



OBSTETRIC VIOLENCE AND THE DOCTOR'S CIVIL RESPONSIBILITY

Patrícia Coêlho Aguiar Freitas¹

Kawenna Santiago Pinheiro^{two}

SUMMARY

The purpose of this article is to address obstetric violence and the doctor's civil liability. The research explores the complexities of obstetric violence, highlighting disrespectful and abusive practices during the pregnancy-puerperal cycle. The doctor's civil liability emerges as a key piece, not only as a reparation mechanism, but as a reflection of the dynamics between the pregnant woman's autonomy and the provision of health care. Furthermore, the study highlights systemic responsibility, encompassing institutional healthcare structures, and emphasizes the importance of a multidisciplinary approach. The intersectionality between social inequalities and obstetric violence is highlighted, highlighting the need for comprehensive public policies. Ultimately, the research promotes awareness of obstetric violence, advocating for woman-centered practice, and points to the importance of medical ethics, effective communication, and respect for autonomy.

Key words:obstetric violence; humanized birth; reproductive rights; civil responsibility; awareness.

ABSTRACT

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1INTRODUCTION

The problem of obstetric violence, which permeates the corridors of hospitals, emerges as an issue of great relevance in the legal sphere, shedding light on violations of women's fundamental rights during periods of pregnancy, childbirth and postpartum. This complex phenomenon denounces disrespectful, abusive and, in many cases, truly violent practices, sometimes perpetrated by health professionals, agents who should ensure respect for the rights of women in labor.

The concept of "obstetric violence" covers actions that violate women's human rights during during the pregnancy-puerperal cycle. Such transgressions manifest themselves in a variety of ways, including unnecessary medical interventions, discrimination, lack of information, disrespect for autonomy and even cases of physical aggression.

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The World Health Organization (WHO) highlights the imperative of respectful, evidence-based birth care, recognizing that respect for women's rights is essential for promoting safe and healthy motherhoodWHO (2018).

The root of obstetric violence often lies in social and cultural structures that perpetuate unequal norms of gender and power, making it an intrinsically legal issue. Medicalization

¹ Teacher. Attorney. Master in Jurisdictional Provision and Human Rights from the Federal University of Tocantins in partnership with the Escola Superior da Magistratura Tocantinense. Specialist in Civil Law and Civil Procedure from Cândido Mendes University. Specialist in Medical and Hospital Law from the Faculdade Escola Paulista de Direito. Graduated from the Pontifical Catholic University of Goiás. E-mail: patriciacelhoaguia@gmail.com .

^{two} Bachelor of Law from Centro Universitário Luterano de Palmas (2023).



excessive childbirth, lack of effective communication between health professionals and pregnant women, as well as the lack of informed consent, are factors that contribute to the perpetuation of this problem. The impact of obstetric violence goes beyond the moment of birth, compromising women's mental and emotional health and influencing their future reproductive decisions, thus constituting an issue subject to analysis and legal intervention.

Disrespectful practices during childbirth, often neglected in the legal context, demand a more assertive legal approach. The lack of adequate information about the rights of pregnant women, combined with a culture that devalues women's voices in the medical context, creates an environment conducive to the perpetuation of obstetric violence. It is imperative to understand that this violence is not limited to physical aggression, including practices that violate the emotional and psychological integrity of women, fundamental legal aspects that demand analysis and reparation.

The legal approach to obstetric violence requires a critical analysis of the institutional structures that perpetuate it. Health systems are often not adequately equipped to deal with the emotional and psychological demands of pregnant women, focusing excessively on standardized medical protocols to the detriment of personalized care. The need for a more holistic, woman-centered approach during childbirth is imperative to overcome the barriers that contribute to obstetric violence, therefore requiring effective legal intervention.

Furthermore, it is crucial to recognize the dimension of social and economic inequalities that affect access to quality obstetric care, making legal intervention even more pressing. Women in situations of socioeconomic vulnerability face a greater risk of being subjected to disrespectful practices during childbirth, highlighting the intersectionality that permeates obstetric violence.

Therefore, legal maternal health policies must address not only clinical issues, cases, but also the social and structural issues that contribute to the violation of pregnant women's rights.

In a scenario of growing awareness, the legal approach to obstetric violence becomes crucial. Training and raising awareness among healthcare professionals, combined with the creation of safe legal reporting mechanisms, are crucial steps to promoting a cultural change in obstetric practices and ensuring the effective application of relevant legislation. Educational initiatives that emphasize the importance of informed consent, respectful communication and individualization of care contribute to more humanized birth care, aligned with legal principles protecting the fundamental rights of women in labor.

The aim is to address the central problem of this work, which focuses on research into "Obstetric Violence and Doctor's Civil Liability". The main objective is to carry out an in-depth analysis of the legal and ethical implications associated with obstetric practices, aiming to understand the complexities of obstetric violence and examine the civil liability attributed to health professionals.

To achieve this purpose, the research adopted the bibliographic research methodology, based on a critical review of the existing literature on the topic. This approach will allow the compilation and analysis of already consolidated knowledge in the area, providing a solid theoretical basis for understanding the phenomenon in question.

Thus, throughout this work, concepts, cases and contexts involving obstetric violence will be explored, highlighting the legal implications for health professionals. The literature review will allow for an in-depth analysis of the ethical and legal issues related to obstetrics, shedding light on the civil liability of doctors in situations of obstetric violence.

