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Moral and sexual harassment of care workers in Brazil: in search of a legal solution

Assédio moral e sexual das trabalhadoras do cuidado no Brasil: em busca de uma solução jurídica

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Summary: 1. Introduction; 2. Care and the Sexual Division of Labor; 3. Harassment in the Workplace and ILO Convention Nº 190; 4. Acting and Judging with an Intersectional Gender Perspective; 5. Final Considerations; 6. References.

Abstract: This article aims to analyze the harassment suffered by workers caring for elderly and sick individuals in their work environments, considering the International Labour Organization (ILO) Convention No. 190, highlighting the importance of the Judiciary adopting gender-sensitive judgments to ensure effective protection for professionals who are essential for the maintenance of society. The research problem involves examining how the Protocol for Gender-Sensitive Judgments can be used to resolve disputes in which care workers claim to have suffered moral and sexual harassment in the workplace. The hypothesis is that moral and sexual harassment in the workplace disproportionately affects

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women workers in the care sector, such as nurses and caregivers, requiring a gender-sensitive analysis. To achieve its objective, the paper uses the hypothetical-deductive method and conducts exploratory-analytical research based on a doctrinal survey and international regulations on harassment. The specific objectives are to reflect on the special characteristics of work in the care sector, including the sexual division of labor; present and question the concepts of moral and sexual harassment, with reference to ILO Convention No. 190; establish a relationship between care workers and harassment cases; and analyze how gender-sensitive judgments help judges assess harassment cases. The conclusion reached is that the analysis of conflicts from a gender perspective can contribute to uncovering harassment that is often hidden due to the very nature of care work.

Keywords: Moral Harassment; Sexual Harassment; ILO Convention No. 190; Gender-Sensitive Judgments; Care Workers.

Resumo: Este artigo tem como objetivo analisar o assédio sofrido por trabalhadoras do cuidado de pessoas idosas e enfermas em seus ambientes de trabalho à luz da Convenção 190 da Organização Internacional do Trabalho (OIT), destacando a importância de que o Poder Judiciário adote julgamentos com perspectiva de gênero, visando garantir uma proteção eficaz às profissionais que são indispensáveis para a manutenção da sociedade. O problema de pesquisa consiste em perquirir como o Protocolo para Julgamento com Perspectiva de Gênero pode ser utilizado para a solução das lides nas quais as trabalhadoras da área de cuidado alegam ter sofrido assédio moral e sexual nos ambientes de trabalho. Parte-se da hipótese que o assédio moral e sexual nos ambientes de trabalho afeta de forma desproporcional as mulheres trabalhadoras da área do cuidado de pessoas idosas e enfermas, como enfermeiras e cuidadoras, demandando uma análise da questão em perspectiva de gênero. Para alcançar o seu intento, o trabalho utiliza o método hipotético-dedutivo e realiza uma pesquisa exploratória-analítica, que parte de um levantamento doutrinário e do regramento internacional sobre o assédio. Seus objetivos específicos são refletir sobre as características especiais do trabalho na área de cuidado, dentre elas a divisão sexual do trabalho, apresentar e questionar os conceitos de assédio moral e sexual tendo como referencial a Convenção 190 da OIT, estabelecendo uma relação entre as trabalhadoras dessa área e os casos de assédio, e analisar como o julgamento com perspectiva de gênero auxilia juízas e juizes a apreciar casos de assédio. Conclui, ao final, que a análise dos conflitos em perspectiva de gênero pode contribuir para que se desvelem assédios ocultados pela própria característica do trabalho de cuidado.

Palavras-chave: Assédio Moral; Assédio Sexual; Convenção 190 da OIT; Julgamento em perspectiva de gênero; Trabalhadoras do Cuidado.

1. INTRODUCTION

There is a wide range of activities related to care, which can include the care of children and people with disabilities. However, this article focuses on investigating the paid work carried out by professionals who care for elderly and sick or bedridden individuals, as well as their relationships with gender and the dignity of those who perform the work. It also questions how the Protocol for Gender-Sensitive Judgments can be used to resolve labor disputes involving this subject.

