



Digital gender-based violence: the rise of cybercrimes against women

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SUMMARY

The general objective of this article is to analyze digital gender-based violence, focusing on the rise of cybercrimes against women and the legal challenges faced in addressing it. The specific objectives are: to contextualize gender-based violence in the digital environment; to examine the relationship between hate speech and freedom of expression; to investigate the applicable Brazilian legislation, with an emphasis on Law No. 13,642/2018; and to assess existing legal gaps. The present study is based on the following problem question: what legal mechanisms are used to combat digital gender-based violence? The justification for the research lies in the urgent need for legal and institutional responses to the increase in practices such as virtual rape, revenge pornography, and misogynistic speech on the internet. The methodology adopted is qualitative, based on bibliographic and documentary analysis of laws, doctrines, and scientific articles. The research concludes that, despite regulatory advances, Brazil still lacks specific criminal classifications and effective public policies, making it essential to improve the legal framework and promote integrated actions between the State, society and digital platforms.

Keywords: Cybercrimes; Digital violence; Violence against women; Brazilian law.

ABSTRACT

The study analyzes the rise of cybercrimes against women, focusing on digital gender-based violence and the legal challenges to combat this phenomenon. Adopting a qualitative approach, the research investigates the concept and nuances of the crime of sexual violence mediated by digital technologies, using documentary and bibliographic analysis of legislative texts, legal doctrines and scientific articles. The work examines current Brazilian legislation and its evolution, including bills that aim to criminalize virtual rape. The research identifies gaps in the legal system and difficulties faced by victims in obtaining adequate protection in the digital environment. In addition, it discusses the relationship between freedom of expression and hate speech, highlighting the legal limits of this manifestation in the virtual context. It should be noted that, although there are legislative advances, such as Law 13.642/2018, there are still institutional and legal challenges to ensure effective protection for women victims of online misogyny. The study highlights the need for legislative improvements and public policies that address digital violence more effectively.

Keywords: Cybercrimes; Digital violence; Violence against women; Brazilian law.

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1. INTRODUCTION

The growing integration of digital technologies into people's daily lives has transformed profoundly the forms of communication and social interaction. However, alongside the benefits of connectivity, violent practices that use the virtual environment have also emerged as a means of aggression, especially against women. Digital gender-based violence has become an alarming form of human rights violation, characterized by actions such as unauthorized sharing of intimate images, cyber harassment, simulated rape in digital environments and dissemination of misogynistic discourses. These practices, although they occur in digital means, produce concrete and devastating effects on the lives of victims, affecting their health mental, your reputation and your integrity.

Given this scenario, this study has the general objective of analyzing digital violence in gender from a legal, social and institutional perspective, seeking to understand its main manifestations and the challenges faced by the Brazilian legal system to protect victims and hold perpetrators accountable. Specifically, it aims to: contextualize the rise of digital gender-based violence and its recurring forms; examine the limits of freedom of expression in the face of the dissemination of hate speech; investigate the legal treatment given to digital crimes in Brazil, with special attention to Law No. 13.642/2018; and point out the legislative and institutional gaps that hinder the effective accountability of the perpetrators of these crimes.

The present study is based on the following problem question: what are the mechanisms Are legal instruments used to combat digital gender-based violence? The rationale for carrying out this study lies in the observation that, despite legislative advances, the Current legislation is still insufficient to deal with the complexity and speed with that these crimes occur mainly on digital platforms that favor anonymity and make investigation difficult.

To achieve the proposed objectives, a qualitative approach was adopted, based on in the documentary and bibliographical analysis of national legislation, international treaties, legal doctrines and academic articles. The methodology allows for critical reflection on the limits of current legislation and the possibilities for legal improvement, with the aim of offer responses more appropriate to the reality experienced by victims of online violence.

As a preliminary conclusion, the research indicates that tackling digital violence gender requires not only legislative changes, but also integrated public policies, digital education and a collective effort between the State, civil society and technology companies. Only through coordinated action will it be possible to guarantee a more efficient virtual environment. safe, fair and inclusive for all women.

