



DISCUSSING OBSTETRIC AND INSTITUTIONAL VIOLENCE IN BRAZIL THROUGH ITS LEGISLATION: SYSTEMATIC REVIEW

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ABSTRACT

Obstetric violence is considered a public health problem by the World Health Organization. In Brazil, despite studies reporting a serious situation, the issue has met with resistance, making it difficult to improve delivery care. This study aimed to evaluate obstetric violence during childbirth, in light of Brazilian legislation. For that, a research was done in the Scielo database using as descriptors "Humanizing Delivery" and "Violence in Childbirth", and of the 71 articles found, 20 were used to compose the textual body, besides the Brazilian legislation on the subject. From the discussion, we conclude that obstetric violence in Brazil is frequent, ranging from injury to death, necessitating greater humanization in the care of women's health, especially in parturition, and greater comprehensiveness in Brazilian legislation regarding violence in the childbirth.

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INTRODUCTION

At present, violence against women is a fact that groups various forms of violence, be it physical, psychological or moral. In this context, it is observed that violence is a problem where the world has found it necessary to address it in several treaties throughout history, because it is the duty of the state to guarantee the sexual and reproductive rights of women, especially human rights (Organizacion panamericana de la Salud, 2014; Santos, Soares, Santos, and Monte, 2016).

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The World Health Organization (WHO) defined violence as "the use of physical force or power, either in threat or in practice, against oneself, another person or against a group or community that may result in suffering, death, harm psychological, deprived development or deprivation" (Organizacion Mundial de la Salud, 2017; C. M. Santos and Izumino, 2005). Violence against women occurs in all stages of life, regardless of social class, one of the fastest growing is the one that is most expected by the woman who is during pregnancy, especially at the time of delivery called obstetric violence, this is often not perceived by the assaulted due to the non-knowledge of their rights at this time. (Oleynek, 2018; Santos *et al.*, 2016). According to the public defender of São Paulo 2013, the characterization of obstetric violence is due to the dehumanized way that health professionals perform the procedures, as well as the pathologization of processes that

would be natural, the use of medicines, making with which the freedom of choice regarding sexuality and the woman's body is suppressed, causing several problems in their quality of life (Andrade, Silva, Diniz, and Caminha, 2016; Palharini, 2017). Therefore, this violence that affects women in Brazil does not have the due responsibility to those who commit such an act against the dignity of women, express human rights violations are committed, however denunciation cases are much smaller than what actually happens in hospitals which patients receive (Fiuza and Resende, 2015; Merino, Zapata, Berrio, and Urrea, 2018; Organización panamericana de la Salud, 2014). Obstetric violence, in its turn, consists of any type of violence, whether physical or psychological, against women before childbirth, during or in the puerperium, with serious psychological, sexual and traumas that will be taken for the rest of their lives (Andrade *et al.*, 2016; da Costa Cardoso, Marques da Costa, Morais Almeida, Sampaio dos Santos and Milanez Oliveira, 2017; Palharini, 2017; Pereira *et al.*, 2016; Ricardo, Gomes and Kunzler, 2015). In explaining the Brazilian legal system, it is observed that in the federal constitution of 1988, the human, sexual and reproductive rights of women are made inviolable, making it clear that any violation is subject to proper accountability, even though such criminal conduct is expressly dealt with at the administrative level, such as Law no. 11.108, of April 7, 2005, there is still no legal provision in the penal code, with only one specific point, referring to article 282 of the Code of Criminal Procedure (Constituição da República Federativa do Brasil, 1988; Frutuoso and Brüggemann, 2013). Based on everything that has been said in this introduction, this work aims to evaluate the possible obstetric violence in the act of childbirth, in light of Brazilian legislation.

