



RAPE OF VULNERABLE PEOPLE IN THE CONTEXT OF THE ELDERLY: AN APPROACH TO THE PROTECTION NETWORKS FOR THE ELDERLY IN BRAZIL



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ABSTRACT

Rape committed against a person without the capacity or conditions to consent, with fictitious violence, is no longer part of article 213 of the CP, to constitute an autonomous crime, provided for in article 217-A, under the nomenclature of rape of a vulnerable person. The objective of this study was to understand the quality of the measures implemented by the elderly protection network to combat the rape of vulnerable people in Brazil. The research work was based on an investigation method with a qualitative approach, presenting an exploratory objective, through bibliographic research, being found authors in the literature in scientific productions of books, articles and dissertations that dealt with the proposed theme. The results showed that economic violence arises in the daily life of the elderly, where most of it originates in the family environment, on the part of the children, with women being the main victims in the category of widows who live on the benefit of retirement. It is understood that, once the aggravations of cases of violence, abandonment and mistreatment are verified, the request for a protective measure of the aggressor is made (a) In many of the cases assisted by the Social Worker of the Protection Police Station to the Elderly (DIPD) of the Civil Police, Public Prosecutor's Office and Public Prosecutor's Office, with interventions such as the National Human Right Hotline, guidelines and conversation circles, as well as inspections in banks and financial institutions, especially during the period of receipt of their benefit, which become actions that go against the provisions of the Brazilian Constitution in light of the Statute of the Elderly to combat economic violence in old age.

Keywords: Rape of a Vulnerable Person. Old. Protective Nets.

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INTRODUCTION

Population aging is a phenomenon and a reality in Brazil and in the world. However, it has different characteristics, based on the social context of each population. In Brazil, a country that has not been prepared to welcome this population, the social follow-up of the elderly is affected by some weaknesses and neglect, not only of the family, but also of society and the State, which neglect and are unaware of their needs (Veras; Oliveira 2019).

Violence is considered a public health problem. One in six elderly people is a victim of some type of violence worldwide, according to a report by the World Health Organization (WHO), published in the journal *Lancet Global Health* (YON et al., 2022). However, the actual incidence and prevalence of elder abuse are unknown, since such data are underreported.

Article 19 of the Statute of the Elderly (Law No. 10,741/2003, amended by Law No. 12,461 of 2011), also provides that suspected or confirmed cases of violence against the elderly will be subject to compulsory notification by public and private health services to the health authority (BRASIL, 2003).

Sexual violence is understood as rape, attempted rape, indecent assault, seduction, obscene acts and harassment, which can occur in conjunction with other types of physical violence (bodily injury, attempted homicide, mistreatment and threats) (Campos; Schor, 2021).

In this sense, it is relevant to emphasize the role of protection networks in combating the rape of vulnerable people to the elderly, evidencing the participation of the Public Prosecutor's Office, the specialized police stations for the elderly, civil police stations. It is worth mentioning that these bodies also have the purpose of promoting actions and projects that can combat these crimes, thus ensuring that these subjects are included in the principle of human dignity (BRAGA, 2019).

The research work was based on an investigation method with a qualitative approach with an exploratory objective, through bibliographic research, being found authors in the literature in scientific productions of books, articles and dissertations.

This article is structured in three chapters, the first being presented the Rights of the elderly, the second one brought economic violence and its scenario in the Brazilian context, the third one addressed protection networks, as well as actions and projects developed to combat economic violence in the elderly

RIGHTS OF THE ELDERLY

Before the 1934 Constitution, the rights of the elderly in Brazil were addressed indirectly, usually as the responsibility of philanthropic entities or related to medical and social security aspects for registered workers (Dias, 2013).

Influenced by the international scenario of valuing human rights and by the redemocratization after the military dictatorship, the Federal Constitution of 1988 enshrined principles such as citizenship, isonomy and the dignity of the human person, which directly impacted the normative and social treatment of the rights of the elderly (Sarlet, 2012).