2. METHODOLOGY

This study adopts a qualitative approach, based on theoretical and documentary analysis, with the aim of examining the concept and nuances of the crime of sexual violence mediated by digital technologies. The methodology used allows an in-depth investigation of the legal, social and psychological aspects involved, considering the context of the legislation Brazilian and the evolution of sexual crimes in the virtual environment.

The research involves bibliographical survey and analysis of legislative texts, legal doctrines and scientific articles that discuss sexual violence and digital crimes. Fundamental works in the field of criminal and digital law were consulted, as well as studies of recent cases of cyber rape and revenge porn. In addition, this work examines Bills in progress that propose the specific criminalization of rape virtual, highlighting gaps in current legislation and the challenges faced by victims in virtual context.

Through documentary analysis of legislative, academic sources and doctrinal articles, the study seeks to identify the main challenges in the protection and criminal classification of crimes digital sexualities, contributing to the understanding of the limits and possibilities of improvement of Brazilian legislation.

3. GENDER AND LAW Nº 11.340/2006

Gender-based violence in the digital environment is the contemporary expression of inequalities and power relations that have historically affected women, now expanded and intensified

through the virtual environment. This phenomenon manifests itself through various behaviors, from online harassment and unauthorized sharing of intimate images to virtual rape and the dissemination of misogynistic speeches, causing profound damage to integrity, reputation and the mental health of victims. The digital nature of these crimes, marked by anonymity and ease of dissemination of information, makes it difficult to identify attackers, representing a complex challenge for legal accountability and for the formulation of effective public policies.

In this context, the Maria da Penha Law (Law No. 11,340/2006) is a legal tool vital in protecting women's rights. Originally designed to combat violence domestic and family, it already serves as a basis for expanding the state response to new modalities of violence, including those that occur in the digital environment. By ensuring protective measures and to enable aggressors to be held accountable, the law can be interpreted to encompass also virtual attacks that cause psychological, moral or image damage to the victims, reiterating the State's commitment to the dignity and safety of women.

To understand “gender-based” violence in the digital environment, it is necessary to distinguish sex from gender. According to Joan Scott (1995), gender is not limited to a biological classification, but to a social system that assigns roles, values and meanings to the perceived differences between men and women. Gender is a constitutive element of social relations and a form primary way of giving meaning to power relations, as it involves cultural symbols, conceptions normative, social practices and subjective identities that shape the way men and women position themselves in society. From this definition, it is clear that digital violence practiced against women is not just a series of isolated attacks, but a reflection of gender hierarchies: by seeing women as inferior or “deserving” of control, aggressors translate this logic of power into the virtual environment, perpetuating domination through threats, humiliation and exposure of intimacy without consent.

Thus, gender-based violence in the digital world is not just a matter of crimes isolated virtual, but a reflection of the historical dynamics of inequality that constitute the social organization. The aggressions promoted in the online environment reinforce stereotypes and hierarchies built over centuries, acting as a modern and insidious form of violation of women's human rights.

4. TYPIFICATION OF CYBERCRIME

Hate crimes have long been considered a social and politics. Even before the advent of technological means of communication, practices of segregation, often brutal, have occurred throughout history. However, with the emergence of the so-called Information Society, these problems have reached a dimension previously unimaginable.

Information technology, despite having given rise to new infractions capable of achieving legal assets exclusive to the digital environment, has become primarily a instrument for the perpetuation of crimes already known by Criminal Law. In other words, the internet has provided new ways of executing old crimes, impacting a number huge number of individuals, which was also seen in the context of hate crimes.

When these crimes migrate to the digital environment, they are referred to as cyber hate crimes, as crimes motivated by prejudice that manifest themselves through information technologies present particularities that do not occur outside the environment virtual. Furthermore, it is observed that the expression “hate speech” has often been used by the media to describe the spread of hate on the internet, although this concept is just one facet of so-called hate crimes.

According to Winfried Brugger (2007), hate speech has two characteristics fundamental: discrimination and externality. According to him:

Hate speech refers to words that tend to insult, intimidate or harass people because of their race, color, ethnicity, nationality, sex or religion, or that have the capacity to instigate violence, hatred or discrimination against such people (BRUGGER, 2007, p. 118).