The International Labour Organization's (ILO) Convention No. 190, which became effective in June 2021, recognizes the right of all people to a world of labor free from violence and harassment. Although it is still pending ratification by the Brazilian State, this international regulation has brought new frameworks for analyzing the issue, and it is from this perspective that the article aims to investigate the violence suffered by care workers for elderly and sick people, aiming to contribute to the Judiciary's appropriate assessment of cases of moral and sexual harassment in this sector.

The problem that motivated this research is how gender-sensitive, intersectional judgment can be used to resolve disputes in which care workers allege that they have suffered moral and sexual harassment in their workplaces. The hypothesis to be demonstrated is that this type of violence disproportionately affects women workers in the care sector, such as nurses and caregivers, requiring a gender-sensitive analysis of the issue.

To achieve its purpose, the research uses the hypothetical-deductive method and conducts an exploratory-analytical study based on doctrinal surveys and international regulations.

The article is structured into three chapters, in addition to the introductory and concluding sections. The first chapter investigates the characteristics of care workers, discusses the sexual division of labor, and establishes a relationship between work and harassment. The second chapter presents and questions the concepts of moral and sexual harassment, referencing ILO Convention No. 190. The third chapter analyzes how gender-sensitive judgments can help judges appreciate cases of harassment against care workers. In conclusion, it aims to prove the hypothesis that, in cases of harassment allegations by nurses and

caregivers of elderly and bedridden individuals, there is a need for an intersectional gender perspective analysis for a proper resolution of the disputes.

2. CARE AND THE SEXUAL DIVISION OF LABOR

Care work is essential for society's survival and was initially investigated by sociology before being regulated by law. Sociology points out that examining the relationships between caregivers and those being cared for requires an understanding of specific characteristics of these bonds, including the predominant assignment of care work to women and the closeness established between people.

Care work, according to Danièle Kergoat³, "encompasses a set of material activities and relationships" intended to concretely meet the needs of others. Kergoat defines this work as "a relationship of service, support, and assistance, paid or unpaid, that implies a strong sense of responsibility towards the life and well-being of others⁴." Complementing this view, Helena Hirata affirms that care work is material, technical, and emotional, shaped by social relations of gender, class, race, and ethnicity⁵. For Hirata, this activity involves caregivers, the beneficiaries, and those who direct, supervise, or prescribe the work.

Care work is often an additional function within the family, encompassing both broad domestic tasks and the care of individuals, whether dependent or not. Furthermore, as observed by Ana Paula Saladini, it can also be a professionally developed and paid activity, classified into two distinct categories, "but they also interpenetrate⁶." The first refers to care in the strict sense, which includes caregivers of the elderly and children. The second category covers domestic workers responsible for both household organization and the care of people living in the homes.

³ KERGOAT, D. "O cuidado e a imbricação das relações sociais". In: ABREU, A.R.P; HIRATA, H; LOMBARDI, M.R. *In: Gênero e trabalho no Brasil e na França: perspectivas interseccionais*. 1. Ed. São Paulo: Boitempo, 2016, p. 17.

⁴ KERGOAT, D. "O cuidado e a imbricação (...)", Ob. Cit., p. 17.

⁵ HIRATA, H. *O cuidado: teorias e práticas*. Tradução de Monica Stahel. 1. ed. São Paulo: Boitempo, 2022, p. 30.

⁶ SALADINI, A.P.S. *O Trabalho Invisível do Cuidado: Pobreza de tempo e Equidade de Gênero*. 1. ed. Brasília: Editora Venturoli, 2024, p. 67.

When observing the reality of paid care work in Brazil, it becomes evident that it is primarily performed by women, who have been assigned care activities based on what society perceives as a feminine duty, which was not initially associated with a profession⁷. The Brazilian census confirms that this occupation is predominantly exercised by women, revealing that in 2010, 96.7% of professionals responsible for in-home care were women⁸.