"Article 230 of the Federal Constitution, inserted in Chapter VII of Title VIII, determines that 'programs to support the elderly will preferably be carried out in their homes' and that 'those over sixty-five years of age are guaranteed free urban public transport' (Brasil, 1988, p. 26)."

In January 1994, in a scenario of crisis in the care and monitoring of the elderly, which originated the first law in attention to this age group of the population. Therefore, Law 8,842 characterized the National Policy for the Elderly (PNI), which resulted from numerous claims made by society and evidence from social movements. During this period, there was direct participation of elderly subjects in full activity, educators, retirees and professionals in the area of geriatrics and gerontology (BRAGA, 2011).

According to Ramos (2018), the National Policy for the Elderly aims to create conditions to provide longevity with dignity and quality of life, putting into practice actions aimed not only at those who are in the most mature phase of aging, but also at the elderly who will age, seeking to prevent any forms of discrimination of any nature to the detriment of the elderly. Therefore, it is considered the main recipient and agent of the changes to be effected as a result of this policy.

Law 8.842/03 established the human and social rights of the elderly, in order to achieve the full exercise of their citizenship, according to what is highlighted in its first article: "the National Policy" for the Elderly aims to ensure the social rights of the elderly, creating conditions to promote their autonomy, integration and effective participation in society" (BRASIL, 2003, p. 97). The third article of the law highlights the principles by which the guarantee of the National Policy for the Elderly is governed, which are:

- I - the family, society and the state have the duty to ensure the elderly all the rights of citizenship, guaranteeing their participation in the community, defending their dignity, well-being and the right to life;
- II - the aging process concerns society in general, and should be the object of knowledge and information for all;
- III - the elderly must not suffer discrimination of any kind;
- IV - the elderly must be the main agent and the recipient of the transformations to be effected through this policy;

V – the economic, social, regional differences and, particularly, the contradictions between the rural and urban areas of Brazil shall be observed by the public authorities and by society in general, in the application of this law. (Brasil, 2003, p. 45).

Analyzing the principles cited, it can be pointed out that the Law guarantees the modern conception of Social Assistance evidenced as a policy of law, configuring and ensuring the minimum possible social protection for the elderly, and originating a new model of social concept for the process of human aging, thus characterizing this legislative criterion as a way of highlighting this community as individuals capable of making decisions and living in a social context in a more effective way. (Brasil, 2003).

The National Policy for the Elderly was established as a guideline for society when it comes to the legal existence of the rights of the elderly, which were previously forgotten in the pages of the Federal Constitution, therefore, a high focus was generated taking into account the theme with the emergence of Law 10.741, of 2003 (LGL\2003\582), also known as the Statute of the Elderly (Brasil, 2003).

The objective of this law is to ensure and highlight the rights enshrined in public policies aimed at the elderly, giving priority to meeting the most basic needs, as well as the maintenance of autonomy as a way to achieve social rights through social assistance and health care services, granting of eventual and permanent benefits, and educational projects and programs for the planning of healthy aging (Soares, 2019).

In line with the rights to the principles of the Universal Declaration of Human Rights, action plans were created for the establishment of the policy of assistance to the elderly, thus indicating in article 8 that "aging is a very personal right and its protection a social right" and in article 9 that "it is the obligation of the State to guarantee the elderly, protection of life and health, through the implementation of public social policies that allow their healthy aging and in conditions of dignity" (BRASIL, 2003, p. 37).

According to Souza (2011), the crimes against the elderly, provided for in Title VI and articles 93 to 108, are all considered to be of an unconditional public criminal action, and are provided for by law, for example, crimes of abandonment, discrimination and exposure to danger, deviation or appropriation of property or any benefit or income of the elderly, as well as the induction of an elderly person without his discernment of the acts to grant a power of attorney for the purpose of managing assets or assets, or freely disposing of them, among others.