In this way, the individual, based on intolerance, whether related to race, nationality, gender identity or any other form of prejudice, distributes or shares messages that incite hatred against a certain group, seeking to restrict or eliminate the rights of these minorities. As with hate crimes, these demonstrations have a segregationist character, supported by the belief that the issuer has superiority in relation to the recipient. However, this type of speech only materializes when from the moment that third parties, in addition to the issuer itself, receive and absorb the



message, since the very definition of the word requires that it be expressed or recorded in a public environment to fulfill its purpose.

It is important to highlight, however, that the simple use of the expression “hate speech” is the subject of debate among scholars. According to Waldron (2012), the use of this term does not would be the most appropriate to characterize such behavior, since the word “hatred” suggests that the main concern should be the spread of prejudiced ideas, in a subjective sense, rather than the issue of the vulnerability of certain groups that are frequently attacked. In addition, Furthermore, the concept of “discourse” refers to the idea of verbal communication, not encompassing that which, according to the author, has greater impact and durability, such as written records, example. In this way, Waldron argues that a more precise term to describe this conduct would be something close to “collective defamation”.

With regard to legislation, the so-called Racism Law (Law No. 7,716/89) typified the practice of acts that promote, encourage or instigate discrimination or prejudice, however, restricted to issues of race, color, ethnicity, religion or national origin. The legislation provides penalties ranging from 1 (one) to 3 (three) years of imprisonment, in addition to a fine, according to the wording introduced by Law No. 9,459/97.

In any case, it is undeniable that the spread of hate speech, when practiced, encourage or instigate prejudice and discrimination against vulnerable groups in society, violates fundamental principles enshrined in our Constitution, especially the principle of dignity of the human person. As we will discuss below, this principle should not be relativized when compared with other rights guaranteed by legislation, such as freedom of expression. This topic has been widely debated in doctrine and in jurisprudence, especially with regard to the expression of thought through the internet, which is why it will be explored further below.

4.1. THE LIMITS OF FREEDOM OF EXPRESSION IN THE FACE OF DISCRIMINATION AND HATRED

Manifestations of prejudice and discrimination in the digital environment present particularities that are not observed in traditional media, such as newspapers and magazines. The speed with which information circulates on the internet and the exponential reach that this



technology provides, in a matter of moments, significantly expanding the impacts of discriminatory speeches propagated in the virtual environment. Thus, by allowing free expression of ideas and thoughts by a diversity of individuals, eliminating barriers of time and space, the internet also becomes a space where certain manifestations go beyond legal limits, configuring violations of human rights.

The relevance of fundamental rights in any legal system is indisputable. They constitute the political and legal pillars of any State. Freedom, as a first generation fundamental right, is inalienable, irrevocable, non-transferable and irrevocable, being one of the essential elements for the consolidation of the Democratic State of Right. This right is provided for in the Constitution, especially in its article 5, covering sections IV and V, which guarantee freedom of expression of thought; sections IX and X, that protect freedom of intellectual, artistic, scientific and communication expression; and items IX and XXXIII, which deal with the right to information, in addition to the provisions contained in Article 220, set out below. *Verbatim:*

Art. 5 All are equal before the law, without distinction of any nature, guaranteeing Brazilians and foreigners residing in the country inviolability the right to life, liberty, equality, security and property, under the terms following:

IV - the expression of thought is free, anonymity being prohibited;

V - the right of reply is guaranteed, proportional to the offense, in addition to compensation for material, moral or image damage;

IX - the expression of intellectual, artistic, scientific and communication activities is free, regardless of censorship or license;

X - the privacy, private life, honor and image of people are inviolable, the right to compensation for material or moral damage resulting from their violation;

XIV - everyone is guaranteed access to information and the confidentiality of the source is protected, when necessary for professional practice;

XXXIII - everyone has the right to receive information of interest to them from public bodies particular, or of collective or general interest, which will be provided within the term of the law, under penalty of liability, except for those whose confidentiality is essential to security of society and the State;



Art. 220. The manifestation of thought, creation, expression and information, under any form, process or vehicle will not suffer any restriction, observing the provided for in this Constitution (BRAZIL, 1988).