Therefore, this research aims to contribute to the understanding and discussion of the topic, promoting critical reflection on obstetric practices and encouraging awareness of the legal and ethical responsibility of health professionals in the context of obstetric violence.

Therefore, eradicating obstetric violence is not only a matter of ethics, but also an urgent legal need. Society, health professionals and government institutions de-comes to join efforts to combat obstetric violence, implementing policies and practices that guarantee full respect for women's reproductive and fundamental rights during the pregnancy- puerperal cycle.

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two DEFINITIONS ABOUT OBSTETRIC VIOLENCE

Obstetric violence, a reality that affects women globally, is a growing concern due to the various manifestations that can have profound consequences for women's physical and mental health (G1, 2021). The definition of this phenomenon covers acts that cause damage, both physical and

psychological, during the birth process, including everything from unnecessary medical procedures to disrespectful and degrading treatment (Defensoria Pública de Mato Grosso do Sul, 2021).

Understanding obstetric violence as a complex problem demands a comprehensive analysis of the factors that permeate it. Among these elements, the lack of knowledge about women's rights during childbirth stands out. The research by Ramos, MA, Oliveira, DC, & Carvalho, MC (2022). Obstetric violence and knowledge about women's rights: a study with pregnant women from the SUS. *Brazilian Journal of Maternal and Child Health*, 22(1), 1-10. highlights the relevance of this aspect, indicating that the lack of adequate information and clarification contributes to the vulnerability of pregnant women to possible violations during the birth process.

Furthermore, the lack of adequate training for healthcare professionals is also a critical component. The health system is often not prepared to deal with the nuances of childbirth care, which can result in disrespectful or unnecessary practices. The need for more holistic and sensitive training for health professionals is evident, aiming not only at technical competence, but also at empathetic understanding of pregnant women's needs.

Another point to be considered is the prevalence of discriminatory attitudes in the healthcare system. branches, MA, Oliveira, DC, and Carvalho, MC (2022) note that, in some cases, women from minority groups or with specific characteristics may face discrimination during childbirth. This dimension of obstetric violence is intrinsically linked to issues of equity in access to healthcare and highlights the importance of inclusive and culturally sensitive approaches.

The impacts of obstetric violence on women's health are vast and cover both physical and mental aspects. In physical terms, exposure to unnecessary medical procedures can result in injuries, infections and complications that affect long-term reproductive health. Lack of adequate medical care during childbirth can also contribute to these complications, highlighting the importance of evidence-based, woman-centered care.

However, it is the mental health impacts that are often underestimated. Obstetric violence can trigger post-traumatic stress, depression, anxiety and other mental health problems. The experience of an event that should be marked by joy and safety, transformed into a traumatic episode, highlights the urgency of a more careful and respectful approach during childbirth (UNESP, 2023).

Obstetric violence, therefore, transcends the medical sphere and becomes an issue of human rights and mental health. The need for an integrated approach that considers not only the physical aspects, but also the emotional ones, is urgent to guarantee comprehensive care for pregnant women. (UNESP, 2023).

The urgency in addressing obstetric violence is unquestionable. In this sense, training health professionals emerges as an essential strategy. Adequate training for identifying, preventing, and managing obstetric violence must be incorporated into academic curricula and professional development programs. This would not only enable professionals to provide quality care, but also raise awareness of issues of respect for women's reproductive rights. (UNESP, 2023).

At the same time, informing women about their rights during childbirth is a crucial component in the fight against obstetric violence. The Mato Grosso do Sul Public Defender's Guide (2021) highlights the importance of pregnant women being aware of their rights, enabling them to recognize and report abusive practices. This awareness creates a dynamic of empowerment, where women become active agents in defending their rights during the birth process.

However, the implementation of robust accountability systems is a key piece in this breakdown. - head. The Memed Blog (2022) emphasizes the need for measures to ensure that healthcare professionals who commit obstetric violence are held accountable for their actions. This not only serves as a mechanism of justice for victims, but it also sends a clear message that obstetric violence does not will be tolerated.

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To effectively address this issue, a coordinated effort is needed that involves not only healthcare professionals, but also policymakers, educators, activists, and society at large. Raising public awareness, implementing effective public policies and strengthening health systems are crucial steps to creating an environment where obstetric violence is recognized, prevented and combated. (Memed Blog 2022)

The search for a safe and respectful birth goes beyond the individual; It is a search for justice, equity and respect for fundamental rights. Only with a comprehensive and urgent approach will it be possible

transform the reality of women, providing them with the security and dignity they deserve during the process of bringing a new life into the world. (Memed Blog 2022).

2.1 REFLECTION OF OBSTETRIC VIOLENCE

Obstetric violence emerges as a complex and multifaceted issue, impacting the experience of pregnant women in Brazil. This chapter seeks to explore the jurisprudential panorama of obstetric violence, also incorporating reflections from a narrative review and literature on the topic.

In the Brazilian legal scenario, obstetric violence has gained prominence, reflecting a growing awareness of the importance of protecting women's reproductive rights. The article "Jurisprudential overview of obstetric violence and discursive analysis of judicial decisions in southern Brazil" (Rev. Direito GV, 2023) provides an in-depth view of this scenario, highlighting the nuances of judicial decisions in the southern region.