As Céspedes and Rocha (2017) emphasize, the protection measures, established in Title III, in articles 43 to 45, will be duly applied when the rights imposed in the Statute are thus violated or threatened by omission or action of society or also of the State, by

omission, failure or abuse of family members, curators or entities that serve this population or as a result of their personal conditions.

However, as can be seen, most of the clauses provided for in the Statute of the Elderly require interventions and actions, whether by the State, the family or society, for their effectiveness and, in several cases of violence, if there is no intense inspection, where it is known that some of the precepts that will provide more dignity to the elderly person will not be seen in practice.

RAPE OF A VULNERABLE PERSON AGAINST THE ELDERLY

With the advent of the Law of Crimes against Sexual Dignity – Law 12015/2009, significant changes were made to Chapter II of the Penal Code, which received the title of "sexual crimes against the vulnerable", now contemplating numerous crimes such as rape of a vulnerable person (art. 217-A). (Brazil, 2009).

Rape committed against a person without the capacity or conditions to consent, with fictitious violence, is no longer part of article 213 of the CP, to constitute an autonomous crime, provided for in article 217-A, under the nomenclature of rape of a vulnerable person. Vulnerable is any person in a situation of fragility or danger. The law does not refer here to the victim's capacity to consent or sexual maturity, but to the fact that he or she is in a situation of greater moral, social, cultural, physiological, biological weakness, etc. (CAPEZ, 2015).

Rape of the vulnerable is obviously covered by this genre, as a result of which the legal good protected by this type, as in other crimes against the vulnerable, is the sexual dignity of the vulnerable victim, who, because she is a minor, will have her emotional development disturbed (TRINDADE, 2021).

Education is a very important means for Brazilians because it is a tool for achieving personal and professional growth and studies have identified a higher rate of violence in elderly people with incomplete elementary education. Thus, according to the literature, the elderly with low education become a potential victim of sexual violence, but there is a study that mentions that a higher level of education does not place this individual as a non-victim of sexual violence. Therefore, the professional's attention to the victim with low education is vital because it becomes a risk factor for sexual violence (Ranzani et al., 2019).

In addition, cases of rape of the elderly arise within the victim's own home, and these cases occur by unknown people, but it also happens by individuals who are close to this target audience. According to (Oliveira et al., 2020) this complicates the identification of violence, as the elderly person may be psychologically affected and choose not to report

the aggressor due to proximity. Thus, it allows the difficulty of exposing the sexual abuse they suffer and makes the collection of data in the Notification Disease System (SINAN) a great impasse, resulting in an incomplete view of reality.

According to Braga (2011), underreporting and difficulty in recognizing cases of sexual violence among the elderly highlight the need for awareness and intervention. The predominance of cases occurs among elderly women, often widows and in vulnerable situations. With this, he emphasizes the importance of qualified professionals to identify and deal with this problem.

PERFORMANCE OF RAPE PROTECTION NETWORKS FOR THE ELDERLY

Among the main protection networks in the fight against rape against the elderly, Efig (2014) highlights the participation of the Public Prosecutor's Office, which is composed of the Public Prosecutor's Office for the elderly, whose purpose is to ensure constitutional rights, well-being and quality of life for the elderly.

However, Braga (2005) still emphasizes that the main focus of the prosecutor's office is against the actions of mistreatment and undue abuse caused by acts of sexual violence against the elderly suffered, however, inspection actions are carried out in residential environments, nursing home institutions.

According to Távora and Rosmar Alencar (2016), the Public Prosecutor's Office still aims to propagate and disseminate the rights provided for the elderly, aiming to establish the complaint in the fight against rape of vulnerable people, in addition, it also provides the community with accredited places where complaints can be made.

