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The silent pandemic of rape of vulnerable people in the context of the health crisis in covid-19 in the Brazilian reality[1]

The silent pandemic of rape of uterus in the context of the health crisis of covid-19 in the Brazilian reality

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SUMMARY
The main aim of this work is to demonstrate that the crime of rape of a vulnerable person has always been present in Brazilian society, but with the Covid-19 pandemic, the number of cases has increased significantly. This time, the theme aims to address the legal classification of the crime of rape of a vulnerable person in the Brazilian penal code, presenting historical and jurisprudential aspects, in addition to conveying the need to put oneself in the shoes of victims of sexual violence and warn, above all, of non-cooperation with the omission of these cases, which need to be curbed by today's society. It is undoubted that victims of violence are constantly revictimized, whether caused by the criminal agent, state bodies or the population. In this context, it is clear that Brazilian authorities are countless times negligent, resulting in neglected victims, as, in addition to not having the strength to prevent the act, they are left aside, carrying with them an eternal trauma. Initially, before discussing the crime of rape of a vulnerable person and its notifications during the coronavirus pandemic, it is necessary to present the historical context, in order to highlight how the crime was treated legally from the beginnings of civilization to the present day. . **Key words:**Vulnerable, Support, State.

ABSTRACT

The main purpose of this work is to demonstrate that the crime of rape of the vulnerable has always been present in Brazilian society, but with the Covid-19 pandemic, the number of cases has increased significantly. This time, the theme aims to address the legal typification of the crime of rape of vulnerable in the Brazilian penal code, presenting historical and jurisprudential aspects, in addition to conveying the need to put oneself in the place of victims of sexual violence and alert, above all, to non-collaboration. with the omission of these cases, which needs to be curbed by today's society. It is undoubted that abused victims are constantly re-victimized, whether caused by the criminal agent, by state agencies or the population. In this context, it is clear that the Brazilian authorities are numerous times silent, culminating in neglected victims, because, in addition to not having the strength to avoid the act, they are left aside, taking with them an eternal trauma. Initially, before discussing the crime of rape of the vulnerable and its notifications during the coronavirus pandemic, it is necessary to present the historical context, in order to show how the crime was legally treated from the beginnings of civilization to the present day.

Keywords: Vulnerable, Support, State

1. INTRODUCTION

Taking into account that the function of the State is to guarantee public security, problems arising This omission is the responsibility of its evident lack, when it fails to promote one of the basic precepts guaranteed constitutionally.

That said, the crime of rape of a vulnerable person is embodied in the Brazilian Penal Code, chapter II, article 217-A, introduced by Law 12,015/2009, which culminates in a prison sentence of 8 (eight) to 15 (fifteen years.

This crime is classified as “an act of carnal conjugation or any libidinous act with minors under the age of 14” and does not require the victim’s consent. Initially, vulnerability is understood based on the observation that people with mental disabilities or those who do not have the understanding to discern the practice of the act or for any other reason cannot offer resistance, according to Barros:

> Criminal Law cannot coexist with abstract concepts, as it does not allow extensive interpretation nor the use of the in malam partem analogy. Therefore, the concept of “vulnerable” should be in terms

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of the law, that is, objective good. (BARROS, Francisco Dirceu, 2010, p. 1).

It is worth mentioning that for Brazilian law, the victim's eventual consent to the practice of the act, their previous sexual experience or the existence of a romantic relationship with the agent are irrelevant. Furthermore, such conduct is considered a heinous crime, deserving of greater legal reprimand, under the terms of art. 1st, item VI, of Law No. 8,072/1990 (Heinous Crimes Law).

The Corona virus emerged in 2019, however it only arrived in Brazil in mid-2020. The virus can be transmitted through direct or indirect contact with infected people. In many cases there was no way of knowing how the individual contracted the virus and was infected, which in turn was called “community transmission”. It is also important to talk about asymptomatic patients, as they often had no symptoms.

The symptoms for identifying this virus were listed in a detailed list by the World Health Organization (WHO) and among the symptoms were the following: fever, tiredness, loss of taste or smell, diarrhea, sore throat, among others.

If the individual presented any of these symptoms, they were subjected to a test, using secretion from the nose or blood collected from the finger, through a small prick, and if it tested positive, the patient in question was subjected to isolation for 15 (fifteen) days, to prevent others from contracting.

Due to this virus, Brazil entered into*lockdown*. Education networks stopped working in person. Later, it became a home office, many who worked became unemployed, as some establishments closed, a reflection of the financial crisis resulting from the global panorama presented by the pandemic.

Given the pandemic concept described above and the responses to this social isolation, there was a significant increase in the number of cases involving rape of a vulnerable person, given that the time spent together by the victim and the aggressor increased, taking into account that a large Some of the aggressors are family members or people very close to them.