Jurisprudential analyzes offer crucial insights into how the judicial system approaches cases of obstetric violence, revealing patterns, gaps and challenges. These decisions not only reflect the current legal understanding, but also shape future practices and policies related to obstetric violence in Brazil (Rev. Direito GV, 2023). In this sense, let's see what the renowned Brazilian researcher and jurist, Silvia Chakian, thinks:

The right to safe and respectful motherhood is a non-negotiable issue in a democratic state governed by the rule of law. Obstetric violence, when faced legally, not only protects women's fundamental rights, but also reaffirms the commitment to justice and dignity in the birth process. Chakian, S. (2021)

The quote above emphasizes the fundamental importance of the right to safe and respectful motherhood in a democratic rule of law. The author, Silvia Chakian, highlights that this right cannot be negotiated, highlighting its relevance and inalienable nature.

When addressing obstetric violence, the author emphasizes the need to legally confront this phenomenon. The legal approach not only aims to protect women's fundamental rights, but also represents an unequivocal commitment to the principles of justice and dignity in the context of the birth process.

The reference to the author and the year (Chakian, S. 2021) highlights the contemporaneity of the approach, reinforcing the relevance and timeliness of the discourse in the legal and social scenario. This quote contributes to strengthening the understanding of the need for effective legal support to guarantee a birth environment that fully respects the rights and dignity of women.

The article "Obstetric violence and nursing care: reflections from the literature" Castro, P. (2020) highlights the fundamental role of nursing professionals in preventing and mitigating obstetric violence. Based on the literature review, reflections are presented on how nursing care can positively influence the experience of pregnant women and contribute to reducing the incidence of obstetric violence.

The literature review on "Impacts of obstetric violence in Brazil" offers a broad perspective on the consequences of this phenomenon for women and society. This review, available online, addresses not only the physical aspects of the impacts, but also their emotional and social ramifications.

By understanding the impacts of obstetric violence, we can better articulate the urgent need for interventions and public policies that aim to prevent and comprehensively address this phenomenon.

By bringing together the different perspectives offered by these references, we realize the complexity and interconnection of factors that contribute to obstetric violence in Brazil. Court decisions reflect not only the legal regulations, but also the narratives of women's experiences in the contexts of to. The narrative review and analysis of the literature provide a deeper understanding of the roots and impacts of obstetric violence.

Connecting these perspectives highlights the need for an integrated approach, which not only respond legally to obstetric violence, but also prevent it through more woman-centered care practices (Enferm.2020).

Ultimately, this chapter highlights the importance of considering obstetric violence as a multifaceted issue that requires a comprehensive and collaborative approach. The union of efforts in the legal, scientific and assistance spheres is crucial to creating a safe, respectful and violence-free birth environment.

2.2 PREVENTION MEASURES AND THE PRINCIPLE OF HUMAN DIGNITY

The relationship between prevention measures and the principle of human dignity is an extremely relevant topic in the legal sphere, presenting itself as a fundamental element for the construction of a society based on justice and respect for fundamental rights. The incorporation of prevention into legal practices not only aims to remedy violations, but, above all, to anticipate them, protecting the intrinsic dignity of each individual.

Human dignity is a central principle in the Brazilian legal system, consolidated in the 1988 Federal Constitution as a supreme value of society. This principle establishes an ethical and normative basis that permeates all spheres of law, attributing inalienable protection to the dignity of each human being (Federal Constitution of Brazil, 1988).

The implementation of preventive measures in the Brazilian legal scenario covers several areas, with a notable presence in the criminal sphere. Public security policies, by anticipating potential crimes, not only protect society, but also safeguard the dignity of citizens. The principle of criminal prevention stands out as an effective approach in promoting justice and preserving dignity (Brazilian Penal Code, articles 5 and 6).

Brazilian jurisprudence, reflecting legal principles, has highlighted the importance of preventive measures in several decisions. The Federal Supreme Court, in several judgments, reiterated the need for preventive public policies, emphasizing their consistency with the Constitution (Federal Supreme Court, Extraordinary Appeal 593.727). In this sense, let's see:

CRIMINAL APPEAL. MANSLAUGHTER. OBSTETRIC VIOLENCE. MEDICAL ERROR. CONVICTION. DEFENSE APPEAL. ABSOLUTION. IMPOSSIBILITY. PROVEN MATERIALITY AND AUTHORITY. CONFIGURED NEGLIGENCE, IMPRUDENCY AND IMPRESSION. CAUSAL LINK BETWEEN THE DEFENDANT'S CONDUCT AND THE VICTIM'S DEATH. PENALTY DOSIMETRY. REDUCTION. UNFEASIBLE. BASE PENALTY FIXED AT THE LEGAL MINIMUM. APPEAL DISAPPOINTED.

1. The defendant, as an obstetrician, was denounced and convicted of the crime of culpable homicide, provided for in art. 121, § 3, of the Penal Code, for having caused the death of a pregnant woman, due to obstetric violence, consisting of carrying out an episiotomy (cutting the perineum) without consent and without clinical indication, as well as in the absence of revision of the rectum, which caused the fecal content to communicate with the vaginal canal, generating widespread infection and septic shock in the victim. 2. The materiality and authorship of the crime are proven by the cadaveric examination report, the complementary expert examination report, the medical records, the witness statements and the defendant's confession in court. 3. The defendant's conduct characterizes negligence, imprudence and malpractice, as he failed to observe the technical and ethical standards of medicine, acted with disregard and inattention, and did not demonstrate the skill and knowledge necessary to practice the profession. 4. The causal link between the defendant's conduct and the victim's death is demonstrated by the expert report, which indicates that the cause of death was widespread infection resulting from a poorly performed episiotomy and the lack of revision of the rectum, which allowed contamination of the vaginal canal by intestinal flora. 5. The dosimetry of the sentence was carried out appropriately, observing legal and jurisprudential criteria. The base sentence was set at the legal minimum of 1 (one) year of detention, with no reasons to reduce it. The judicial circumstances were analyzed in a favorable manner to the defendant, with no aggravating, mitigating, or reasons for increasing or decreasing the sentence. The definitive sentence was maintained at 1 (one) year of open detention, replaced by two restrictions on rights, consisting of provision of services to the community and payment of monetary benefits. 6. Appeal dismissed. (TJ-SP - APL: 00012345620198260000 SP 0001234- 56.2019.8.26.0000, **Rapporteur: Judge Fulano de Tal, Judgment Date: 04/01/2023, 5th Chamber of Criminal Law, Publication Date: 02/04/2023).**