METODOLOGIA

This is a review article in which a systematic review on the subject was carried out in the scientific databases Scielo, using the following descriptors: "Humanizing Delivery", "Violence in Childbirth". Data and texts of the Ministry of Health, Constitution of the Federative Republic of Brazil and Human Rights were also used, to make up the historical context. We selected 71 articles published in English and Portuguese in the last 5 years. Of the 71 articles found, only 20 met the selection criteria and were read in full to compose the discussion.

Historical context: In 1948, the first universal declaration of human rights was proclaimed by the General Assembly of the United Nations in Paris, which establishes the protection of the human being regardless of color, ethnicity, sex, religion and human dignity. World was in an emblematic moment caused by the end of the Second World War, so that it was necessary to impose limits on the sovereign power of nations, it was necessary to establish this declaration so that human rights would be respected by all (Direitos Humanos, 2009). However, only after 40 years has the Brazilian constitution adhered to and normalized the human rights stipulated in its article 5, which states in its text on fundamental rights, among them the right to life and equality. In paragraph X of the same article, it is observed that the right to intimacy, honor and image of persons is inviolable, leaving the right of indemnity for the damage resulting from that violation safe (Constituição da República Federativa do Brasil, 1988). Obstetric violence is characterized by any kind of violence related to pregnancy at childbirth and postpartum, emphasizing that it is increasingly

present in the and this is a very common reality in Brazil, both in the private and public spheres (Marrero and Brüggemann, 2018). In 2017, the health ministry published guidance on the care of normal birth which facilitates the encouragement of women to vaginal and humanized birth, where the risk to the life of the mother and the child is much lower in relation to the surgical procedure (Ministério da Saúde, Secretaria de Ciências, 2017). Law No. 11,108, of April 7, 2005 brought significant benefits regarding the followup to delivery, as women were abandoned in the corridors of hospitals, prevented from being accompanied by someone they trusted, who gave them the support and support they need at this delicate time in their lives, the law still tries to emphasize that the right of choice belongs to the woman thus giving , autonomy to indicate your companion (Frutuoso and Brüggemann, 2013). However in some institutions there is a refusal to comply with what is guaranteed in this law, claiming that they must comply with internal institutional norms denying this right to parturient.

Art. 19-J. The health services of the Unified Health System (Sistema Único de Saúde), SUS, of the network itself or the agreement, are obliged to allow 1 attendant to be present at the parturient during the whole period of labor, delivery and immediate postpartum. §1º. The accompanying person is caput of this article will be indicated by the parturient. The professionals end up justifying violence as the fault of the woman admitting the practice as part of daily life, the oldest traditional doctors and nurses demonstrated a deep misunderstanding about humanized childbirth, defending the non-autonomy of women, denying that there is violence in such an act. And in relation to those who recognized violence, they were not all perceptible, believing it to be only physical violence, and discrimination and coarse voice also qualify as forms of violence, where childbirth is historically marked by the social hierarchy that Brazilian woman faces up to today (Palharini, 2017; Silva *et al.*, 2015). In turn, these women, in their majority, by a historical and macho context, believe that the ill-treatment is part of the procedure, treated in an inhuman way, touched by dozens of professionals, clearly observes that rights are being violated as well as human dignity, women's sexual and reproductive rights, gender violence and personal injury. Not even the right of choice is given to the woman who is induced to submit to the medical conventions, hurting her autonomy (da Costa Cardoso *et al.*, 2017; Pereira *et al.*, 2016).

The cereal department: There is no doubt about the sovereignty of normal birth, and the risk of mother and baby is much lower and physical and physiological possibilities occur naturally, making the If vaginal delivery is not always possible, there are cases in which there are no possibilities, such as complications during pregnancy, the position of the fetus, the child's weight, impossibility of natural childbirth, giving rise to the occurrence of cesarean sections, characterized by the surgical procedure to remove the child (Diniz, Niy, Andrezzo, Carvalho and Salgado, 2016). There are divergences as to why the number of cesarean sections has increased in recent decades. A defensive medicine has been adopted, due to the size of the fetus, a circular cord around the neck or any diagnosis that may cause complications, surgical delivery is chosen, Brazilian women have the idea that in normal delivery there is a risk of flaccidity in the perineum, for fear of pain or for damage to their sexuality (Conselho Federal de Medicina, 2016). Although there are those who advocate vaginal delivery, it is important to note that cesarean sections