Another protection network is the Specialized Police Stations for Elderly Care (DEAI) where their purpose is to provide clarification and monitoring of the elderly victims of violence against abuse, the actions of the police station establish as a method of repression in preventive relations, and in the investigation of cases (BRASIL, 2003). These police stations follow the legal system as provided for in article 96 of the Statute of the Elderly:

Article 96. Discriminating against an elderly person, preventing or hindering their access to banking operations, means of transportation, the right to contract or by any other means or instrument necessary for the exercise of citizenship, due to age: Penalty - imprisonment from 6 (six) months to 1 (one) year and fine.; § 1 The same penalty is incurred by anyone who disdains, humiliates, belittles or discriminates against an elderly person, for any reason, including economic abuse. (BRASIL, 2003, p. 35).

The (DEAI), according to Vicente Faleiros (2013) also seeks to promote the rights accessible to the elderly community with the purpose of reducing sexual violence

infractions. The protection network is intended to give priority to the monitoring of the profile of elderly individuals, as well as to act in the investigation of crimes and abuses for those who may suffer from the violation of patrimonial assets, material damage, some types of physical injuries, misappropriation of financial resources, among other types of violence.

According to Nestor Távora and Alencar (2016), the Civil Police is also an important protection network in these cases, it is composed of police officers and agents, with the main role of the actions and interventions of the judicial police, investigating the acts of undue impropriation and sexual abuse to the detriment of the elderly. In this sense, the authors also argue that:

In their daily actions, these protection networks record the due occurrences, with the purpose of collecting the initial information by investigation, as well as diligences and also through the registration of the Occurrence Report (BO) and, later, moves on to the elaboration of the Inquiry (TÁVORA; ALENCAR, 2016, p. 45).

Regarding the performance of the police in relation to the confrontation of violence against women, Braga (2005) emphasizes that it is relevant to the performance of the military police, showing that they are public security agents of fundamental relevance, because, in some cases of complaints of economic violence, they provide initial care while still at home or even approaches on public roads of people involved in the case, so that it can later be forwarded to other protection networks.

METHODOLOGICAL PROCEDURES

The research work was based on an investigation method with a qualitative approach with an exploratory objective, through bibliographic research, being found authors in the literature in scientific productions of books, articles and dissertations.

According to Samuel Casarin (2012), qualitative research is established as the information that researchers attribute to their experiences in the social sphere and to how the subjects understand this reality.

For Meadows (2007), exploratory research aims to explore scenarios and possibilities that have not yet been found and discovered. Thus, an exploratory study aims to gain familiarity and acquire new information when dealing with a current situation.

Fonseca (2002) emphasizes that bibliographic research helps from the beginning, therefore, it is carried out with the purpose of identifying whether there is a scientific work when dealing with the subject of the research to be substantiated.

RESULTS AND DISCUSSIONS

When it comes to the action of rape of a vulnerable person against the elderly public, the damage and misappropriation of sexual acts is also the crime of misappropriation, property damage or property, improper possession of bank cards that often make them vulnerable in the process of human illness.

It is also noteworthy that the age group that presents a high statistics of occurrence of sexual violence is between 60 and 69 years old, which may be duly related to the fact that these elderly people remain in better conditions in their health and with greater evidence of independence, which in many cases facilitates the registration of the police report in the agencies for the protection of the elderly, such as the police station and public prosecutor's office (Braga, 2023).

In addition, in this phase of aging it is quite common for them to seek new relationships and social contacts, since with the process of income and retirement comes the loss of position in society, relatives and friends, and also several times, of neglect in the family environment, making them exposed to different cases of financial violence.

Although these individuals have a certain independence for instrumental and basic daily activities, the elderly have modifications in the natural aging process that give rise to the need for a new way of life in society.

From this perspective, in the verification of the description of the Occurrence Reports (BO) in police stations in Brazil, it is noted the fact that some family member such as children and grandchildren or neighbors misappropriates illegal acts of the elderly when this subject for some reason, mainly due to illness and independence, entrusts his assets and assets to them. It is understood, therefore, that sexual violence can originate taking into account factors of dependence of the elderly on the people closest to the family, who are the main administrator of their monetary income (Dias, 2013).