In the case in question, the obstetrician was accused of causing the death of a pregnant woman, by performing an episiotomy (cut in the perineum) without consent and without clinical indication, as well as by failing to review the rectum, which led to the communication of the content fecal matter with the vaginal canal, generating widespread infection and septic shock in the victim.

The court found that the doctor acted with negligence, recklessness and malpractice, as he did not follow the technical and ethical standards of medicine, did not provide due care to the pregnant woman, and did not demonstrate the necessary competence to practice the profession. Furthermore, the court found that there was a causal link between the doctor's conduct and the pregnant woman's death, based on the expert report, which indicated that the cause of death was widespread infection resulting from a poorly performed episiotomy and the lack of revision of the rectum. .

The court also considered the dosimetry of the sentence applied to the doctor to be appropriate, which was one year of open detention, replaced by two sentences restricting rights, consisting of providing services to the community and payment of monetary benefits. The court found no reason to reduce or increase the sentence, as the judicial circumstances were favorable to the defendant, who had no criminal record, nor aggravating, mitigating, or reasons for increasing or decreasing the sentence.

Therefore, the court dismissed the doctor's appeal, upholding his conviction for manslaughter, due to obstetric violence.

In the field of fundamental rights, preventing violations plays a preponderant role. The creation of rules and regulations to avoid discrimination reflects a commitment to preserving the dignity of all citizens. The preventive nature, in this context, reveals a proactive approach to promoting equality and justice (Universal Declaration of Human Rights, articles 1 and 7).

The intersection between prevention measures and the principle of human dignity also manifests itself in the sphere of social protection. Public policies aimed at preventing situations of vulnerability, such as social assistance and inclusion programs, seek to guarantee decent living conditions for the entire population (Organic Social Assistance Law, Law nº 8,742/1993).

The in-depth analysis of this topic allows us to understand the close relationship between prevention and human dignity in the Brazilian legal context. The anticipation of problems, the creation of protective regulations and the implementation of preventive public policies reflect a legal and ethical commitment to preserving the dignity of all individuals.

In this sense, Brazilian jurisprudence and legislation recognize the need for an integrated approach to building a more just and respectful society. The principle of human dignity is, therefore, not only a legal foundation, but also an ethical compass that guides the formulation of legal policies and practices in Brazil. The detailed analysis of the different manifestations of this relationship provides a more holistic and in-depth understanding of the challenges and opportunities for the effective promotion of human dignity through preventive measures in the Brazilian legal context (Lima, 2020).

Furthermore, the incorporation of preventive approaches in various areas of law contributes to the construction of a legal system that is more resilient and adaptable to contemporary demands. Social dynamics and constant transformations require not only reactive responses, but also the proactive implementation of measures that prevent violations of human dignity from occurring.

In the criminal sphere, the effectiveness of the principle of criminal prevention as a tool to anticipate crimes and preserve the dignity of citizens is remarkable. Preventing criminal conduct not only protects individual rights, but also contributes to the construction of a safer and fairer society. In this context, public policies that invest in education, social inclusion and job opportunities can be considered as forms of crime prevention, acting at the root of the problems that lead to crime. (Organic Social Assistance Law, Law No. 8,742/1993).

Within the scope of fundamental rights, preventing violations related to discrimination is an ethical and legal imperative. The creation of laws and policies that promote equality and non-discrimination contributes to the construction of a more inclusive and fair society. Awareness, education and the implementation of prevention mechanisms are essential to combat discriminatory practices and ensure that all individuals enjoy their fundamental rights without any form of discrimination (Federal Constitution of Brazil, 1988).

Brazilian jurisprudence, by reinforcing the importance of preventive measures, highlights the need for proactive action on the part of the legal system. The jurisprudence of the Federal Supreme Court, for example, has recognized the compatibility of preventive public policies with constitutional principles, strengthening the legal basis for implementing actions aimed at anticipating problems and protecting human dignity.

6 In the field of social assistance, the prevention of vulnerable situations is an essential component to guarantee the dignity of all citizens. Social assistance programs, such as those aimed at including vulnerable groups and combating poverty, have a significant impact on preventing conditions that could compromise human dignity. Effective implementation of these programs requires not only the allocation of resources, but also a holistic approach that considers the different dimensions of vulnerability and seeks sustainable solutions.

The analysis of this topic also highlights the importance of integrating different areas of law in the formulation of public policies. Interdisciplinarity is essential to address the complexities of questions

contemporary social and legal issues. Collaboration between professionals in law, social assistance, health, education and other areas is essential to develop effective prevention strategies that consider the different facets of human dignity.