The sexual division of labor, according to Danièle Kergoat, who developed the concept, "is the form of division of social labor arising from social relations between the sexes." Among its characteristics is "the prioritization of men for the productive sphere and women for the reproductive sphere, while men also appropriate roles with greater social value," as observed in the political, religious, and military fields⁹. Helena Hirata, in turn, observes that "the social division of labor has work as its reference field, while gender relations 'transversalize' all social fields¹⁰".

As Danièle Kergoat points out, the social division of labor is structured by two fundamental principles. The first is the principle of separation, which assigns different tasks to men and women. The second is the hierarchical principle, which attributes greater value to male labor compared to female labor¹¹.

Kergoat emphasizes that women entered the labor market under unequal conditions, and they were assigned tasks related to supposed feminine characteristics, such as delicacy and caregiving abilities. Thus, the division of occupations continued based on stereotypes, assuming that women were unsuited for jobs requiring attributes such as leadership, rationality, or strength¹².

⁷ NICOLI, P.A.G.; RAMOS, M.M. "Os fundamentos sexistas da regulação do trabalho e a marginalidade jurídica do cuidado". In: ALKIMIN, G.C.; NICOLI, P.A.G; RAMOS, M.M. (org.). *Gênero, Sexualidade e Direito: Perspectivas Multidisciplinares*. 1. ed. Belo Horizonte: Initia Vita, 2017, p. 131-132.

⁸ GUIMARÃES, N.A.; HIRATA, H.S. "O cuidado e o emprego doméstico: interseccionando desigualdades e fronteiras". In: GUIMARÃES, N.A.; HIRATA, H.S. *O gênero do cuidado: desigualdades, significações e identidades*. 1. ed. São Paulo: Ateliê Editorial, 2020, p. 147.

⁹ KERGOAT, D. Divisão sexual do trabalho e relações sociais de sexo. In: *Dicionário Crítico do Feminismo*. 1. ed. São Paulo: Editora Unesp, 2009. p. 67.

¹⁰ HIRATA, H. *O cuidado: teorias e práticas*. Tradução de Monica Stahel. 1. ed. São Paulo: Boitempo, 2022, p. 32.

¹¹ KERGOAT, D. "Divisão sexual do trabalho e relações sociais de sexo". In: *Dicionário Crítico do Feminismo*. 1. ed. São Paulo: Editora Unesp, 2009. p. 67-68.

¹² KERGOAT, D. Dinâmica e consubstancialidade das relações sociais. Tradução de Antonia Malta Campos. Revisão técnica: Helena Hirata. *Novos Estudos CEBRAP*, n. 86, p. 93-103, 2010.

In Brazil, the professionalization of the caregiving for the elderly stems from the increasing incorporation of women into the economically active population, which doubled between the 1980s and 2010. As a result, these professionals took on roles traditionally assigned to women who remained at home, responsible for all domestic tasks and the well-being of the household members¹³. As Brazilian women left their homes to engage in paid activities, the need for professional caregiving services arose. This situation is expected to intensify considering declining birth rates and the gradual aging of the population¹⁴.

Care work has always been undervalued by Brazilian society, treated as a private matter for those who hire it, and poorly remunerated. This devaluation and invisibility were reflected in the lack of legal protection until 1972, when Law No. 5,859 recognized the right to formal employment registration in the Work and Social Security Card for those providing domestic services, in addition to granting 20 working days of annual vacation and inclusion in the social security system¹⁵. Even though these rights were far below those granted to other workers under the 1943 Consolidation of Labor Laws (CLT), they were rarely enforced. Not even the 1988 Constitution, which enshrined labor as a fundamental social right, guaranteed equality of rights for all workers, nor did it secure provisional job stability for pregnant domestic workers. The equalization of rights was only formally recognized in 2013 with Constitutional Amendment No. 72¹⁶, later regulated in 2015 by Complementary Law No. 150¹⁷. Even so, several rights, such as the receipt of hazard and hardship pay, were not extended to the category.

¹³GUIMARÃES, N.A.; HIRATA, H.S. “O cuidado e o emprego doméstico: interseccionando desigualdades e fronteiras”. In: GUIMARÃES, N.A.; HIRATA, H.S. *O gênero do cuidado: desigualdades, significações e identidades*. 1. ed. São Paulo: Ateliê Editorial, 2020.