It is clear that cases of rape of vulnerable people have become more frequent than they used to be.

According to the Brazilian Public Security Secretariat, in an analysis of micro data on rapes, there were 60,926 records of sexual violence in Brazil in 2020, including 16,047 of rape and 44,879 of rape of a vulnerable person, from police reports drawn up by the Civil Police. (BRAZILIAN PUBLIC SAFETY YEARBOOK 2020)

This time, it is evident that the Brazilian ranking has increased in cases of rape of vulnerable people, although the crime of rape is constant in the Brazilian population, it does not stand out in relation to the rape of vulnerable people, whose cases present more constancy and/or occurrence as mentioned above.

It is also necessary to highlight that the rape of vulnerable people was already a result of great concern in Brazil. However, with the Corona virus pandemic, which arrived unexpectedly in Brazil and around the world, the number of daily cases of crime notifications increased alarmingly. It is noteworthy that newspapers, magazines, websites, among other media, presented daily warnings regarding the increase in crimes against sexual dignity.

In addition to these statements, it is necessary to present other important requirements for understanding the topic. After all, rape of a vulnerable person is a very significant crime, since its typicality encompasses not only age criteria, but also the victim's disability, whether temporary or permanent, physical or mental. Therefore, the present work intends to analyze the practice of the aforementioned crime in Brazilian society, highlighting, above all, the unbridled increase in cases during the Corona virus pandemic, spanning the period from 2019 to 2021.

twoMATERIALS AND METHODS

two

In developing this research, the qualitative method was used, going through an exploratory bias, through doctrinal and jurisprudential readings, legislation, data collection, addressing, especially, the increase in cases during the pandemic in Brazilian society.

The main objective is to highlight the need to pay attention to the crime of rape of a vulnerable person, in order to seek policies to combat this crime. To do this, we started with an analysis ranging from the legal classification, the means by which the state must express itself and what has already been done, in addition to highlighting the increase in cases during the Covid-19 pandemic.

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3 HISTORICAL CONTEXT OF THE RAPE OF A VULNERABLE

In the settings of past civilizations (primitive and/or antiquity), they do not contain traces or information that clearly demonstrate when the crime of rape began. After all, each society had its own legislation, as well as its own methods of punishment, often disproportionate to the crimes committed. It was only with the implementation of the codes known as the code of Manu and the code of Hammurabi, with emphasis on the law of Talião, which says: "an eye for an eye, a tooth for a tooth", found in the Babylonian code of Hammurabi (dated 1770 BC) is that a reciprocity was established between the crime committed and the penalty applied, that is, a penalty limit.

For many, the law was based on the Law of Talion, which comes from the Latin "Lex Talions", which It worked like this: the harm you did to someone should be returned to you, that is, if you committed a crime, you would be held responsible for it according to what you committed, without going unpunished. (MAALAFAIA, 2022).

In this sense, according to Rossetto:

> Punishment, which accompanied man in all periods of History, had the phases of private revenge, divine revenge and public revenge. Private revenge, which occurred in the primitive period, was characterized by the absence of public punitive action, it was revenge, without any concern with the proportionality between the offense and the reaction of the victim, relatives or social group (tribe) against the offender. (ROSSETTO, 2014)

On the other hand, many had an "eye for an eye" interpretation. Thus, the crime for which the offender committed would result in the same punishment. On the other hand, the Law of the Twelve Tables, existing in Romanesque civilization, only punished specific, previously determined crimes. (BEZERRA, Juliana. 2020)

In the same sense, Rossetto adds that:

> At a more advanced moment in primitive society, to limit the disproportion between the severity of the punishment and the crime, the talion emerged: "the strength of revenge must be measured by the intensity of the aggression, according to the formula eye for an eye, tooth for a tooth" . The retaliation was the first achievement of the repressive system. Not allowing the retaliation to exceed the measure of the offense was, without a doubt, progress. The retaliation mitigated the excessive revenge. (ROSSETTO, 2014)

Despite not finding cases of rape in the Bible, there were already punishments in cases repugnant to God, in accordance with the commandments and laws existing at the time. We can mention cases of adultery, in which the woman who committed the act considered illicit was stoned, considered an unforgivable sin.