It is then discussed the real need to develop projects, actions and sensitize the elderly protection agencies and society in general, with the purpose of recognizing the rights of this class, as well as the risks and situations of sexual abuse against the elderly, directing the victims, so that they are understood and supported by the Federal Constitution, as well as in integrality, thus ensuring that the elderly fit even more into the principle of the dignity of the human person, living in well-being and quality of life.

ACTIONS AND PROJECTS DEVELOPED BY THE NETWORKS FOR THE PROTECTION OF ECONOMIC VIOLENCE AGAINST THE ELDERLY AT THE NATIONAL LEVEL

According to Peres (2013), the Federal Public Prosecutor's Office develops strategic interventions to enable efficient assistance and dignified monitoring of the elderly. One of the actions to combat sexual violence against the elderly was the creation of the National Human Rights Hotline (DDHN), creating and strengthening the services of support networks, strengthening the rights of the elderly as a result of this type of violence.

Távora and Alencar (2016, p. 115) reveal that "these telephone actions are characterized as ombudsman shifts and, therefore, as instruments that facilitate the exercise of citizenship." As a result, people closer to these subjects, when they perceive an incidence of abuse and can make complaints without their identity being revealed.

A project developed by the Police Station for the Elderly in the city of Campinas-SP has as its main actions the planning of workshops and conversation circles with family members of the elderly, bringing the theme about the harm that sexual abuse causes in the lives of these subjects (PERES, 2014).

Civil police stations in the state of Rio de Janeiro, on the other hand, carry out inspection actions in public places and private institutions, especially during the period when the elderly receive their retirement income. The action allows judicial agents to observe who is following these transactions and whether there is a prevalence of sexual abuse (FINGER, 2014).

FINAL CONSIDERATIONS

The theme proposed in this study deals with rape of vulnerable people in the context of the elderly, taking into account an approach to the protection networks for the elderly in Brazil, with the purpose of opening an investigation into cases of rape of the elderly and forwarding the complaint to the Public Prosecutor's Office (MP), as well as directing these victims to psychological support and promoting actions in the communities involving projects such as lectures and conversation circles addressing topics that establish protection in the Statute of the Elderly in these cases of vulnerable crime.

It was verified in the studies that sexual violence is considered as an action that constitutes abuse committed against the elderly public, as they are more vulnerable people as a result of the aging process itself, which puts them in a situation of demotivation and fragility, being coerced with fear of possible reprisals from the aggressors, passing several times without a measure, even to silence the act of violence. Therefore, this type of

violence in many cases is omitted in several situations by the victim, and by those who commit the crime, thus favoring the non-identification of these offenders.

According to the results pointed out, it can be evidenced that sexual violence arises in the daily life of the elderly, being mostly in the family context, by people closest to them or by their children. The findings also show that women are established as the main victims, with the majority considered widows who live on retirement benefits,

The most observed problems are that the family environment presents itself as the main caregiver of the elderly person and in another period it presents itself as the first suspect who practices this act of economic violence with the elderly. It is understood that, when the main aggravations of cases and incidences of violence due to mistreatment, abandonment and financial abuse are verified, the request for protective measures to the aggressor is made. Thus, in many of the cases, agencies ranging from the Elderly Protection Police Station (DIPD) of the Civil Police, the Public Prosecutor's Office and the Public Prosecutor's Office to the Assistance programs for the elderly proposed in each case are called

