

CRIMINOLOGICAL ANALYSIS OF FEMALE INCARCERATION FOR THE CRIME OF DRUG TRAFFICKING



<https://doi.org/10.56238/arev6n1-012>

Submitted on: 08/27/2024

Publication Date: 09/27/2024

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ABSTRACT

This article intends, as well as the proposed theme, to analyze the crime of drug trafficking committed by women, critically verifying the conditioning factors of female criminality. The research question that guides this research is: what factors condition the entry of women into the practice of drug trafficking? From the question presented, the phenomenon of female criminality in drug trafficking was analyzed from a critical perspective, seeking to understand, through studies of marginal feminist criminology and theories that justify entering the criminal activity, the main motivations that influence the entry of women into the crime in question. Once the research problem was overcome, alternatives were sought that could produce positive effects in terms of reducing female incarceration by drug trafficking, highlighting that decarceration measures are presented as a possible solution to the problem, since the current prohibitionist drug policy is ineffective. Thus, to achieve the results obtained in this research, the following methodological techniques and procedures were used: i) bibliographic review in works of social sciences, criminal law and criminology, as well as by the authors who focus on women's relations with crime from a feminist theoretical framework; ii) analysis of quantitative and qualitative data extracted from official agencies, paying attention to the limitation they present, since there is a great restriction of information.

Keywords: Drug trafficking, Female criminality, Criminogenic factors, Gender perspective, Incarceration.

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INTRODUCTION

No scientific research is born, or should be born, without a restlessness that precedes it. In the case of this study, nonconformity, indignation and motivation arose from the finding: 1) that the crime of drug trafficking is the one that most incarcerates women in Brazil; 2) drugs being treated in Brazil as a matter of public security, ignoring the objective of the Drug Law, that is, to protect public health, and 3) the need to understand the main conditions of female entry into drug trafficking.

The problem of illicit drugs is currently one of the most discussed and controversial social issues in the world. Its legal status and the possibility of change is a source of political discussions, that is, whether it is criminalized and to what extent, or whether it is decriminalized or legalized, attest to the instability of the current drug policy, which is increasingly contested. Thus, the discussion about the problem of drugs becomes increasingly necessary and emerging, since it results in the crime of drug trafficking and, consequently, the incarceration of those who engage in this criminal activity.

It is highlighted, therefore, that this research has as its object of analysis the practice of the crime of drug trafficking from the perspective of gender, seeking to understand the conditioning factors of female criminality and, from this, to present measures aimed at reducing female incarceration for the practice of the crime in question, from an exarcerating bias.

Drug trafficking, provided for in article 33 of the Drug Law (No. 11,343/2006), is a crime whose commission grows alarmingly over the years, especially if analyzed from the perspective of the gender issue, considering the exacerbated growth of female incarceration in recent years. Faced with a scenario as serious as it is pessimistic, it is questioned about the main reasons for these women's entry into this dark world and what measure should be adopted to try to minimize this problem.

Thus, to achieve the results obtained in this research, the following methodological techniques and procedures were used: i) bibliographic review in works of social sciences, criminal law and criminology, as well as by the authors who focus on women's relations with crime from a feminist theoretical framework; ii) analysis of quantitative and qualitative data extracted from official agencies, paying attention to the limitation they present, since there is a great restriction of information.

To facilitate the understanding of the reasoning on the subject, the present research was divided into chapters. In chapter I, the notions of criminality from the perspective of

gender were introduced, highlighting the involvement of women with crime from a historical context that translates female criminality in Brazil. In chapter II, an analysis of female incarceration for drug trafficking was carried out, demonstrating the main conditions for female entry into this criminal practice. Finally, in chapter III, possible solutions to the problem of female incarceration for the crime of drug trafficking were presented, from an incarceration bias.

FEMALE INCARCERATION IN BRAZIL

Despite the high number of incarcerated women in Brazil, gender studies still continue to be ignored. Few are the studies that seek to analyze women as perpetrators of acts of breach of criminal law. There are several authors who hold the opinion that little or no value has been attributed to female violence. As Almeida (2001, p. 99) argues:

Rare are the books and debates that contemplate women as perpetrators of crimes. At most, in criminological literature or in novels, women are treated as co-authors, accomplices or architects of crimes, and rarely as the creator of their criminality.