Other civilizations, in turn, believed that the Bible directed the application of justice, such as the Hebrews. There were servants chosen by God, who were responsible for guiding these people. If someone did not obey God's rules, the leaders (servants) had the autonomy to punish them, according to what was imposed in the Bible. In cases of death of the leaders who guided them, the Hebrews met among themselves and chose someone with sufficient autonomy to lead them, or expected answers from God as to who would be best suited to assume this leadership role. (CURADO, Adriano. 2016)

Greece was polytheistic, as its people were formed by migrations from Northern Europe, called Indo-Europeans. Thus, they believed that the gods had human and divine forces. The crimes committed were punished by quartering and decapitation, in some cases the criminals were even thrown into bonfires in public view. Thus, it is noted that each society had its criteria of justice and defense. (LEGAL TEAM. 2016)

It is also known that during historical evolution, civilizations such as Rome, Greece, Athens, among others, it applied the Law in a more restricted way. This fact demonstrates that the way of punishing or the conduct that is considered a crime, which differs from current society.

Although each civilization presents its own way of dealing with crimes, previous ones, such as Mesopotamia, through the Code of Hammurabi**,**which severely punished acts that were contrary to the law, in addition to being based on self-protection, currently prohibited by the penal code. Thus, whoever carried out the act considered illegal would be held responsible. In this way, it was unusual for any transgressor to go unpunished for the crimes committed.

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Even if it were a civilization between kings, queens, princes, princesses, court, without the existence of Judges, Public Prosecutor's Office or any legal means that exist today, the Law was already present and effective. Although compared to today, it would be incoherent, our legislation would not be adopted, as the Law was very strict and women were victims of neglect of the laws, as they had rare guarantees.

In historical civilizations such as Rome, Germany and Spain, the penalty for perpetrators of rape was death; in Egypt, in turn, the perpetrator was castrated. Furthermore, Greece imposed a fine on the perpetrator, but, shortly afterwards, the law changed to the death penalty.

Despite not being aware of what rape of a vulnerable person was, they already adopted the understanding that the rapist should answer for his actions in order to punish with his own life. In this way, the woman was covered by the law. Furthermore, cases among men were very rare and hardly any woman was the perpetrator of the rape.

In Brazil, in turn, the Penal Code is followed, which, after many years, is still the basis of defense for Brazilian society, having specific forms of classification for each illegal situation.

It is important to highlight that until the 1940 Penal Code, children and adolescents did not receive specific criminal protection in relation to crimes of a sexual nature. Furthermore, both the Criminal Code of the Empire (1830) and the Penal Code of the Republic (1890) did not provide for any specific classification for crimes committed against children under 14 years of age and did not even provide for an increase in the penalty prescribed for such situations.

Over time, with legislative changes, the Penal Code presented changes significant, especially in crimes against sexual dignity. In this context, article 217-A in the Penal Code now covers the crime of rape of a vulnerable person.

Before the inclusion of art 217-A of our CP, the crime of rape was foreseen in art 213 and art 214 of the CP, both seen as a crime of violence or serious threat. Let's see:

> Art. 213. Compel someone, through violence or serious threat, to have carnal union or to practice or allow another libidinous act to be practiced with them: (Wording given by Law No. 12,015, of 2009) Penalty - imprisonment, of 6 (six) to 10 (ten) years. (Wording given by Law No. 12,015, of 2009)
> § 1 If the conduct results in serious bodily injury or if the victim is under 18 (eighteen) or over 14 (fourteen) years of age: (Included by Law No. 12,015, of 2009)
> Penalty - imprisonment, from 8 (eight) to 12 (twelve) years. (Included by Law No. 12,015, of 2009) § 2 o If the conduct results in death: (Included by Law No. 12,015, of 2009)
> Penalty - imprisonment, from 12 (twelve) to 30 (thirty) years (Included by Law No. 12,015, of 2009) Gross indecency (Repealed by Law No. 12,015, of 2009)
> Art. 214. Sexual rape. Carrying out or forcing someone to practice or allowing someone to practice carnal intercourse or another libidinous act with them by means not included in the previous article. Imprisonment, 1 to 5 years. Single paragraph. If the victim is under 18 and over 14. Penalty: imprisonment, 3 to 7 years.

It is noted that there was a way to punish the offender, but the rape of a vulnerable person was not present, as this punishment was for rape cases as a whole. Due to many objections, changes were made to Law No. 12,015/2009, with regard to crimes against sexual dignity, thus bringing the inclusion of article 217-A, to the Brazilian Penal Code, classifying the crime of rape of a vulnerable and making it a heinous crime.

4 INNOVATIONS OF LAW 12,015/2009

In 2009, Law no. 12,015/2009, brought changes regarding sexual crimes. She came with the aim of supporting all victims of these acts. This legislation made its first amendment to “Title VI”, of the Brazilian Penal Code, whereas previously the name “Dos Crimes Contra os Costumes” was adopted and with its arrival, it was renamed “Dos Crimes Contra a Dignidade Sexual”.

The law establishes that it is not only men who can be the perpetrators of this crime, but also women. Although the number of cases is higher among women, it still exists with men as the subject, considering that they can also be victims, and in this way the law also protects them.