Likewise, the American Convention on Human Rights, better known as the Pact of San José da Costa Rica, ratified by Brazil, when dealing with freedom of thought and expression, in its article 13, states that:

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive and impart information and ideas from all nature, without regard to frontiers, verbally or in writing, or in any form printed or artistic, or by any other process of your choice.
2. The exercise of the right provided for in the preceding paragraph cannot be subject to censorship prior, but to subsequent responsibilities, which must be expressly established by law to be necessary to ensure:
 - a) respect for the rights or reputation of other people; or
 - b) the protection of national security, public order, or health or morals public.
3. The right of expression may not be restricted by indirect means or routes, such as the abuse of official or private controls over newsprint, frequencies radioelectric or equipment and devices used in the dissemination of information, nor by any other means intended to hinder the communication and circulation of ideas and opinions.
4. The law may subject public shows to prior censorship, with the aim of exclusive to regulate access to them, for the moral protection of children and adolescents, without prejudice to the provisions of paragraph 2.
5. The law must prohibit all propaganda in favor of war, as well as all advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility, crime or violence. (OAS, 1994).

Furthermore, the Internet Civil Rights Framework (Law No. 12,965/2014) also aims to basis of respect for freedom of expression, as well as human rights, personality development and the exercise of citizenship in digital media. *In verbis*:



Art. 2º The discipline of internet use in Brazil is based on respect for freedom of expression, as well as:

II - human rights, personality development and the exercise of citizenship in digital media;

3rd The discipline of internet use in Brazil has the following principles:

I - guarantee of freedom of expression, communication and manifestation of thought, under the terms of the Federal Constitution; (BRAZIL, 2014).

Among the various rights guaranteed by the Federal Constitution, freedom of expression stands out as one of the most relevant fundamental rights, being one of the demands oldest of humanity throughout history. However, just as freedom is protected by our legal system, the right to equality also represents one of the foundations essential principles of democracy. These two principles, freedom and equality, are complementary, as their coexistence is essential for the full effectiveness of both (POTIGUAR, 2012).

In view of this, it is essential to highlight that these fundamental rights should not be classified on a scale of importance, since establishing a hierarchy between them would be contrary to the essence and function of the Democratic State of Law. Recognizing the superiority of one fundamental right over another would amount to the creation of a tyranny of values, which would be incompatible with democratic principles.

Thus, the right to freedom of expression, like any other right fundamental, it cannot be treated as absolute. On the contrary, it is relative, as it can enter in conflict with other rights also protected by the Constitution, therefore requiring reciprocal restrictions. Tavares (2010) reinforces this understanding by stating that no right fundamental can be used as justification for the practice of illegal acts, since it would be inconsistent to consider that the same conduct can simultaneously constitute a warranty and a legal violation. According to the author:

There is no human right enshrined in the Constitutions that can be considered absolute, in the sense of always being valid as a maxim to be applied in specific cases, regardless of the consideration of other circumstances or constitutional values. In this sense, it is correct to state that fundamental rights are not absolute. There is a wide range of hypotheses that end up restricting the absolute scope of fundamental rights. Thus, it must be considered that the human rights enshrined and guaranteed: 1) cannot serve as a protective shield for the practice of illicit activities; 2) cannot serve to support civil irresponsibility; 3) cannot nullify other rights equally enshrined in the Constitution;



4) they cannot annul the same rights of other people, and must be applied harmoniously in the material sphere (TAVARES, 2010, p. 528).

Thus, it is understood that, although freedom of expression is a right fundamentally assured to all, it must be limited whenever it exceeds its limits legitimate, disrespecting the rights of others and violating the principle of human dignity human. This conflict must then be resolved through a careful analysis of the case concrete.

When we deal with hate speech, we address a dilemma between freedom of expression and the principle of human dignity, the latter being the basis of the Democratic State of Law and the foundation of several other fundamental principles present in our legal system. According to Sarlet (2009), dignity can be defined as a “intrinsic and distinctive quality recognized in every human being, making him worthy of the same respect and consideration from the State and society” (SARLET, 2009, p.67).

Thus, an individual's manifestation of thought cannot be based on freedom of expression to defame, offend or humiliate other people, as it should not serve as justification for spreading hate, promoting or encouraging violence against certain individuals or groups. In this sense, Silva (2014) argues that, in cases where free expression of ideas violates the constitutionally protected rights of third parties, it is necessary to imposing limits and sanctions on those responsible, ensuring that all parties are treated as equals within a debate.