¹⁴Segundo dados do IBGE, no Brasil o número de nascimentos por ano recuou de 3,6 milhões em 2000 para 2,6 milhões em 2022, e deve cair para 1,5 milhão em 2070. Por outro lado, no período de 2000 a 2022 a população com mais de 60 anos subiu de 8,7% para 15,6%, e deverá chegar a 37,8% dos habitantes do Brasil em 2070. In: IBGE. “População do país vai parar de crescer em 2041”. Disponível em: <https://agenciadenoticias.ibge.gov.br/agencia-noticias/2012-agencia-de-noticias/noticias/41056-populacao-do-pais-vai-parar-de-crescer-em-2041>. Acesso em: 14 set. 2024.

¹⁵BRASIL. *Lei 5.859/1972*, de 11 de dezembro de 1972.

¹⁶BRASIL. *Emenda Constitucional 72*, de 2 de abril de 2013.

¹⁷BRASIL. *Lei Complementar 150*, de 1º de junho de 2015.

What is observed is that the definitions and characteristics of domestic workers and professional caregivers in residential settings indicate that “the transition of these activities to the professional field was accompanied by the same historical markers observed when these duties were imposed on women within families,” particularly in terms of their invisibility and devaluation¹⁸. Among the reasons for this is the fact that such activities are predominantly assigned to women, a result of the sexual division of labor, as previously analyzed.

In addition to the devaluation of the activity itself, since most in-home care professionals are women, they are also predominantly exposed to what Helena Hirata and Natacha Borgeaud-Garciandía describe as the “complex nature of the interaction involving a beneficiary of care and the provider¹⁹.” This professional activity, as Mariana Marcondes points out, focuses on meeting human physical, emotional, and psychological needs²⁰, often requiring physical contact between the caregiver and the person being cared for, which may lead to reactions from the latter that constitute violence against the caregiver.

At the same time, it is necessary to consider that some degenerative diseases impair individuals' ability to exercise control, which may lead them to commit acts that invade the caregiver's personal space. However, Hirata and Borgeaud-Garciandía emphasize that “it should not be expected that the worker will accept sexual harassment from an elderly person under the pretext that they have cognitive issues²¹.”

This context highlights the difficulties of in-home care work, in which women are placed without training, lacking a support network, and at risk of being misinterpreted when they decide to expose situations of violence to those

¹⁸ SALADINI, A.P.S. *O trabalho invisível de cuidado: pobreza de tempo e equidade de gênero*. Brasília: Editora Venturoli, 2024, p. 69.

¹⁹ GUIMARÃES, Nadya A.; HIRATA, Helena S. O cuidado e o emprego doméstico: interseccionando desigualdades e fronteiras. In: GUIMARÃES, N.A.; HIRATA, H.S. *O gênero do cuidado: desigualdades, significações e identidades*. 1. ed. São Paulo: Ateliê Editorial, 2020, p.191.

²⁰ MARCONDES, M.M. “O cuidado na perspectiva da divisão sexual do trabalho: contribuições para os estudos sobre a feminização do mundo do trabalho”. In: YANNOULAS, S.C. (coord.). *Trabalhadoras: análise da feminização das profissões e ocupações*. 1. ed. Brasília: Editorial Abaré, 2013, p. 258.

²¹ GUIMARÃES, N.A.; HIRATA, H.S. “O cuidado e o emprego doméstico: interseccionando desigualdades e fronteiras”. In: GUIMARÃES, N.A.; HIRATA, H.S. *O gênero do cuidado: desigualdades, significações e identidades*. 1. ed. São Paulo: Ateliê Editorial, 2020, p. 203.

responsible for organizing care services, such as the spouse, children, or other family members of the person being cared for²².

It is a challenging topic to address, but it has repeatedly appeared in judicial proceedings in the form of claims for compensation for moral and sexual harassment committed against care workers. As a result, it cannot be ignored by judges responsible for adjudicating and ruling on these cases. Thus, the next chapter will be dedicated to analyzing the concepts of moral and sexual harassment, using ILO Convention No. 190 as a reference.