Thus, female criminality, which is still considered a new topic in the Brazilian legal scenario, requires greater attention, taking into account the complexities of human relations in the female sphere.

The particularities involving female incarceration emerge from the contestation of the absence of women in traditional studies, as well as from a state policy aimed at incarceration and the existence of a problem directly related to gender issues. The fact that the majority of incarcerated women in Brazil are primary, poor, young, single mothers, with a low level of education, belonging to ethnic minority groups, imprisoned for involvement with drugs and not members of criminal organizations, demonstrates the need to create more effective and proportional public and social policies, which consider the particularities of conduct and the female sex. as well as the functions performed by the prison (INFOPEN, 2019).

This study requires a transversality of reflections that broaden the views on gender issues beyond the debates in the field of criminal sciences, proposing to demonstrate how the limitations in the approaches to female incarceration tend to restrict the creation of public policies in the area and ignore the particularities of gender within the prison system.

Thus, one of the problems that mobilize this research is to consider the particularities of gender as a subversive category, so that, based on the studies of criminology and

criminal law, it is possible to establish political-investigative actions and strategies to question the violations and vulnerabilities that occur in the context of female incarceration. Therefore, the need to think about gender as a subversive category implies recognizing that the "ethical, aesthetic, and political frameworks will serve as a substrate for the anti-punitive argument, seeking to reduce the punitive action of the State, which catalyzes the spheres of brutality" (Martins, 2021).

From an interdisciplinary lens, it seeks to understand the causes of female criminality from a criminological perspective, demonstrating that "there are many stories of women imprisoned that do not echo, especially when it comes to women imprisoned by force of the State, selected by the penal system" (Horowitz, 2021, p. 45).

Thus, having as an object of study, the rupture of criminal law from the perspective of gender, it is worth mentioning the perspective defended by Horowitz (2021, p. 58), who argues that, in order to understand female incarceration and the reflections of this phenomenon that fall on the lives of incarcerated women, "it requires the mobilization of gender as an analytical tool that indicates that there is a social dimension in phenomena that seem natural". This implies that, in order to understand gender as a category of analysis, it is necessary to denaturalize functions that have been socially constructed, in addition to investigating gender relations from the perspective of power issues existing in social relations in the most varied forms, especially in the criminal justice system.

In this way, to analyze the transgression of the criminal law from the perspective of gender, based on the assumption that the criminal control exercised in Brazil reflects on many bodies, reverberating, preferentially, in those most vulnerable, such as the object of study of this research – incarcerated women. This finding awakens the "need to reflect on criminal policies appropriate to the problems in question" (Horowitz, 2021, p. 46).

Seeking to quantify and qualify female criminality in Brazil, it is necessary to demonstrate, through statistical data made available by SISDEPEN, the main particularities of incarceration in Brazil, with emphasis on the gender perspective. Incarceration is a phenomenon that raises reflections throughout society, generating discussions about the need to rethink imprisonment as the main response of the State to social conflicts. Brazil is one of the countries with the highest representation in this scenario, since it has 832,295 prisoners, being, therefore, one of the countries with the largest prison population in the world. Making a gender cut in the aforementioned data, approximately 45,259 are women.

Regarding the profile of the female prison population, it is observed that they are vulnerable people, and still burdened by the support of the home and their children, since approximately 50% of the inmates are single/separated/divorced. According to the data analysis, approximately 22% of incarcerated women are between 18 and 24 years old, 20% between 25 and 29 years old, 17% between 30 and 34 years old, 22% between 35 and 45 years old, 12% between 46 and 60 years old and 2% over 60 years old – the missing percentage of 5% is considered uninformed. Regarding race/skin color, 51% are brown, 34% are white, 14% are black, 0.5% indigenous and 0.5% yellow. From these data, it can be seen that the majority of women incarcerated in Brazil are young (between 18 and 35 years old) and declared brown/black. Thus, Germano and Monteiro (2018, p. 07) state that "the profile of the imprisoned woman reinforces the already known profile of prisoners in general, representing the situation of social and economic vulnerability of women targeted by criminal selectivity."