Among the changes to the law, one of great importance and prominence was the inclusion of rape of vulnerable people. in article 217-A of the Penal Code. It should be noted that, in article 224, caput, of the Penal Code, there was only the relative presumption of violence, imposed with article 223, caput, of the same legislation.

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> **Article 224:** Violence is presumed if the victim: a) is
> not over 14 (fourteen) years of age;
> b) is alienated or mentally ill, and the agent knew this circumstance;
> c) cannot, for any other reason, offer resistance.

c) the provisions of art. 224 of the Penal Code, relating to the presumption of violence, used to give typicality to the crimes of rape and indecent assault, when sexual intercourse with a vulnerable person is obtained. Illustrating, art. 213 with 224, a, of the Penal Code, to create the figure of rape of a minor under 14 years of age, assuming that there was violence, due to the victim's inability to discern. We believe that the elimination of the so-called presumption of violence was correct, in order not to create the false deduction that there would be, in criminal law, presumptions (inclusions, probabilities) specifically drawn against the interests of the accused. Therefore, Law 12,015/2009 adopted the concept of vulnerability (the state of someone who is deprived of the ability to resist, subject to injury or deprived of protection). There are many ways for someone to find themselves, at some point in their life, vulnerable to something. In the context of art. 217-A, it deals with the capacity for understanding and acquiescence regarding the sexual act. Therefore, in essence, there continues to be a presumption that certain people do not have the aforementioned capacity to consent. However, what was previously simply called presumption of violence was included in the term vulnerable. Regarding the age of the victim, when under 14 years of age, jurisprudence has mostly interpreted it to be absolute vulnerability, which does not admit proof to the contrary; (NUCCI, Guilherme de Souza, 2021)

However, this article was revoked from the Brazilian criminal code and replaced by article 217-A.

> Art. 217-A. Having sexual intercourse or carrying out another libidinous act with a minor under 14 (fourteen) years of age: (Included by Law No. 12,015, of 2009)
> Penalty - imprisonment, from 8 (eight) to 15 (fifteen) years. (Included by Law No. 12,015, of 2009)
> § 1 Anyone who practices the actions described in the caput with someone who, due to illness or mental disability, does not have the necessary discernment to carry out the act, or who, for any other reason, cannot offer resistance, incurs the same penalty. (Included by Law No. 12,015, of 2009)
> § 2 (VETOED) (Included by Law No. 12,015, of 2009)
> § 3 If the conduct results in serious bodily injury: (Included by Law No. 12,015, of 2009) Penalty - imprisonment, from 10 (ten) to 20 (twenty) years. (Included by Law No. 12,015, of 2009)
> § 4 If the conduct results in death: (Included by Law No. 12,015, of 2009)
> Penalty - imprisonment, from 12 (twelve) to 30 (thirty) years. (Included by Law No. 12,015, of 2009)
> § 5 The penalties provided for in the caput and in §§ 1, 3 and 4 of this article apply regardless of the victim's consent or the fact that she had sexual relations prior to the crime. (Included by Law No. 13,718, of 2018)

It can be observed that Law no. 12,015/2009 brought significant changes to the legislation relating to the crime of rape, especially the rape of a vulnerable person, containing a specific article for this conduct.

There are also cases in which an error of this type can be configured, a cause that excludes culpability, Therefore, it is important to observe what the article typifies to be characterized as rape of a vulnerable person. It is sufficient, therefore, for the agent to actually have a carnal relationship, which may even be consented to by the victim, or to perform another libidinous act with her. In the latter case, the law disregards the consent of someone under 14 (fourteen) years of age, and the agent, who knows the victim's age, must respond for the crime of rape of a vulnerable person.

> It is sufficient, therefore, for the agent to actually have a carnal relationship, which may even be consented to by the victim, or to perform another libidinous act with her. In the latter case, the law disregards the consent of someone under 14 (fourteen) years of age, and the agent, who knows the victim's age, must respond for the crime of rape of a vulnerable person.
> The conduct provided for in the criminal type of art. 217-A are the same as those contained in art. 213 of the CP, and the difference between them lies in the fact that in the crime of rape of a vulnerable person, the victim must necessarily be under 14 (fourteen) years of age (it is not possible to disqualify the crime of rape of a person under 14). years for sexual harassment – STJ, REsp 1684167), therefore, we refer the reader to what was said when studying the aforementioned art. 213 of the CP (GRECO, Rogério, 2021)

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Consider a hypothetical situation: Let's suppose that João, a 19 (nineteen) year old boy, talks on Tinder with Ana, a 14 year old girl, but he doesn't know her real age and in the way she talks, she appears to be a mature woman. So João is unable to identify that she is underage. They both decide to go out on a date. Ana personally doesn't look 14 years old, neither in appearance nor even in her speech. After hours of conversation, they decide to go to a motel and there a carnal union takes place, with the consent of both.