3. HARASSMENT IN THE WORKPLACE AND ILO CONVENTION Nº 190

The traditional concepts of violence and harassment in the workplace were substantially altered with the approval of the International Labour Organization's Convention No. 190. Elements that were previously considered essential for characterizing workplace harassment, both by doctrine²³ and legislation²⁴, such as the repetition of conduct and deliberate, intentional behavior, are no longer required to establish harassment.

However, concepts like that developed by French author Marie-France Hirigoyen, who classifies workplace harassment as any abusive conduct manifested through behaviors, words, acts, gestures, or writings with the potential to harm a person's personality, dignity, or physical or psychological integrity, jeopardize their employment or degrade the work environment²⁵, remain current.

ILO Convention No. 190, whose text was approved during the 108th Session of the International Labour Conference, came into force internationally

²² GUIMARÃES, N.A.; HIRATA, H.S. O cuidado e o emprego doméstico: interseccionando desigualdades e fronteiras. In: GUIMARÃES, N.A.; HIRATA, H.S. *O gênero do cuidado: desigualdades, significações e identidades*. 1. ed. São Paulo: Ateliê Editorial, 2020.

²³ Em 2014, Luís Menezes Leitão conceitua assédio moral laboral como uma espécie de violência psicológica sofrida no trabalho representada pela perseguição movida a um trabalhador e que se caracteriza pela reiteração de comportamentos humilhantes, hostis e persecutórios, que visam perturbá-lo emocionalmente e, em última instância, levar ao abandono do trabalho. In: LEITÃO, L.M. *Direito do Trabalho*. 4. ed. Coimbra: Almedina, 2014, p. 178.

²⁴ No Brasil, a Lei 13.185/2015, que instituiu o Programa de Combate à Intimidação Sistemática, e que também poderia ser utilizada para caracterizar o assédio laboral, define como intimidação sistemática ou *bullying* todo ato de violência física ou psicológica praticada por um indivíduo ou por um grupo de forma intencional e repetitiva e sem motivação evidente, direcionada a uma ou mais pessoas, com o objetivo de intimidá-la ou agredi-la, causando dor e angústia à vítima, em uma relação de desequilíbrio de poder entre as partes envolvidas.

²⁵ HIRIGOYEN, Marie-France, tradução KÜHNER, M.H. *Assédio Moral: a violência perversa no cotidiano*, 6ª edição. Rio de Janeiro: Bertrand Brasil, 2003, p. 65.

in June 2019, following ratification by two countries, Uruguay and Fiji. One of the key reasons for its approval is the recognition that violence and harassment are deeply intertwined with gender and disproportionately affect women. As a result, the need for a gender-sensitive approach to workplace violence, considering underlying causes and risk factors such as gender stereotypes and structural inequalities, becomes evident.

The term "violence and harassment" in the workplace was defined by ILO Convention No. 190 as "a range of unacceptable behaviors and practices, or threats thereof, whether a single occurrence or repeated, that aim to, result in, or are likely to result in physical, psychological, sexual, or economic harm." This definition includes gender-based violence and harassment, which are directed at individuals because of their sex or gender or disproportionately affect individuals of a particular sex or gender, including sexual harassment²⁶.

It is evident, therefore, that ILO Convention No. 190 does not require the repetition of conduct over time to characterize harassment. According to Rodolfo Pamplona Filho and Claiz M. P. Gunça dos Santos, the Convention brings a significant change by considering that violence and harassment can be established with a single occurrence, which reflects the ILO's understanding that "the key point for determining whether an act will be classified as violence or harassment is the nature and effects of the conduct, not the number of occurrences."²⁷

It is worth noting that traditional doctrinal definitions of moral harassment require the repetition of conduct as one of the necessary elements for its characterization. This is due to the strict meaning of the word "harassment," which implies persistence and constancy. The term "harassment" would imply "the notion of persistent, annoying insistence, constant pursuit, establishing a siege with the aim of exercising control over the harassed person."²⁸ And at least until the approval of ILO Convention No. 190, analyses of complaints would often question whether the acts of violence were repeated in order to classify the

²⁶OIT. "Organização Internacional do Trabalho". *Convenção de nº 190, sobre a eliminação da violência e do assédio no mundo do trabalho*. Artigo 1º.