From the data presented, it can be seen that, in the twenty-first century, even in the face of all the criticism of its bankruptcy, prison continues to be perfected and imposed as a control mechanism, especially for those people who are more vulnerable to the system. In this sense, regarding the profile of the women who make up the Brazilian prison system, Juliana Borges (2019, p. 62) argues that "incarceration continues as a mechanism for the deep maintenance of inequalities based on racial hierarchy and with the youth segment as its main target".

The analysis of the profile of incarcerated women in Brazil shows that the prison system continues to act under the same vision, reproducing the selective perspective that has guided it since the fourteenth century, given "the finding that there is an evident disproportion between the legal programming of the penal system, consisting of numerous criminal types" (Sanchez, 2002, p. 58) and "the operational capacity of the penal control agencies, to persecute and punish the agents who commit the conducts defined as crimes, which is much lower than the universe of crimes committed" (Zaffaroni, 1991, p. 26).

DRUG TRAFFICKING AND FEMALE INCARCERATION: ANALYSIS OF CRIMINOGENIC FACTORS

Provided for in article 33 of the Drug Law (No. 11,343/2006), the crime of drug trafficking is a growing problem in Brazil, which generates discussions in the legal, social and political world, since incarceration for this crime has grown in an exacerbated way in

recent years. Noting that the majority of women currently incarcerated in Brazil are responsible for the practice of the crime in question, it is necessary to understand the main reasons that condition the entry of women in this area of action. It is noteworthy that understanding what leads people to commit crime is a complex task, since there is no consensus on a universal truth, even if it refers to a specific culture and historical moment.

It should be noted that the first studies on the determinants of criminality sought to find a general cause to justify the behavior of the individual who committed a crime. It so happens that such perspectives were revealed more in the discourses of theologians, doctors and reformers of the time, detaching themselves from theories that seek to explain criminality. Regarding the theoretical development of criminology, one of the best known approaches is that of Lombroso (1968), who argued that the pathologies of the individual were determinants of criminality, this perspective was abandoned after the Second World War due to its racist content, which condemned people with certain physical characteristics to be continuous carriers of the disease of criminality.

There are several theories that seek to explain the causes of crime from a general perspective, so this research sought to study criminological theories and analyze them from the perspective of the woman who practices the crime of drug trafficking, highlighting that all existing theories were not exhausted in this research.

Regarding the theories that seek to explain the causes of crime, there are the following: 1) Individual pathologies: it seeks to demonstrate the behavior of the individual who commits crime based on individual pathologies, with the study by Lombroso (1968) being a reference on this threshold of criminology; 2) Social disorganization: seeks to verify the experiences of the individual in local communities based on family relationships, friendship, work and social integration, and such relationships are conditioned by structural issues. From this perspective, the practice of crime would be a consequence of undesirable effects on the organization of social relations; 3) Lifestyle: argues that there are three elements as a contained hypothesis: victim, aggressor, and protection technology determined by the victim's lifestyle. Therefore, the greater the provision of resources for protection, the greater the cost of committing a crime and the less opportunity for the offender; 4) Social learning: verifies the process by which individuals established their behaviors, analyzing such behaviors from their personal experiences in relation to conflicting situations. This, the behavior (un)favorable to criminal practice would be acquired from personal relationships, in the processes of interaction with family, friends and society;

5) Rational choice: the determinants of crime result from a rational evaluation of the expected bonuses and burdens, compared to the results obtained from the reservation of their time in the legal labor market. That is, the practice of crime results from an overestimated process of something that the individual intends to obtain, at which time the profits acquired from the criminal practice and the associated probabilities of imprisonment will be confronted in the face of the opportunity cost of committing crimes and the salary offered in the labor market; 6) Social control: the greater the involvement of the citizen in the social system and the greater his links with society and the greater the degrees of agreement with the values and norms in force, the lower the chances of this actor becoming a criminal; 7) Self-control: the distinction between individuals with criminal behaviors and other individuals consists of the development of psychological mechanisms of self-control during childhood to adolescence; 8) Anomie: the cause of criminality results from the impossibility of the individual obtaining the plans and goals he desires; 9) Interactional: deviant behavior is the result of a dynamic interactional process that seeks to understand simultaneously as a cause and consequence of a variety of reciprocal relationships developed over the years; 10) Ecological: seeks, from the combination of skills concerning different categories, to understand the determinants of crime. Such skills would be incorporated at the structural, institutional, interpersonal and individual levels.