When analyzing this context, the law can understand it as a type of error, and this hypothetical situation can be considered as atypical, since João did not force Ana to have sexual relations or libidinous acts with him. In this case, art. 217-A constitutes the crime for children under 14 years of age, or an incapacitated person, when the perpetrator has this awareness and, even so, practice.

> The inclusion of § 5 to art. 217-A has the clear objective of making clear the path chosen by Parliament, seeking to put an end to doctrinal and jurisprudential divergence, regarding the vulnerability of people under 14 years of age. Absolute vulnerability is chosen by making it clear that carnal intercourse or a libidinous act with a minor under the age of 14 is punishable, regardless of their consent or the fact that they have already had sexual relations prior to the crime. Firstly, it must be concluded that any person under the age of 14, whether or not they can validly consent, that is, even understanding the meaning and effects of a sexual relationship, is prohibited, by law, from relate sexually. If the precept is not complied with, your partner will be punished (over 18, rape of a vulnerable person; under 18, criminal act similar to rape of a vulnerable person). By law, the relative vulnerability of children under 14 years of age decreases. The law is associated with the understanding espoused by the Superior Court of Justice (Summary 593). The second part focuses primarily on child and youth prostitution; after all, the criminal law refers, on purpose, to sexual relations (in the plural), intending to point to the irrelevance of the victim's sexual experience. This experience, as a rule, comes from prostitution. (NUCCI, 2021)

In this context, article 20, caput, of the Penal Code, foresees the error of the type as the error regarding a constitutive element of the legal type that excludes intent, but allows punishment for a culpable crime, if provided for by law.

According to Rogério Sanches Cunha, the type error is divided into two types: essential type error and accidental error (CUNHA, 2020).

In the first case, the error concerns the main criminal data, so that, if warned, the agent stops acting criminally; as an example, we can cite the situation of a person who picks up a cell phone thinking it is theirs and only realizes that they picked up the wrong device when they get home, in which case there will be no punishment for intent, as there will be no punishment for guilt, since the theft does not provides for the culpable modality. (RINALDI, Wagner Gustavo. 2020)

As the doctrine points out, an essential error can be inevitable or avoidable; if inevitable "excludes intent (as there is no conscience) and guilt (as there is no predictability)" (CUNHA, 2020, p. 276); if avoidable, it only excludes intent, as it was possible to foresee the dangerous situation.

It is important to emphasize that the inevitability of an error must be assessed according to the circumstances of the specific case. In accidental errors, the agent makes mistakes about secondary elements of the crime, so that, if warned, the agent continues his illicit conduct, only correcting it. (RINALDI, Wagner Gustavo. 2020)

5 THE REALITY OF VULNERABLE RAPE IN THE SILENT BRAZILIAN PANDEMIC OF COVID-19

Brazil is a very large territory. However, not every extension has strong support from the State, since justice often takes time and is not effective. In 2019, with the beginning of the pandemic, in which Brazilians had to be isolated, due to the existence of the virus and the restriction measures adopted, there was an increase in cases of crime rape of vulnerable people, as the streets would be less busy and face-to-face teaching networks would have a reduced number of people. Thus, the probability of an increase in cases was high, and so it happened.

In March 2020, when the pandemic reached Brazilian territory, social isolation was immediately impacted. Brazil recorded more than 100 thousand cases of rape, of which 100,398 were cases of rape

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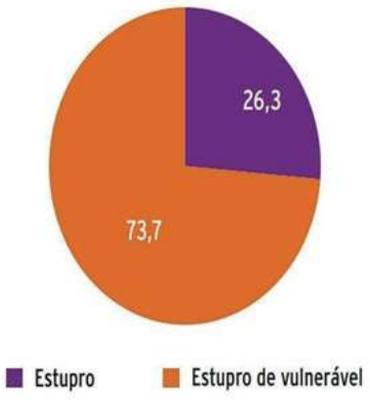
of vulnerable. The report made by the Brazilian Public Security Forum (FBSP) with analysis of police reports in the national territory, contained by 27 civil police federations, found that 83% of cases of rape of vulnerable people occurred inside homes in the city of São Paulo . (CREATIVE SOCIALISM, 2022)

The data points to a survey of 877 of 1,052 reports of rape of a vulnerable person, occurring at home. In the quarter of 2019, there was a percentage of 71% of reports of rape of a vulnerable person. (BRAZILIAN PUBLIC SAFETY YEARBOOK, 2020)