²⁷PAMPLONA FILHO, R; SANTOS, C.M.P.G.D. *Assédio moral organizacional: presencial e virtual*. 1. ed. São Paulo: Saraiva Educação, 2020, p. 161-162.

²⁸SALADINI, A.P.S. *Trabalho, medo e sofrimento: considerações acerca do assédio moral*, 2013, p. 72.

behavior as harassment, leaving one-time assaults unpunished depending on how the victim responded.

Another relevant aspect is the reference to potential effects caused by the act, as the consequences may be physical or psychological. Harassment will be considered present even if no actual harm was caused as long as the potential for harm exists. This is important, as individuals have different subjectivities and levels of resilience when facing violence.

It is also important to note that the element of intent has been excluded from the definition of harassment. Thus, in workplace relations, even unintentional conduct may be characterized as harassment. This prevents defenses that claim the behavior was merely a "bad joke" from being accepted, eliminating what could be termed "recreational harassment" from the workplace.

This means that the harasser's conduct no longer needs to be repeated for harassment to be recognized; a single act may suffice. Additionally, there is no need to prove that the behavior was deliberately intended to harass, as any inappropriate and unacceptable behavior may constitute harassment. It is sufficient that the act has the potential to cause harm for it to be punishable without requiring concrete harm to have occurred to the victim.

It is particularly significant for improving the protection of care workers that ILO Convention No. 190 formally recognized that there is a specific issue of gender-based violence and harassment, including but not limited to sexual harassment. Thus, the Convention revolutionizes the standards for defining inappropriate workplace behaviors as harassment, bringing to the international agenda a problem that has always been underlying in social and labor relations.

The characteristics of paid in-home care work for elderly and sick individuals, which is predominantly carried out by women, as previously analyzed, expose these workers to inappropriate or unacceptable circumstances that can cause physical, psychological, sexual, or economic harm. The next chapter will explore how gender-sensitive, intersectional judgments can help reveal situations of gender-based violence and harassment in the home care work environment.

4. ACTING AND JUDGING WITH AN INTERSECTIONAL GENDER PERSPECTIVE

The relations in paid work and the norms that apply to them have been shaped according to the sexist standards of society. Therefore, when dealing with workplace violence against the rights of women, it is necessary to reinterpret the law in a way that protects or at least enables redress for the harm, which can be achieved through a method that gives visibility to situations historically buried by traditional hermeneutics²⁹.

Acting and judging with an intersectional gender perspective derives from the use of a method that allows judges to uncover the presence of vulnerabilities in social relations and judicial processes, as well as to recognize the disproportionate power relations in the process of creating laws³⁰.

Judging with a gender perspective is not a new concept, as it was consolidated at the Fourth World Conference on Women in Beijing in 1995. However, the Inter-American Court of Human Rights (IACHR) is a pioneer in conducting judgments with a gender perspective, as seen in cases such as Miguel Castro Prison vs. Peru (2006), González et al. ("Cotton Field") vs. Mexico (2009), Veliz Franco et al. vs. Guatemala (2014), and Espinoza González vs. Peru (2014).

According to an analysis by Adriane Araujo, the IACHR examines whether gender played a relevant role in the assessment and evaluation of the facts, which makes it possible to recognize "situations that would otherwise go unnoticed, even though they are key to understanding the controversy as a whole."³¹

In addition to repeatedly using this method of analysis, the IACHR has also begun to mandate that justice system actors from states that have submitted to the Court's jurisdiction, such as Brazil, must act with a gender perspective. In

²⁹ ASSAD, S.F. *Julgamento com perspectiva interseccional de gênero: uma releitura do direito a partir dos métodos feministas e decoloniais*. 1. ed. Brasília, DF: Editora Venturoli, 2024.