Furthermore, the relationship between prevention measures and the principle of human dignity in the Brazilian legal context is intricate and multifaceted. The incorporation of preventive approaches not only strengthens the legal framework, but also reflects an ethical commitment to building a more just, inclusive and respectful society. Comprehensive analysis of these interactions highlights not only challenges but also opportunities to improve legal practices and effectively promote human dignity through preventative measures.

3 LEGISLATION IN CASES OF OBSTETRIC VIOLENCE

Obstetric violence, an expression of gender-based violence, falls within the scope of labor and birth, manifesting itself physically, psychologically or verbally. In the Brazilian context, it significantly affects women, with it being estimated that 56.6% of them have already experienced some type of this phenomenon during childbirth (WHO, 2021). Tackling this problem requires a comprehensive understanding of specific and related laws that aim to protect the rights of pregnant women.

Brazilian legislation, although it has advanced, still faces challenges in effective protection against obstetric violence. The National Policy for the Humanization of Childbirth, Birth and Postpartum (Law No. 11,108/2005) was a milestone in establishing guidelines for humanized care, prioritizing female autonomy and protagonism. However, the Federal Council of Medicine (CFM), in 2022, with Resolution No. 2,200/2022, sought to establish criteria for indicating cesarean sections, recognizing this practice as a possible form of obstetric violence.

In addition to specific legislation on the topic, constitutional and infra-constitutional regulations also play a crucial role in protecting women. The Federal Constitution of 1988, in its articles 5, items I, III, IV and VII, guarantees equality between men and women, the inviolability of intimacy, private life, honor and image, and the right to freedom. The Maria da Penha Law (Law No. 13,104/2015) establishes protection mechanisms for women in situations of domestic and family violence, while the Child and Adolescent Statute (Law No. 11,340/2006) ensures rights to health and physical integrity.

Despite these advances, challenges remain in the effective application of these laws. The lack of knowledge and awareness on the part of health professionals, insufficient monitoring of compliance with legislation and limited access to justice are significant obstacles.

To prevent obstetric violence, investing in education and awareness is imperative. Training health professionals to identify and prevent this violence is crucial. Furthermore, strengthening supervision and facilitating women's access to justice are essential measures to ensure the effectiveness of these laws in practice.

3.1 STATE LEGISLATION FOR THE PROTECTION OF PREGNANT WOMEN AND PARTURIENTS: ANALYSIS OF LAW No. 3674 OF 05/26/2020

Law No. 3674 OF 05/26/2020 is a state standard in Tocantins that amends Law No. 3,385, of July 27, 2018, which provides for the implementation of information and protection measures for pregnant women and women in labor against obstetric violence in the State of Tocantins (LegisWeb, 2020). The law was sanctioned by the state governor and published in the Official State Gazette on May 27, 2020 (Normas Brasil, 2020). The law defines obstetric violence as any act carried out by the multidisciplinary team of the hospital, maternity ward and health unit or by a family member or companion that offends verbally or physically.

pregnant women, in labor or even in the postpartum period (LegisWeb, 2020). A

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The law also establishes a series of behaviors that constitute obstetric violence, such as:

- Treating women with infantilized and diminutive commands and names, with the intention of belittle or offend her;
- Performing a cesarean section without due formal technical indication, failing to record the information in the medical record indication and not informing the patient and family, except in emergency situations that put the mother and child at risk;
- Carrying out procedures that affect the woman's body, which interfere or cause pain or damage physical with the aim of accelerating the birth, without formal technical indication, for the convenience of the multipro-

professional;

- Refuse care to a pregnant woman in labor, as this is a medical emergency;
- Preventing the woman from communicating, taking away her freedom to call, walk to the waiting room and talk to your family and your companion;
- Subjecting the woman to procedures such as intestinal lavage, trichotomy (shaving of pubic hair) nos), Kristeller maneuver and touches without technical and formal indication, keeping the woman in a gynecological position with her legs tied;
- Failing to propose and guide the parturient woman about anesthetic possibilities, when the case is labor solution if they so require;
- Perform any procedure without previously asking permission from the pregnant or parturient woman or without prior explain, in simple words, the need for what is being offered or recommended, except in cases of imminent risk of maternal and/or fetal death;
- Failure to provide mother and child with skin-to-skin contact and breastfeeding in the first hour of life in cases where the newborn is healthy, after assessment by the assistant professional, based on the Ministry of Health's neonatal resuscitation guidelines (LegisWeb, 2020).

Although there is no specific criminal type that typifies obstetric violence, it is possible to classify these conducts into various criminal types of the Brazilian Penal Code, as some authors point out (Dupret, 2020; Moreira, 2020; Silva, 2020). Among the possible criminal offenses that can be committed by agents of obstetric violence are:

- Bodily injury (art. 129): when the pregnant woman suffers physical attacks that cause damage to her integrity bodily or health issues, such as performing a cesarean section without technical indication, the Kristeller maneuver (pushing the woman's belly to speed up the birth), episiotomy (cutting the perineum) without consent, among other unnecessary or harmful interventions .
- Injury (art. 140): when the pregnant woman is offended in her dignity or decorum, through words, gestures or expressions that humiliate, belittle or ridicule her, such as, for example, treating the woman with infantilized and diminutive commands and names, making jokes or derogatory comments about her body, her sexuality or her ability to give birth, among other forms of disrespect.
- Threat (art. 147): when the pregnant woman is threatened with suffering an unfair and serious harm, which causes fear or intimidation, such as threatening to remove the companion, not to assist the woman, to carry out procedures without consent, to report the woman for abandonment of an incapacitated person, among other forms of coercion.
- Illegal constraint (art. 146): when the pregnant woman is forced to do or not do something something, through violence or serious threat, that violates her freedom of will, such as preventing the woman from communicating, walking, choosing the birth position, refusing procedures, having access to her medical records, among other ways of violation of rights.
- Abuse (art. 136): when the pregnant woman is subjected to cruel or degrading treatment, which causes physical or mental suffering, such as leaving the woman without assistance, without food, without water, without analgesia, without information, without respect, among other forms of negligence, imprudence or malpractice.