The surveys on these cases identified, firstly, the residences, accounting for 78.5%. Afterwards, public roads, at a percentage of 8.1%, followed by educational units, at a total of 3.9%, rural areas, at 2% and commercial areas, at the same percentage of 2%. Furthermore, most of the victims were between the ages of 10 and 14, 5 and 9 years old, and some were aged 15 years old. It is noteworthy that girls aged 13 are the most common victims, 60% white and 38% black, and boys aged 4 to 5. Furthermore, around 7% of these victims are disabled or have some vulnerability. (BRAZILIAN YEARBOOK

GRÁFICO 43
Distribuição dos crimes de estupro e estupro de vulnerável
Brasil (2020)



Source: Analysis produced from micro data from police records and state secretariats of Public Security and/or Social Defense. Brazilian Public Security Forum, 2020.

The graph above lists the registration of state Public Security Secretariats, based on age group. The number of victims of sexual violence are children aged between 10 and 13 years old (28.9%), followed by children aged 5 to 9 years old (20.5%), teenagers aged between 14 and 17 years old (15%) and finally, children aged 0 to 4 years (11.3%). Furthermore, the percentage shown by the graph due to rape of vulnerable people is alarming. (BRAZILIAN PUBLIC SAFETY YEARBOOK 2020)

According to a report made by 4 out of every 5 police reports, the rape of a vulnerable person occurs within the victim's own home. Even with extensive research carried out on the subject, there is no way to identify the relationship between the perpetrator and victim in this case. On average, 73% of records are from victims who are related to the agent. (BRAZILIAN PUBLIC SAFETY YEARBOOK 2020)

Many of the victims were not registered, as there were no complaints, this means that even with research carried out, data collected and exposed here during the pandemic, it is not the real number of victims, considering that many were not even notified. The table below shows the number of cases of rape and rape of a vulnerable person, in order to detail each state and the increase in cases reported by them between the years 2017 to 2020.

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Tabela 4 – Taxa de vitimização por estupro ou estupro de vulnerável de crianças de 0 a 19 anos

UNIDADE DA FEDERAÇÃO	TAXA VITIMIZAÇÃO POR ESTUPRO OU ESTUPRO DE VULNERÁVEL - VÍTIMAS DE 0 A 19 ANOS*			
	2017	2018	2019	2020
AC	...	...	...	...
AL	41,9	17,4	49,7	57,8
AM	...	...	...	...
AP	...	...	...	110,2
BA	...	...	...	...
CE	48,6	49,9	54,5	51,8
DF	72,3	74,4	64,0	60,6
ES	...	93,1	46,0	90,2
GO	115,9	134,4	137,7	106,1
MA	...	...	...	15,7
MG	70,1	76,5	68,6	61,2
MS	218,5	220,9	210,1	186,0
MT	159,8	148,0	150,9	136,5
PA	88,2	98,6	94,8	...
PB	...	8,9	8,8	7,0
PE	53,2	...	...	...
PI	24,4	52,9	60,2	59,8
PR	131,1	164,8	169,0	139,7
RJ	58,6	74,7	72,6	83,4
RN	...	...	36,8	39,9
RO	...	118,3	53,2	146,2
RR	...	89,2	87,7	126,8
RS	130,0	122,3	128,3	...
SC	150,1	169,9	162,3	135,2
SE	...	...	82,4	58,2
SP	90,7	89,6	65,4	74,8
TO	...	...	...	126,1

*Por 100 mil habitantes de 0 a 19 anos.

Source: Analysis produced from micro data from police records and state secretariats of Public Security and/or Social Defense. Brazilian Public Security Forum, 2020.

Given these data mentioned above, it can be concluded that the pandemic contributed to the increase in cases of rape of vulnerable people. Despite the practice of this crime being constant in Brazilian society, the lockdown experienced from 2020 until the end of 2021 contributed to this survey.

5.1 MEANS FOR INFORMATION ABOUT RAPE OF VULNERABLE PEOPLE

The first measure that can be taken in these cases is within the family, fathers and mothers have the duty to have Have a conversation with your children, ask them if they are ok, if anything strange is happening. In situations where children are left with someone other than their parents, or even if they are, a conversation must be held to make sure that everything is ok and that the child or adolescent is not suffering any type of abuse.

Means of discussion at school on this subject is essential and indispensable, even if the child or adolescent has no real idea of sexual intercourse, they must stick to direct explanations, which make them understand that they should report it to their parents. parents any strange touch, as a means of avoiding the action of rape, and continuation of the practice in cases that are already victims.

The main point is to report the incident, by filing a police report and avoiding omission and underreporting of these cases, so that there is an adequate reprimand and the damage to the victim's life is minimized.