Analyzing the theories mentioned from the perspective of gender, in the context of women incarcerated for the crime of drug trafficking, the incidence of the following theories is verified: social disorganization, social learning, rational choice, social control and anomie.

When verifying the conditions that determine the entry of women into the crime of drug trafficking, the affective relationships they nurture with partners, parents and children is unanimous determinant in the doctrine, being the main cause of women's entry into this area of action. (Costa, 2007). The absence of work is another very incisive factor in female crime, since due to unemployment and because they are, in most cases, single mothers and the only ones responsible for supporting the home, they end up finding in drug trafficking the possibility of financial return. (Barbosa, 2017)

It can be seen, therefore, that women live in a chain of oppression, which leads to situations of fragility and vulnerability, when they find in drug trafficking a way to promote the subsistence of the home and minimize the condition of vulnerability in which they live. Luciana Ramos (2012, p. 109) argues that "trafficking presents itself as a job, which allows them greater financial return and improved family life".

In addition to the conditions presented, the entry of women into the crime of drug trafficking is highlighted as a way to achieve status and power, since the profit obtained from this practice generates economic independence. In these cases, women "enter the illicit drug trade because they see in this activity a possibility of social and economic ascension, a way to gain power" (Barbosa, 2017, p. 29).

Status, power, absence of work/unemployment and affective relationship with men involved in drug trafficking are relevant conditioning factors and directly influence the entry of women into this field of activity. Relating the conditioning factors addressed with the aforementioned theories, it is possible to verify the application of the following theories: social disorganization, social learning, rational choice, social control and anomie.

The Theory of social disorganization states that the practice of crime is a consequence of undesirable effects resulting from relationships they have with third parties. In the context of women incarcerated for drug trafficking, it is perceived that the conditioning factor consists of the affective relationships they nurture with partners and family members.

The conditioning factor of female criminality based on the affective relationship that women have with partners and/or family members can also be the object of the Social Learning Theory, which argues that (un)favorable behavior to criminal practice would be acquired from personal relationships, in the processes of interaction with family, friends and society.

The Theory of Rational Choice has elements that seek to demonstrate the conditioning factor of female criminality for the practice of drug trafficking, as it argues that the determinants of criminality result from a rational evaluation of the expected bonuses and burdens. This theory is of a microeconomic nature and its incidence occurs from the entry of women into drug trafficking due to the absence of work and the need to provide for household expenses.

The Theory of social control argues that the individual inserted in the social system and in accordance with the prevailing values is less likely to enter into crime. This theory is directly related to the woman who enters the world of drugs as a form of power and status, thus seeking social empowerment.

Finally, the Theory of anomie stands out, which argues that the cause of criminality results from the impossibility of the individual being able to achieve the plans and goals he desires. The relationship between this theory and what determines female criminality in the crime under analysis can occur from two conditions: obtaining status/power and economic

advantage, that is, women enter the criminal activity due to the impossibility of achieving social empowerment by other means, as well as the impossibility of maintaining household expenses due to the absence of work.

POSSIBLE SOLUTIONS TO THE PROBLEM OF FEMALE INCARCERATION FOR THE CRIME OF DRUG TRAFFICKING.

This item seeks to provide contributions regarding possible solutions to the problem of female incarceration for the crime of drug trafficking, providing the abolitionist point of view in the face of this analysis.

Thus, considering that "the current concrete reality of incarcerated Brazilian women is emblematic due to the condition of vulnerability they occupy", it seeks to verify and demonstrate possibilities of solving the phenomenon of female incarceration for the crime of drug trafficking, discussing, to this end, in what "measure patriarchal domination acts to allocate women in places of inferiority and submission", especially in the context of the crime provided for in the Drug Law (Matos; Wurster, 2018, 62-63).