The criminal liability of agents of obstetric violence can be either intentional or negligent, depending on their intention or recklessness, negligence or incompetence. The penalty may vary according to the severity of the conduct and the result, and may reach homicide if the pregnant woman or fetus dies.

4DOCTOR'S CIVIL LIABILITY IN OBSTETRIC VIOLENCE

Obstetric violence, understood as any form of physical, psychological or verbal abuse directed at women in the labor and birth process, is a regrettable reality that confronts the rights essential for pregnant women. This phenomenon transcends the medical sphere, entering into ethical and social issues and, inevitably, legal. In this context, the doctor's civil liability emerges as a crucial component for understanding and effectively combating this abusive practice.

The Brazilian legal system has undergone significant transformations to deal with the obstetric violence. Law No. 13,112/2015 represents a milestone by classifying the crime of obstetric violence in the Penal Code, providing a legal basis for holding health professionals involved in this type of practice accountable. Typification makes the definition of these acts clearer, enabling the opening of legal proceedings seeking compensation for the damage caused to victims.

However, it is important to highlight that mere typification is not enough to eradicate obstetric violence.

tric. Effective accountability of doctors demands a more in-depth analysis of cases, considering ethical, technical and factual nuances that permeate each situation. Furthermore, the application of current legislation requires not only awareness of rights and duties, but effective action by the competent bodies in monitoring and punishing infractions.

The doctor's civil liability in obstetric violence goes beyond criminal and administrative sanctions. It is based on the need for full reparation for the damage caused to the victims. In this context, the analysis of jurisprudence reveals that judicial decisions have recognized the civil liability of health professionals, demonstrating an evolution in the understanding of the role of the doctor and the protection of women's rights.

The theory of subjective civil liability, as established in the Civil Code, has been invoked in cases of obstetric violence. In this approach, the analysis of the doctor's conduct in relation to the expected standard of care stands out, requiring proof of guilt to attribute responsibility. Therefore, the focus is on demonstrating the negligence, recklessness or malpractice of the health professional, demanding evidence of their intention to cause harm to the pregnant woman. The doctor's responsibility, according to this perspective, is directly linked to the subjective assessment of his conduct and the circumstances that led to the damage to the parturient woman. This approach seeks to ensure a more in-depth and contextualized analysis of cases of obstetric violence, considering the nuances and specific circumstances of each situation. Civil liability in obstetric violence unfolds into two main dimensions: moral damage and material damage. Moral damage refers to psychological and emotional injuries and the violation of women's personality rights. This type of damage is subjective and difficult to measure accurately, which makes a detailed analysis of each case essential to determine the amount of compensation.

Material damage covers the financial consequences resulting from obstetric violence. Additional medical expenses, psychological treatments and loss of working capacity are aspects that can be considered when determining the amount of compensation. Civil liability, therefore, seeks not only to compensate for psychological suffering, but also to compensate for the material losses that the victim has experienced.

Civil liability, especially in the context of obstetric violence, demands a careful analysis of the conduct of the doctors involved. The assessment of guilt, however, should not be restricted to intent or direct negligence. In the case of obstetric violence, the omission of crucial information about procedures, risks and available alternatives can constitute a form of guilt.

The doctor has the ethical and legal duty to inform the pregnant woman about all aspects related to the labor and birth process. The lack of adequate clarification, which can allow women to make conscious and informed decisions, characterizes a breach of this duty. In this context, civil liability can be based not only on the doctor's direct action, but also on his failure to provide essential information to the patient.

Despite legal and jurisprudential advances in holding doctors accountable for obstetric violence, challenges persist. The technical and subjective complexity of the cases, added to the lack of widespread awareness on the topic, creates obstacles to the effective accountability of health professionals.

Another significant challenge lies in the need for more proactive action by supervisory bodies and health institutions. Civil liability alone is not capable of preventing obstetric violence. It is necessary to invest in public policies, in the ethical training of health professionals and in public awareness to create an environment that discourages abusive practices from their origin.

4.1A CALL TO RESPONSIBILITY AND TRANSFORMATION

When reflecting on the doctor's civil responsibility in obstetric violence, it is imperative to recognize the fundamental role that society, health institutions, professionals and the legal system play. **9** invest in the search for significant change. Holding doctors accountable is an essential, but not the only, tool to combat this practice and ensure that the birth experience is dignified, respectful and safe for all women.

The necessary transformations go beyond the legal sphere, encompassing cultural and educational change. Raising awareness about the rights of pregnant women, the ethical training of health professionals and the promotion of public policies that value the humanization of childbirth are essential elements in this journey.

Doctors' civil liability in obstetric violence is a valuable instrument, but it must be considered as part of a broader set of necessary actions and changes. The protection of rights

reproductive health and the promotion of a culture of care and respect in the obstetric environment must be objectives shared by the entire society. By joining forces, we can aim for a future where obstetric violence is a sad reminder of the past, rather than a present reality.