REFERENCES

1. Alarcon, M. F. S., Silva, J. P., Oliveira, M. C., & Santos, R. F. (2019). Violência financeira: Circunstâncias da ocorrência contra idoso. *Revista Brasileira de Geriatria e Gerontologia*, 22(6), e190182. <https://doi.org/10.1590/1981-22562019022.190182>
2. Braga, P. M. V. (2005). *Direitos do idoso*. Quartier Latin.
3. Braga, P. M. V. (2011). *Curso de direito do idoso*. Atlas.
4. Brasil. (1988). *Constituição da República Federativa do Brasil de 1988*. Presidência da República. http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm
5. Brasil. (1994). Lei nº 8.842, de 4 de janeiro de 1994: Dispõe sobre a política nacional do idoso, cria o Conselho Nacional do Idoso e dá outras providências. *Diário Oficial da União*. https://www.planalto.gov.br/ccivil_03/leis/l8842.htm
6. Brasil. (2003). Lei nº 10.741, de 1 de outubro de 2003: Dispõe sobre o Estatuto do Idoso e dá outras providências. Presidência da República. https://www.planalto.gov.br/ccivil_03/leis/2003/l10741.htm
7. Casarin, H. C. S. (2012). *Pesquisa científica: Da teoria à prática*. Intersaberes.
8. Céspedes, L., & Rocha, F. D. (Eds.). (2017). *Vade Mecum* (23rd ed.). Saraiva.
9. Dias, M. B. (2013). *Manual de Direito das Famílias* (9th ed.). Revista dos Tribunais.
10. Efing, A. C. (2014). *Direitos dos idosos: Tutela jurídica do idoso no Brasil*. LTr.
11. Faleiros, J. L. (2013). *Violência contra idosos, ocorrências: Vítimas e agressores*. Editora Universal.
12. Fonseca, J. J. S. (2002). *Metodologia da pesquisa científica [Course notes]*. UEC.
13. Gil, A. C. (2002). *Como elaborar projetos de pesquisa*. Atlas.
14. Marconi, M. A., & Lakatos, E. M. (2003). *Fundamentos de metodologia científica* (5th ed.). Atlas.
15. Marques, C. L., Lima, C. C., & Bertoncello, K. (2023). *Prevenção e tratamento do superendividamento: Caderno de investigações científicas (Vol. 1)*. Escola Nacional de Defesa do Consumidor.
16. Martins, M. B. (2023). *Violência silenciada: Violência física e psicológica contra idosos no contexto familiar*. Saraiva.
17. Meadows, A. J. (2007). *A comunicação científica*. Briquet de Lemos.
18. Minayo, M. C. S. (2010). Violência contra idosos: Relevância para um velho problema. *Cadernos de Segurança Pública*, 19(3), 783–791.

19. Moreira, J. O. (2012). Mudanças na percepção sobre o processo de envelhecimento: Reflexões preliminares. *Psicologia: Teoria e Pesquisa*, 28(4), 451–456. <https://doi.org/10.1590/S0102-37722012000400009>
20. Oliveira, A. A., Silva, J. P., Oliveira, M. C., & Santos, R. F. (2018). Violência contra idosos: Concepções dos profissionais de enfermagem acerca da detecção e prevenção. *Revista Gaúcha de Enfermagem*, 39, e57462. <https://doi.org/10.1590/1983-1447.2018.57462>
21. Peres, A. P. A. B. (2011). *Proteção aos idosos*. Juruá.
22. Ramos, P. R. B. (2018). *Curso de direito do idoso*. Saraiva.
23. Ranzani, C. L., Armond, J. E., & Gorios, C. (2015). Agressões físicas e sexuais contra idosos notificadas na cidade de São Paulo. *Revista Brasileira de Geriatria e Gerontologia*, 18(4), 755–760. <https://doi.org/10.1590/1809-9823.2015.14171>
24. Sarlet, I. W. (2012). *Dignidade da pessoa humana e direitos fundamentais na Constituição Federal de 1988 (9th ed.)*. Livraria do Advogado.
25. Silva, C. F. S., & Dias, C. M. S. B. (2016). Violência contra idosos na família: Motivações, sentimentos e necessidades do agressor. *Psicologia: Ciência e Profissão*, 36(3), 637–652. <https://doi.org/10.1590/1982-3703003222015>
26. Souza, A. M. V. (2011). *Tutela jurídica do idoso: A assistência e a convivência familiar (2nd ed.)*. Alínea.
27. Távora, N., & Alencar, R. R. (2016). *Curso de Direito Processual Penal (11th ed.)*. Juspodivm.