The relationship between freedom and equality is analyzed by Alex Potiguar (2012). According to the author, hate speech, as it is a form of violence that violates individual rights and collectives, generally aimed at minority groups, ends up, in practice, silencing the victims. For him, the regulation of these demonstrations is essential, and they should be prohibited within a democratic state, because using freedom of expression as a justification for the dissemination of prejudiced speeches and incitement to violence clearly denies the principle of constitutional equality.



4.2. AN ANALYSIS OF LAW 13.642/2018

Based on the theoretical framework previously discussed, which allowed an understanding more in-depth study of the topic, it becomes possible to direct a critical look at the reality faced by women who are victims of online misogyny, as well as the challenges posed to legislation Brazilians in combating hate speech directed at them daily on the internet.

Given the relevance of the discussion in the search for effective measures to minimize the impacts of digital misogyny in Brazil, there is a significant difficulty in supporting legal in the current legislation on the subject.

One of the main factors that favor the spread of hate in the virtual environment is anonymity. To contextualize:

These anonymous and decentralized networks cannot be accessed through traditional search engines, such as Google and Yahoo, for example, and therefore require the installation of specific browsers for this purpose. Thus, by guaranteeing its users the impossibility of identifying the authorship of everything shared in this environment, the deep web has been widely used as a means of communication between haters, through chans (channels within the network), to incite and spread hatred against the most varied groups, thus hindering the action of the investigative police. Furthermore, hosting websites abroad is also a tactic widely used by those who use the networks to express hate speech, since, due to conflicts of laws, the procedure for interception through service providers by the police is much more difficult (Escobar, 2019, p.44).

Although Brazil has signed international commitments to guarantee human rights women's human rights and eradicate all forms of gender discrimination, legislation criminal law aimed at protecting against discrimination still presents significant weaknesses.

In the legislative-criminal sphere, the recent approval of Law 13.642/2018, known as Lola Law incorporated the concept of misogyny into the Brazilian legal system, granting it Federal Police the task of investigating crimes that propagate misogynistic content in internet. However, there is still an institutional gap regarding the understanding and application practice of reporting cybercrimes.



5. FINAL CONSIDERATIONS

Digital gender-based violence has become established as one of the contemporary challenges more complex in the legal and social spheres. The digital environment, although it has expanded forms of interaction and communication, it has also become a space where women are constantly target of misogynistic attacks, cyber harassment and technology-mediated sexual crimes. The anonymity and the ease of disseminating content in the digital environment provide a scenario where criminal practices, such as revenge pornography, virtual rape and speeches of hatred, are spreading at an alarming rate. This study highlights the need to address these crimes rigorously, analyzing current legislation and the challenges faced to ensure effective protection for victims.

The research demonstrated that, despite the normative evolution and the existence of laws such as Law 13.642/2018, there are still significant gaps in the criminal classification of virtual crimes. The Brazilian legal system faces difficulties in punishing digital attacks that threaten against the dignity of women, especially due to the complexity of the investigations and the impunity that still prevails in the digital sphere. Furthermore, freedom of expression is often used as a shield for the spread of hate speech, making necessary to strike a balance between this fundamental right and the protection of human dignity in virtual space.

The importance of regulating these criminal practices goes beyond the legal sphere, also requiring efforts in the field of awareness and digital education. The protection of victims demand the implementation of more effective mechanisms, both in identifying aggressors and in holding accountable those who use the digital environment to perpetuate misogyny. The creation of public policies aimed at security in the digital environment, combined with improvement of existing laws, can contribute significantly to the reduction of online violence against women.

Finally, this study highlights the urgency of a broad debate on digital violence gender and the need for joint action between public authorities, civil society and digital platforms. Only through a collective effort will it be possible to minimize the impacts of these practices and ensure a safer and more inclusive virtual environment. The search for



a more robust legal framework, associated with the promotion of educational campaigns and strengthening victims' rights, represents an indispensable path to addressing the challenges posed by the growth of cyber hate crimes and sexual violence. The proposed reflection contributes to the expansion of this debate and encourages new initiatives aimed at to the protection of women in the digital universe.

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