medical care, nor multidisciplinary teams that contemplate the specificities of women's health. There is a lack of gynecologists, psychologists and even basic supplies, such as sanitary pads, diapers and essential medicines. This precariousness directly compromises the exercise of the right to health, enshrined in Article 6 of the Federal Constitution, and evidences the structural selectivity in the guarantee of fundamental rights (Brasil, 1988).

Overcrowding, therefore, is not an isolated problem, but the symptom of a criminal justice model that fails to consider social markers of difference, such as gender, class, and race. According to Wacquant (2011), the contemporary penal system has come to operate as a mechanism of social control of marginalized populations, replacing public policies of inclusion with strategies of containment and punishment. This logic falls even harder on incarcerated women, who are deprived not only of freedom, but also of access to minimum conditions of dignity, especially with regard to physical and mental health care.

The impact of this phenomenon goes beyond the physical conditions of the prison environment. It also hinders access to regular and preventive services, such as gynecological exams, prenatal consultations, psychological counseling, and assistance in cases of sexual violence. According to recent studies, in many prisons, women have to wait long periods to be treated, facing logistical and institutional barriers that restrict their mobility within the unit (Silva, 2020). This reality reveals a scenario of invisibility and neglect of the reproductive and sexual rights of inmates, contributing to the perpetuation of structural inequalities that mainly affect black and poor women — the predominant audience in Brazilian women's prisons (Mallart, 2019).

Access to health in the Brazilian women's prison system is marked by glaring inequalities and the absence of adequate structure to meet the demand. According to data from INFOPEN Women, of the National Penitentiary Department, only 35% of women's prison units had a complete health team in regular operation in 2021,

composed of a doctor, nurse, and dentist (Brasil, 2021). Most units do not have permanent gynecological care, even though this is one of the greatest demands of the incarcerated female population. The lack of professionals and the precariousness of the equipment result in late diagnoses, aggravation of diseases and increased risks in situations such as pregnancy, postpartum and menstruation without basic hygiene. In addition, the data reveal that about 45% of women prisoners do not have regular access to preventive exams, such as Pap smears and blood tests (Brasil, 2021). This negligence compromises the right to comprehensive health and prevention, directly hurting the National Policy for Comprehensive Health Care for Persons Deprived of Liberty (PNAISP). The situation becomes even more serious when one considers that, in 2020, the women's prison system registered more than 1,500 pregnant or breastfeeding women, many of them in units without adequate beds, without prenatal care, and with an irregular supply of basic medication (Brasil, 2020). This failure in care compromises not only the health of the woman, but also that of the newborn, which evidences the rupture of a generational cycle of care.

Another worrying fact concerns the distribution of basic hygiene supplies. In 2021, the National Council of Justice found that more than 60% of women's prison units did not provide sanitary pads with the necessary regularity, leaving the responsibility for providing them to the families of prisoners or to donations from third parties (CNJ, 2021). This violation directly affects the dignity of the inmates and compromises their physical and mental health. The absence of adequate menstrual products in overcrowded and unhealthy environments can cause infections and generate anxiety, depression and shame, which demonstrates how the State's negligence is also manifested in the everyday details of prison life.

CONCLUSION

This study aimed to analyze how the overcrowding of the female prison system compromises the realization of the fundamental right to health of women deprived of liberty in Brazil. From a qualitative approach, based on literature review and document analysis, it was possible to evidence that the precarious conditions of prison units negatively impact access to essential medical services, especially gynecological and reproductive health.

It was found that the insufficiency of human and material resources, combined with the invisibility of the specific demands of incarcerated women, represents not only an administrative failure, but a systematic violation of fundamental rights guaranteed by the



constitution. The state's omission in this context reveals a selectivity in the application of social rights, reinforcing structural gender inequalities within the penal system.

Given this scenario, it is urgent to implement structural public policies that not only expand access to health in prison, but also take into account the particularities of the female public. It is essential that the Brazilian State fulfills its constitutional obligation and promotes minimum conditions of dignity in the execution of sentences, guaranteeing incarcerated women the full exercise of their citizenship.

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