In addition to these measures, psychological support for these victims is necessary, as this will result in severe trauma. This support will help the victim to live better with this harmful scar. The State, in turn, has significant role in the search for ways to prevent the commission of these crimes. Investment in education and social policies represents a necessary mechanism.

> In the Federal Constitution, the dignity of the human being represents one of the foundations of the Democratic Rule of Law (art. 1, III), which is proclaimed “intended to ensure the exercise of social and individual rights, freedom, security, well-being, being, development, equality and justice as supreme values”. This means that the constituent considers the true value to be pursued, around which all these must operate and, therefore, as already interpreted by José Celso de Mello Filho, as the source value of the entire social order. (MARCÃO, Renato and GENTIL, Plínio, 2018)

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It is understood that the Federal Constitution/88 and other related infra-constitutional laws ensure the everyone has the right to defense.

5.2 SUPREME COURT OF JUSTICE AND JUDGMENTS RELATING TO THE RAPE OF A VULNERABLE

The Superior Court of Justice vehemently decides the crime of rape of a vulnerable person, even if it is committed with the victim's consent.

> [...] 1. The jurisprudence of this Superior Court of Justice was pacified in the sense that, according to the normative system in force after the enactment of Law no. 12.015/09, carnal union or other libidinous act with a minor 14 (fourteen) years constitutes the crime of article 217-A of the Penal Code, regardless of serious threat or violence (real or presumed), which is why the eventual consent or self-determination of the victim for the configuration of the crime became irrelevant. [...] (AgRg no REsp 1363531 MG, Rel. Minister MARIA THEREZA DE ASSIS MOURA, SIXTH PANEL, judged on 06/27/2014, DJe 08/04/2014).
> [...] 1. The Third Section of this Court, in the judgment of REsp 1480881/PI, judged under the rite of art. 543- C of the CPC (repetitive appeals), pacified the understanding that, in sexual crimes committed against minors under 14 years of age, the presumption of violence is absolute, sufficient to characterize the crime of rape of a vulnerable person provided for in art. 217-A, caput, of the Penal Code, that the agent has carnal knowledge or performs any libidinous act against the victim. 2. 'Modernity, the moral evolution of social customs and access to information cannot be seen as factors that oppose the natural civilizational tendency to protect certain physically, biologically, socially or psychologically fragile segments of the population. In the case of children and adolescents under the age of 14, the recognition that they are still immature people - to a lesser or greater extent - legitimizes criminal protection against any and all types of early sexual initiation to which they are subjected by an adult, given the unpredictable risks regarding the future development of their personality and the impossibility of measuring the physical and psychological scars resulting from a decision that a teenager or a young child is not yet capable of freely making.'. [...]" (AgRg no REsp 1427049TO, Rel. Minister GURGEL DE FARIA, FIFTH PANEL, judged on 10/27/2015, DJe 11/16/2015).

Despite the existence of the private life of each human being, in which each person has the free will to make decisions, under 14 years of age, for criminal law, they are considered vulnerable, that is, they do not have discernment in their acts.

> [...] 1. The jurisprudence of the Federal Supreme Court and the Superior Court of Justice established the understanding that, under the regulations prior to Law No. 12,015/09, the presumption of violence in rape and indecent assault was absolute (referred to in the old wording of article 224, "a", of the CPB), when the victim was not over 14 years of age, even if the victim voluntarily consented to the sexual act [...] 5. Examination of the history of criminal ideas - and, in particular, the criminal policy options that gave rise to the successive regulations of Brazilian Criminal Law - demonstrate that the provoked and premature sexual initiation of children and adolescents by adults who take advantage of the person's immaturity is no longer tolerated. in physical and psychological training to satisfy your sexual desires. 6. From an absent State and a Criminal Law that is indifferent to the protection of the sexual dignity of children and adolescents, we have gradually evolved into a Social and Criminal Policy with increased concern for the healthy physical, mental and emotional growth of the child and youth component of our population, a concern that became, by command of the constituent (art. 226 of the CR), shared between the State, society and the family, with numerous consequences in criminal dogmatics. 7. Modernity, the moral evolution of social customs and access to information cannot be seen as factors that oppose the natural civilizational tendency to protect certain physically, biologically, socially or psychologically fragile segments of the population. In the case of children and adolescents under the age of 14, the recognition that they are still immature people - to a lesser or greater extent - legitimizes criminal protection against any and all types of early sexual initiation to which they are subjected by an adult, given the unpredictable risks regarding the future development of their personality and the impossibility of measuring the physical and psychological scars resulting from a decision that a teenager or a

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> Young child is not yet able to freely take. 8. The acclaimed social acceptance of the conduct attributed to the defendant by residents of his small hometown, or even by the family of the victim, does not exclude criminal liability for perpetrators of crimes, under penalty of allowing the state's punitive power to be subject to regional and sociocultural differences existing in a country with continental dimensions and rendering the legal and constitutional protection granted to specific segments of the population irrational. [...] (REsp 1480881 PI, submitted to the repetitive special appeals procedure, Rel. Minister ROGERIO SCHIETTI CRUZ, THIRD SECTION, judged on 08/26/2015, DJe 09/10/2015).