Therefore, knowing that the androcentric view that determines social relations is very peculiar and intense in the prison environment, this item will take into account the participation and factors that condition the entry of women into the crime of drug trafficking.

It should be noted, from the outset, that drugs are nothing more than a substance/commodity with a value defined by its illicit nature and, consequently, criminalized, thus increasing the risk of investment/commercial activity. It is from this definition that the objectives of the prohibitionist policy arise: to combat the illegal trade and consumption of illicit substances, from the perspective of social protection. Initially, it is essential to observe how much the prohibitionist ideology impacts and influences the idea of illicit drugs and the policy of repression, when it inserts the issue of drugs in the field of public security, making it impossible for the issue to be operated by public health agencies.

Thus, it is possible to argue that the prohibition of drugs, or any other substance, does not, by itself, change the demand for it. This implies that the current prohibitionist model of drugs manages, sporadically, to minimize the supply of illicit drugs practically without changing the demand. According to Samuel Borges (2016, p. 77), "the result of this is an increase in the market price of drugs and, consequently, a greater financial return for traffickers who manage to remain in the activity". Thus, it can be seen that the ineffectiveness of the prohibitionist policy and the high economic benefit resulting from the

illicit drug market, which are concentrated in businessmen and members of the financial system, thus reflecting that the vulnerability to the criminal justice system falls unequally according to the social positions in this organization, concentrating on the weakest and most precarious sector. In this sense, Andrea Gallassi and Luís Tófolli (2017, p. 02) list a series of problems generated by such prohibition, which are:

The violence of drug trafficking for the dispute of a hypertrophied and highly profitable market; the lack of control and the usually poor quality of the drugs consumed and the impacts of this and the violence itself on the public health system; the swelling of prisons by the irresponsible incarceration of thousands for petty crimes, including the possession of small amounts of drugs; the removal of people who make problematic use of drugs from psychosocial care; and corruption and the involvement of public agents to ensure the progress of business.

From the capitalist point of view, it can be said that the illicit drug trade is similar to a financial pyramid, in which leaders and investors occupy the top and become unreachable by control agencies, at which time profits gradually increase while those who occupy the bottom are in conditions of vulnerability and exposed to the control of the criminal justice system. (Foucault, 2006)

Bringing this approach to the perspective of incarcerated women and considering the factors that condition female criminality in Brazil due to this crime, it is possible to verify that most women who are part of the prison system currently occupied the base of the hierarchical pyramid of trafficking, since, when they did not practice the criminal activity in the name of affective relationships, it was as a way to provide for the subsistence of the home and children or due to the absence of formal work.

Thus, it can be seen that the high number of women incarcerated for the crime of drug trafficking reinforces the punitive idea of the State, based on what is defended by the prohibitionist drug policy, and it is not possible to end/reduce crime for the crime in question from the imprisonment of these women, as they are easy prey and vulnerable to the system. therefore, they are quickly replaced in the criminal activity. Thus, it is imperative and necessary to think of alternative measures to incarceration, prioritizing, preferably, prevention and protection of public health.

It is imperative to think about decarceration measures, since the criminal justice system is saturated in trying to solve the anxieties of this problem. It is necessary to dispel the idea that the use of Criminal Law, through the deprivation of liberty, will be able to contain the consequences of the risks caused by the practice of crimes, especially those provided for in the Drug Law. In this sense, França Júnior (2017, p. 16) argues, from an

abolitionist perspective, that "it is not by trying to impose certain measures on the criminal system that we will be able to stop it, but by completely removing the possibility of influencing conflicts".

From the above approach, considering that drug trafficking is the crime that most incarcerates women in Brazil (SISDEPEN, 2022), a look at the approach of penal abolitionism becomes attractive, considering the potential for reducing the female prison population that is imprisoned due to the condition of fragility and vulnerability that conditioned the entry of women into drug trafficking.

Critical criminology has shown for several decades that there has been no correlation between increased repression and decreased crime at any time in history (Araújo; Silva, 2022). Thus, to believe that increasing penalties and building prison establishments are effective measures to ensure public safety and reduce the practice of crimes is to have a limited and utopian vision of what public security means. Abolishing penalties and punitive practices is also an important step, which moves towards a world with more freedom, including the legalization of drugs.