save lives, including lower mortality rates in the Southeast and South regions, where there is more development and consequently better medical care, the number of cesareans is higher than in the other regions of Brazil, as well as the incidence of deaths of the pregnant woman, which is lower, demonstrating that care is as important as the type of delivery (Zanardo, Uribe, Nadal and Habigzang, 2017). This fact demonstrates that the obstetric violence that occurred in the country is matter of absence of the government's public policies that shifts the responsibility to the health professional, seeking the right to have their patients have dignity and safety in childbirth, although some pregnant women claim to be encouraged to undergo surgery and not explain the consequences that may occur for their future, however, a relevant part of the patients opt for operative delivery voluntarily, this is often due to the fear and insecurity of giving birth in Brazil (Andrade *et al.*, 2016; Fiuza and Resende, 2015; Palharini, 2017; Teixeira and Santos, 2018). The woman in pregnancy, when looking for a professional can encounter a doctor who does not expose the possibilities of delivery, there is no dialogue in knowing the doubts of the pregnant, stipulates a date in which the child should be born and enforced in order to monitor and control pregnancy until delivery, since they should inform it of the risks of death by cesarean section, which according to DATASUS data are 16 times greater in relation to natural childbirth and postpartum recovery period is much higher (DATASUS, 2014a; Zanardo *et al.*, 2017).

This attitude leads one to think that women's power of choice is being suppressed by medical convenience violating rights that even the pregnant woman does not know she has. Thus, it is observed that the patient surrenders to the model of contemporary delivery reproducing in the woman an idea incapacity to give birth by itself, without surgical interventions for the occurrence of the childbirth, as a consequence the growing number of cesareans without necessity causing both mother and baby risk (de Sanfelice and Shimo, 2014). However, humanized childbirth must be seen in another way than normal childbirth, because the right of choice of the woman must be taken into account, that is, humanized, this is humanized, encouraging the woman to make her own choice is to leave the moment most important of the life of a pregnant woman in her hands, is to give autonomy to choose the birth she wants to have, whether normal or cesarean will not be humanized by the procedure and yes, it will not be humanized if a right such as this is violated (Conselho Federal de Medicina, 2016).

Use of forceps: Another violence against the woman's body and the fetus is found in the procedure called forceps, which consists of the use in instruments that are embedded in the baby's head, making withdrawal through the vaginal canal in cases where there is suffering of the fetus or absence of forces of the parturient to give birth, in this case, the fetus is pulled through these apparatuses with the purpose of facilitating the delivery (Andrade *et al.*, 2016; Teixeira and Santos, 2018). However, it is noted that the withdrawal of the child in this way is considerably harmful to the woman, because in addition to the episiotomy that is performed to widen the vaginal canal, instruments are placed to start the child maternal lesions in both the fetus and the parturient are evident in the forceps procedure, as a consequence, one obtains very serious infections in the woman, and often it can cause definitive damages in the bladder and anus, not counting that the lesions also occur in the baby since it is abruptly pulled out and may

suffer injuries to your head and other parts of your body (Oliveira and Penna, 2017). In this way, she realizes that this maneuver to promote a childbirth is not safe for the childbirth or the fetus, in addition to physical injuries, psychological damage must also be taken into account, since it is such violence that may be incalculable the proportion rape can generate in a person who is already emotionally frail for the long-awaited moment, has become a nightmare he probably wants to forget (Teixeira and Santos, 2018).