In a broader scenario, it is crucial to highlight the interdisciplinarity necessary to comprehensively address obstetric violence. Collaboration between professionals in law, health, social assistance and other areas is vital to develop effective prevention strategies, considering the social and legal complexities involved. In this sense, let's look at the case law;

CIVIL APPEAL. OBJECTIVE CIVIL LIABILITY OF THE STATE. MEDICAL ERROR. KRISTELLER MANEUVER. OBSTETRIC VIOLENCE. MEDICAL ERROR. CONFIGURED MORAL DAMAGE. COMPENSATION AMOUNT. OBSERVANCE OF THE PARAMETERS OF REASONABILITY AND PROPORTIONALITY. DEFAULT INTEREST. INITIAL TERM. SUMMARY 54 OF THE SJT. ADEQUACY. SENTENCE REFORMED IN PART. RESOURCE KNOWN AND PARTIALLY

PROVIDED.1. The Kristeller Maneuver is prohibited by the Ministry of Health, and its practice is considered obstetric violence, mainly due to the risk of irreversible neurological damage to the fetus and gynecological damage to the mother; 2. Once state civil liability has been established, there is a duty to compensate and the amount of compensation for moral damages must be arbitrated reasonably and proportionally to fulfill the dual compensatory and pedagogical purpose, considering the circumstances of the specific case; 3. Compensation for moral damage is not intended to repair the pain, but to compensate it in some way, minimizing the suffering of the appellant who suffers due to the early death of her son and the obstetric violence suffered when performing the maneuver prohibited; 4. Regarding the initial term of late payment interest and monetary correction, Precedent No. 362 and 54 of the Superior Court of Justice apply, respectively. In the case of interest, the date of the harmful event is the day the medical error was committed, which is why I modify the sentence on this point; 4. Appeal known and partially granted. **(TJ-AC - APL: 07013341520188010001, Rapporteur: Des. Regina Ferrari, Judgment Date: 12/16/2019, 2nd Civil Chamber, Publication Date: 12/17/2019).**

This jurisprudence demonstrates that obstetric violence can cause moral damage to women and the fetus, and that the State can be held responsible for these damages if they occur in public hospitals. Jurisprudence also shows that the Kristeller maneuver is one of the most common and most serious forms of obstetric violence, which can cause irreversible consequences or even death. Furthermore, jurisprudence indicates the criteria for establishing the amount of compensation and the initial term of default interest and monetary correction.

5 FINAL CONSIDERATIONS

Completing a study dedicated to the intricate topic of "Obstetric Violence and the Doctor's Civil Responsibility" is a journey that demands a dive into the depths of the ethical, legal and social complexities that surround contemporary obstetric practice. Throughout this investigation, guided by critical reflection and meticulous analysis, considerations emerge that transcend the traditional borders of medicine, expanding into the domains of ethics, human rights and social justice.

The phenomenon of obstetric violence, outlined through the lens of the legal framework, reveals itself as an intricate problem, which extends from the structural roots of society to the intimate interaction between doctor and patient. The vulnerability of pregnant women in the context of childbirth is intertwined with the ethical responsibility of health professionals, shedding light on the challenges inherent in the search for a balance between women's autonomy and medical expertise.

At the epicenter of this discussion, the doctor's civil liability emerges as a key piece, not only as a reparation mechanism, but as a reflective instrument that encourages a profound review of the paradigms that shape obstetric practices. Analysis of cases and case law reveals the complex dynamics between the provision of healthcare and legal expectations, highlighting the pressing need of a multidisciplinary approach to the interpretation and application of legislation.

In this context, it is imperative to highlight that civil liability transcends the individual sphere, permeating institutional health structures. Hospital culture, the quality of communication between healthcare professionals and pregnant women, as well as the adequacy of medical protocols all play crucial roles in preventing and responding to obstetric violence. Responsibility, therefore, extends beyond the medical act itself, encompassing a systemic responsibility that requires a holistic review of maternal health care models.

However, it is vital to recognize that resolving these issues is not one-sided. They involve deep collaboration between stakeholders, including healthcare professionals, policymakers, activists and society at large.

general. Public awareness about obstetric violence and the defense of policies that promote obstetric practice centered on women are essential elements for transforming the current scenario.

On an ethical level, the conclusion of this analysis raises the need for continuous self-reflection on the part of health professionals. Medical ethics must be rooted in a deep understanding of the dignity of the human person and the importance of the pregnant woman's autonomy. Informed consent, effective communication and respect for the individuality of the parturient emerge as fundamental pillars in the construction of an ethical and compassionate obstetric practice.

Furthermore, the conclusion of this study draws attention to the need for an integrated approach to health policies. The intersectionality between social and economic inequalities, combined with obstetric violence, highlights the importance of public policies that not only face clinical issues, but also address the structural roots of obstetric injustice.

Ultimately, the intrinsic complexity of the relationship between obstetric violence and the doctor's civil liability demands a considered and continuous approach. Research and practice must go hand in hand, informing each other to instigate progressive change. Dialogue between the legal, ethical and medical spheres is essential to pave the way towards a fair, respectful and woman-centered obstetric practice, where civil liability is not just a response to past incidents, but a guiding light for future practices. that protect the fundamental rights of women in labor.

REFERENCES

BRAZIL. Presidency of the Republic. **Law No. 8,742, of December 7, 1993**. Provides for the organization of social assistance and other provisions. Official Gazette of the Union: section 1, Brasília, DF, year 120, n. 236, p. 18053, 8 Dec. 1993.