Bringing to the debate the decarceration measures, it is worth noting that the objective is not reforms in the prison system, which are enunciated as if they guarantee a minimum of legal compliance and justice to the accused and prisoners, but end up increasing the complexity and structure of the prison. What deserves to be highlighted and propagated are measures that aim to reduce the number of women incarcerated for the crime of drug trafficking.

Considering the factors that condition the entry of women into drug trafficking, as a measure capable of producing a positive effect and reducing crime, the State should invest in primary prevention, which aims to combat the factors that induce crime before they affect the individual. That is, with regard to drug trafficking, considering that the condition of single mother, sole breadwinner, and unemployed are factors that condition women's entry into criminal activity, social measures aimed at promoting formal employment and professional qualification tend to reduce women's involvement with trafficking.

In addition, other measures can be adopted as a way to reduce female incarceration for the crime in question, such as those already granted by habeas corpus and legislative amendment, which have triggered positive results, such as the mischaracterization of the heinousness of privileged drug trafficking; implementation of custody hearings to verify that the arrest was carried out in accordance with the law and to ensure that the rights of the

imprisoned woman are respected; replacement of preventive detention with house arrest for all women prisoners who are pregnant, postpartum or are mothers of children and/or disabled under their custody.

The above measures demonstrate the possibility of reducing female incarceration, constituting positive measures, after all "in an abolitionist perspective, the end of imprisonment is desired for all" (Pereira, 2018, p. 110). However, the idea of penal abolitionism in Brazil is something out of the current reality, as "the consolidation of future policies carried out in the performance of the State itself foresees the swelling of structures and distances itself from a paradigm of community conflict resolution" (Pereira, 2018, p. 110).

In view of the current Brazilian reality and the performance of the criminal justice system, the idea of penal abolitionism can be introduced as a way of thinking about "the end of prisons as a maximum objective that guides the minor objectives" (Pereira, 2018, p. 118), instigating the creation of effective decarceration measures through habeas corpus, pardons and legislative changes, such as those mentioned above. Thus, thinking from a macro view to obtain micro results, the idea of penal abolitionism, in the face of the current Brazilian conjuncture, serves to drive the creation of decarceration measures, which aim to reduce female incarceration for the crime of drug trafficking, since "the use of prison as a response to drug trafficking is selectively affecting women" (Merino, 2018, p. 72).

CONCLUSION

In this space, some of the considerations and results obtained from the research proposed by this scientific work will be demonstrated. Knowing that the debates on female incarceration, drug policy and criminal justice are frequent and controversial in the political, legal and social spheres, we sought to critically analyze female incarceration for the crime of drug trafficking in order to understand the main reasons that condition the entry of women into this criminal activity.

From the analysis of criminological theories, it was found that the main factors that condition female criminality result, for the most part, from affective relationships, absence of work and the fact that they are mothers and the sole provider of the home. In view of this, it was found that the performance of the criminal justice system reinforces the criminalization of women incarcerated for drug trafficking, acting, preferably, in specific places and on

people in conditions of economic and social vulnerability, such as poor, black, peripheral and unemployed women.

Thus, with the aim of solving the problem of female incarceration for the practice of drug trafficking, it was initially defended the need for the State to develop and execute measures that act in primary prevention, which has as its main objective to combat the factors that induce criminality before they affect the individual. In relation to drug trafficking, considering that the condition of poor woman, single mother, sole breadwinner, and unemployed are factors that condition women's entry into criminal activity, social measures guaranteed by the State with the objective of promoting formal employment and professional qualification tend to reduce women's involvement with trafficking.

Then, it was presented that decarceration measures tend to produce positive effects in this scenario, highlighting that the current prohibitionist policy is ineffective, since it does not combat drug trafficking and/or use, it only enhances the effects of illegal commercialization and contributes to the high economic profit of traffickers, in addition to incarcerating those most vulnerable to the system. Thus, under the bias of penal abolitionism, legislative changes in the Drug Law (No. 11,343/2006) are presented as positive with regard to female incarceration.

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