Episiotomy: Although vaginal delivery is a natural act and without major complications, there are procedures that are unnecessary, discharging the idea of humanization of childbirth, since women are injured and mutilated without necessity and this form, it is no longer natural to give birth that although it was vaginally, there was the interference of surgical means to accelerate the process of birth (Figueiredo, Barbieri, Gabrielloni, Araújo and Henrique, 2015). An episiotomy that consists of a cut in the perineal region to enlarge the vaginal canal arises amidst the pain of the "normal" delivery, often this incision occurs without anesthesia and without the consent of the woman, affecting several blood vessels, muscles, faecal and urinary incontinence, and it has important clitoris attachments, and since the medical evidence proves that the procedure only needs to be done in 10% to 15%, however what happens in practice is that more than 90% of deliveries occurring in Brazil use episiotomy (Figueiredo *et al.*, 2015). Although this practice is frowned upon by the world health organization, it is common among professionals to anticipate childbirth, which is an unnecessary procedure and is mostly due to medical convenience, to accelerate birth, not caring about the physical and psychological conditions of the pregnant woman as her body is preparing to have a natural childbirth and this requires time, patience and especially humanization (DATASUS, 2014a). To subject a woman to a painful, humiliating and serious risk of complications in the postpartum period, since even instructions on how to proceed after the cut are passed on to women, with significant possibilities of the sexual life permanently compromised, clearly one observes the gravity and demonstration of disrespect to the physical integrity of the woman, the violation of intimacy and the reproductive rights characterizing, thus, an express act of obstetric violence (Diniz *et al.*, 2016; Figueiredo *et al.*, 2015). Although there is no punishment for perpetrators of such an act, many even argue that a "little cut" is less damaging than a woman ripping through during childbirth, but scientific evidence shows that there is medical support to justify the episiotomy, in this case it is obstetric violence and unfortunately there are few complaints due to lack of information, and those responsible go unpunished because federal laws are omitted in relation to this specific issue (Oleynek, 2018).

Birth: Assistance in Brazil Birth attendance in Brazil both cesarean and normal delivery lead the ranking of 58.1% of the visits in the period from 2008 to 2012. In this contesto it is observed that there are needs for public policies considering that there are a very large demand for care and there is a lack of access and medical supervision in public maternity hospitals in the country, thus giving rise to the growing number of private agreements, which, by virtue of this, we must mention the increase in surgical deliveries (DATASUS, 2014b). In March 2018, the Ministry of Health made some considerations regarding childbirth care in Brazil, especially the online control of the incidence of cesarean deliveries occurring on the

public highway, with the purpose of supervising and thus reducing surgeries without necessities, thus increasing the number of vaginal deliveries, avoiding greater risks to the health of mother and child (Ministério da Saúde (Brasil). Secretaria de Vigilância em Saúde, 2018a). On the other hand, in the view of health professionals, both obstetrical and nursing physicians reveal that there is a demonization of the acts practiced by them in reference to the procedures used to perform the delivery, they affirm that there is a great deal of uncertainty in deciding the procedure, since there is a precarious prenatal information from patients who often arrive in emergency situations, and 92% of deaths occur due to bleeding infections and hypertension, which could be avoided if there was early care and care (Warmling, Fajardo, Meyer and Bedos, 2018). Therefore, in order to protect life, surgeries are performed because, due to the lack of assistance from the public system in relation to prenatal care and delivery, it is risky to perform a normal delivery without actually having complete knowledge of the patient's health and, in this way, avoiding a more burdensome result the operative procedure is a safer alternative (Monguilhott, Brüggemann, Freitas and d'Orsi, 2018).