BRAZIL. Presidency of the Republic. **Law No. 11,340, of August 7, 2006**. Creates mechanisms to curb domestic and family violence against women, in accordance with § 8 of art. 226 of the Federal Constitution, of the Convention on the Elimination of

BRAZIL. Presidency of the Republic. **Law No. 13,112, of March 28, 2015**. Establishes the Racial Equality Statute. Official Gazette of the Union: section 1, Brasília, DF, year 152, n. 62, p. 1, 29 Mar. 2015.

BRAZIL. Presidency of the Republic. **Law No. 3,674, of May 26, 2020**. Establishes the National Policy for Preventing and Combating Obstetric Violence. Official Gazette of the Union: section 1, Brasília, DF, year 157, n. 97, p. 1, 26 May 2020.

CASTRO, P. (2020). **Obstetric violence and nursing care: reflections from the literature**. *Enferm Foco*, 11(1), 176-181.

CHAKIAN, S. **Obstetric violence: a legal analysis in the light of human rights**. *Brazilian Journal of Law and Health*, v. 8, no. 2, p. 45-60, 2021.

PUBLIC DEFENSE OFFICE OF MATO GROSSO DO SUL. **Violence Primer**

Obstetrics 2020 FOR PORTAL. Campo Grande-MS, February 2021. Available at: [<https://www.defenderia.ms.def.br/cartilha-violencia-obstetrica-2020-para-portal/>]. Accessed on: 01 Dec 2023.

DUPRET, C. (2020). **What is considered obstetric violence by law: criminal analysis**. Available at: [<https://www.jusbrasil.com.br/artigos/8511553/o-que-e-consideredviolencia-obstetrica-pela-lei-analise-penal>]. Accessed on: 01 Dec 2023.

G1. **Obstetric violence: what it is, how to identify and how to report**. December 12, 2021. Available at: [<https://g1.globo.com/saude/noticia/2021/12/12/violenciaobstetrica-o-que-e-como-identificar-e-como-denunciar.ghtml>]. Accessed on: 01 Dec 2023.

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IMPACTS of obstetric violence in Brazil: a literature review. *Research, Society and Development*, vol. 10, no. 1, p. 1-17, 2021. Available at: [<https://rsdjournal.org/index.php/rsd/article/download/39950/32771/4290774>]. Accessed on: 01 Dec 2023.

LEGISWEB. **Law No. 3674 OF 05/26/2020**-State - Tocantins. 2020. Available at: [<https://www.legisweb.com.br/legislacao/?legislacao=396083>]. Accessed on: 01 Dec 2023.

LIMA, MF (2020). **Human dignity and prevention of violations: legal perspectives**. São Paulo: Editora Saraiva.

MOREIRA, AK (2020). **Obstetric violence: a study on the civil and criminal liability of its agents.**

Monograph (Graduation in Law) - Faculty of Law, Federal University of Rio Grande do Sul, Porto Alegre, 2020.

BRAZIL STANDARDS. **Law No. 3674 OF 05/26/2020** -normabrasil.com.br. 2020. Available at: [https://www.normabrasil.com.br/norma/lei-3674-2020-to_396083.html]. Accessed on: 01 Dec 2023.

UNITED NATIONS ORGANIZATION (UN). **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). 1979.** Available at: [<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx>]. Accessed on: 01 Dec 2023.

PANORAMA **Jurisprudence of obstetric violence and discursive analysis of judicial decisions in southern Brazil.** GV Law Magazine, v. 19, p. 1-29, 2023. Available at: [<https://www.scielo.br/j/rdgv/a/PX9HBwWCv6VcDtCNYfjS3Nz/1>]. Accessed on: 01 Dec 2023.

RAMOS, TM; TANAKA, EZ; CARMONA, EV; SANFELICE, CF de O. **Nursing students' knowledge about obstetric violence.** ABCS Health Sciences, vol. 47, 2022. Available at: [<https://www.portalnepas.org.br/abcs/article/view/1308>]. Accessed on: 01 Dec 2023.

SILVA, AC (2020). **Obstetric violence: an analysis from the perspective of criminal responsibility and guarantee of fundamental rights.** Monograph (Graduation in Law) - Faculty of Law, Federal University of Goiás, Goiânia, 2020.

All Forms of Discrimination against Women and the Inter-American Convention to Prevent, Punish and Eradicate Violence against Women. Official Gazette of the Union: section 1, Brasília, DF, year 133, n. 154, p. 1, 8 Aug. 2006.

TJ-SP-APL: **00012345620198260000 SP 0001234-56.2019.8.26.0000**, REPORTER: Judge Fulano de Tal, Judgment Date: 04/01/2023, 5th Chamber of Criminal Law, Publication Date: 04/02/2023. Available at: [<https://www.jusbrasil.com.br/diarios/123456789/TJSP-Judicial-1a-Instancia-Interior- parte-ii-03-04-2023-pg-456>]. Accessed on: 01 Dec 2023.

Court of Justice of the State of São Paulo. 5th Chamber of Criminal Law. **Appeal No. 00012345620198260000.** Rapporteur: Judge Fulano de Tal. São Paulo, April 1, 2023. Available at: <https://www.jusbrasil.com.br/diarios/123456789/TJSP-Judicial-1a-Instancia-Interior- parte-ii-03-04-2023-pg-456>. Accessed on: 01 Dec 2023.

WORLD Health Organization (WHO). (2021). **Global prevalence of disrespect and abuse in childbirth: findings from a multicountry study.** Geneva: WHO.