To characterize the crime of rape of a vulnerable person provided for in art. 217-A, caput, of the Penal Code, it is enough for the agent to have carnal knowledge or to practice any libidinous act with a person under 14 years of age. The victim's consent, any previous sexual experience or the existence of a romantic relationship between the agent and the victim do not rule out the occurrence of the crime, as argued by Rogério Greco (2018, p.97).

> The sexual relationship may have been "consented" by the offended party, who, afterwards, does not complain and may even have enjoyed it. However, according to rules of experience, captured by the legislator, sexual activity with such people is prohibited, since the majority do not have sufficient discernment or conditions to authorize the act, therefore, the vulnerability of their situations indicates the presumption of having been violent. the practice of sex. In any case, the forms qualified by the result are foreseen, as it is possible to have sexual intercourse with the effective use of violence. In this case, the result can reach more serious consequences, such as injury or death to the victim. In short, as it is a special criminal type in relation to art. 213, whenever the sexual practice involves a minor under the age of 14, is ill or mentally disabled or is incapable of resisting, it is classified as rape of a vulnerable person, taking into account art. 217-A (NUCCI, Guilherme de Souza, 2021)

The author Guilherme de Souza Nucci defends the victim's non-consent, as she does not have old enough for such practice, where in some cases this can lead to injuries due to their body not being trained enough to allow this practice.

6 GOVERNMENT POLICIES RELATED TO THE RAPE OF VUNERABLE PEOPLE, ARISING FROM THE CONSEQUENCES OF THE COVID-19 PANDEMIC

According to the Municipal Secretariat of the State of São Paulo, a survey was carried out between 2017 and 2020, rapes of vulnerable people have already increased in recent years, but in the first half of 2020 they decreased significantly (-15.7%), mainly in months of 2020. In April (-36.5%) and May (-39.3%) compared to the corresponding period last year. (BRAZILIAN PUBLIC SAFETY YEARBOOK, 2020)

In the first half of 2020, when the pandemic began, the proportion of this type of crime in areas housing in the state of São Paulo was 8% and in May it was 88%, which exceeded the level. 79% in previous years. (BRAZILIAN PUBLIC SAFETY YEARBOOK, 2020)

The crime of rape of a vulnerable person is committed mainly against children aged 0 to 14 and was responsible for 75% of the total rapes registered in the first quarter of the state of São Paulo. (BRAZILIAN PUBLIC SAFETY YEARBOOK, 2020)

Numbers like these above demonstrate the real need to change this scenario. Movements that enable reporting are vital, as well as providing information to communities about the content of criminal conduct.

From this perspective, the City of Rio de Janeiro launched a plan to combat sexual violence against children and young people. A memorandum of understanding to combat the exploitation of minors was signed at Monday at the Huominen Museum, in the center of the capital. (Plan to combat sexual violence against children) (SAMPAIO, 2022).

The purpose of the child and youth rights plan drawn up by the City Council in together with the Municipal Social Secretariat is to improve public order to protect against abuse and violence and minimize the consequences of the pandemic, which has worsened the problem.

This measure should be taken as an example and applied throughout the national territory, thus enabling real effectiveness in the protection of adolescent children and the dissemination of their rights and guarantees.

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FINAL CONSIDERATIONS

The present work aimed to discuss the crime of rape of a vulnerable person present in Brazilian society and the notable increase in the number of cases during the Corona virus pandemic.

Given these facts, it is concluded that Law n.12.015/2009 brought several changes, including art. 217- A in the Brazilian Penal Code, which deals with the rape of a vulnerable person, making it a heinous crime, that is, non-bailable and not susceptible to pardon, grace and amnesty.

Furthermore, it is clear, through the decisions and laws presented, that there is nothing to talk about consent in these cases, for children under 14 (fourteen years old). They are minors and do not have sufficient understanding to consent to sexual intercourse. It will be considered a crime regardless of your intention, as Brazilian doctrine makes it clear that there is no way to consent to this practice.

In view of this, the best way to avoid these acts is through dialogue and constant family attention, in order to notice the signs of any behavioral differences in the child or adolescent.

Finally, it is necessary to reflect on the role of the State and its action in these cases, if due protection is offered in terms of legal support and assistance policies. After all, all protection bodies, as well as social control bodies, need to be attentive and active in offering protection and prevention policies.

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