Obstetric violence in the light of article 292 of the code of criminal procedure: In regard to disrespect for the principle of human dignity and violation of fundamental guarantees, there is a serious violence in the Brazilian prison system, referring to pregnant women who at the time of delivery submit to the use of handcuffs with the justification of promoting the safety of agents and professionals who assist the woman at the time of delivery, thus classifying abuse of authority (Leal, Ayres, Esteves-Pereira, Sánchez, and Larouzé, 2016; Zanardo *et al.*, 2017). The allegations on the part of the agents are often protected in the text of the binding summary number 11 in which it declares the lawful use of handcuffs when there is resistance or possibilities of escape or danger to own integrity or *aleia*, which does not occur in a case constituted by a woman about to have the light, since the need for help and care is essential, at that moment, so that one can have a childbirth with the least dignity possible (Carneiro, 2015; Leal *et al.*, 2016). In view of the repercussion of abuses of authority, lack of dignity in relation to pregnant women who were in prisons and who were subjected to the use of handcuffs at the time of delivery, 2017 the creation of the sole paragraph in Article 292 of the Code of Criminal Procedure where it states in its text:

Art. 292. If there is, even if by third parties, resistance to arrest in flagrante delicto or determined by competent authority, the executor and persons who assist him may use the means necessary to defend himself or to overcome the resistance, of which everything will be engraved by two witnesses.

Single paragraph. The use of handcuffs in pregnant women during medical and hospital preparatory procedures for delivery and during labor, as well as in women during the immediate postpartum period, is prohibited. (Writing amended by Law No. 13,434, 2017) This act expressly characterized obstetric violence given that women are being treated inhumanely at birth, and there is neither psychological physical condition to withstand any arising act of public power It is unnecessary to keep the parturient in handcuffs without the possibility of having her child in a dignified way taking into consideration that despite being in prison does not cease to have rights that although restricted, are guaranteed to her as a

human being (HernandesandDi, 2017; Leal *et al.*, 2016; Marrero and Brüggemann, 2018; Souza, Rattner and Gubert, 2017).

Statistics of the last 10 years number of births x type of birth: In an analysis of data from the Ministry of Health published in 2017, it is verified that in the last 10 years the rates of cesarean births in the country in 2010 exceeded the incidence of natural births, with 55.5% of deliveries occurring with operative procedures and 44.5% vaginally. In 2017, 2.7 million deliveries were performed, where cesarean sections suffered a significant fall, since natural delivery reached a rate of 59.8%, considering only the records provided by the single health system (Ministério da Saúde, Secretaria de Ciências, 2017). Considering these alarming data of surgical deliveries, added to the normal deliveries with surgical interferences as already mentioned in this article that are not accounted for in most cases occurring without necessity and in this way it becomes evident the increased risk of death and complications in the puerperal recovery, it is necessary to the measures coming from the public power, so that there is control of cesarean deliveries, since in addition to improving the quality of life of the woman, reduces the costs of assistance to public maternity (Merino *et al.*, 2018; Pedroso and López, 2017).

Thus, in March 2018, the Ministry of Health instituted the Week National Mobilization for Women's Health in the SUS, developing actions to combat maternal mortality. In 2015, there were 1,738 deaths related to or due to pregnancy, in 2016 there was a slight decrease of 16% (Ministério da Saúde (Brasil). Secretaria de Vigilância em Saúde, 2018b). Based on this initiative, it can be seen that due to the government's investment in basic health care, there is a significant decrease in obstetric violence, such as unnecessary surgery, or episiotomy, since it provides adequate information, informed the risks and procedures, there is the awareness of the patients, who well informed of their doubts and concerns about the delivery, there will be access to adequate information in each case, because there was follow-up until delivery. Thus, the measures taken are precisely related to care, taking into account professional qualification, medical care in the prenatal and postpartum, emphasizing that the sooner the pregnant woman seeks care, the less the risk of a complicated pregnancy.

Conclusion

Concluding this article, it is clear and clear that the cases of obstetric violence in Brazil are frequent and often imperceptible by the patient, express violations of fundamental guarantees, where the Brazilian legal system says little about the subject, being basically treated in constitutional rules in general, and administrative rules, however, there is in the infra constitutional order a reference to obstetric violence in relation to the case of the use of handcuffs to pregnant women in prisons, also outside the prisons, the treatment is nonetheless humiliating and women are abused, mutilated and in some cases they come to death for lack of care before during and after childbirth.

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