³⁰ ASSAD, S.F. *Julgamento com perspectiva interseccional de gênero: uma releitura do direito a partir dos métodos feministas e decoloniais*. 1. ed. Brasília, DF: Editora Venturoli, 2024.

³¹ ARAUJO, A.R.D. A promoção da igualdade de oportunidades e eliminação da violência baseada em gênero no trabalho: ações para a igualdade de direitos de todas, todos e todes. In: RICHA, Morgana de A. et al. *Mulheres na Justiça do Trabalho: 80 anos em perspectiva*. 1. ed. Rio de Janeiro: Justiça e Cidadania, 2022, p. 95.

fact, the IACHR is unequivocal in its position that the failure to investigate gender-based violence amounts to discrimination against women in accessing justice³².

The decisions of the IACHR are based on Article 7 of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women (Convention of Belém do Pará), an instrument to which the Brazilian State, as a signatory, is also bound. It is important to note that Article 2(b) of the Convention of Belém do Pará³³ explicitly mentions gender-based violence in the workplace. Thus, whenever a woman worker suffers physical, sexual, or psychological violence, the Brazilian State's duty to protect women from gender-based violence is not being respected.

As stated by María Concepción Gimeno Presa, "for members of the judiciary, judging with a gender perspective is a legal duty." She adds that "the integration of a gender perspective into the judicial process is a new task that must be carried out within legal systems that have often ignored it."³⁴

However, the category "woman" does not correspond to a single identity, as the issues faced by women in both public and private spheres vary significantly based on factors such as skin color (race), social class, nationality, and even age.

It was precisely to demonstrate that discrimination affects Black women differently due to the intersection of gender and race that Kimberlé Crenshaw coined the term "intersectionality." This means that when considered in isolation, gender, race, and class do not possess the same characteristics. As Heleieth Saffioti warns, if class or race is privileged in the analysis of intersectionality with gender, it may affect the understanding of the phenomenon of gender violence."³⁵

Patricia Hill Collins and Silma Birge emphasizes that intersectionality has been used as an analytical tool to elucidate "how categories of race, class, gender, age, citizenship status, and others position people differently in the world" and how some individuals are particularly affected by inequalities, including

³² CORTE IDH. *Caso Véliz Franco e outros vs. Guatemala, Sentença de 19 de maio de 2014*. San José: CORTE IDH, 2014, § 223.

³³ OEA. *Convenção Interamericana para prevenir, punir e erradicar a violência contra a mulher, "Convenção de Belém do Pará"*. Belém do Pará: OEA, 1994.

³⁴ PRESA, M.C.G. *¿Qué es juzgar con perspectiva de género?* 1. ed. Cizur Menor (Navarra): Editorial Aranzadi, 2020, p. 14.

³⁵ SAFFIOTI, H. *Gênero patriarcado violência*. 2. ed. São Paulo: Editora Expressão Popular, 2015. @ **Direito e Linguagem**, Extraordinário nº 02, vol. 01, DOI 10.5281/zenodo.13774067, 2024. 183

difficulties in obtaining formal and well-paid employment³⁶. For Hill Collins, intersectionality also allows for reflections on the concept of work itself, which was originally considered a paid activity performed by men³⁷.

When it comes to the role of in-home caregivers for elderly, sick, or incapacitated individuals, it is evident that the gender of the caregiver, along with other factors such as social class and race or ethnicity, can determine whether the professional is subjected to harassment over an extended period. As Helena Hirata points out, "a caregiver is not oppressed, exploited, or dominated only because she is a woman, but also because she is Black and poor."³⁸

According to Regina Stella C. Vieira, "the way society organizes care can either promote or hinder gender equality," and feminist labor theory allows "a shift from a gender approach that questions the equality or inequality identifiable in legislation to a deeper interrogation of the categories, concepts, and foundations governing the discipline"³⁹.

Women who dedicate themselves to professional caregiving work should not be coerced into ignoring abusive behavior by those they care for. Often, family members tend to overlook violence committed by elderly individuals, especially when they suffer from illnesses that cause mental confusion. However, when the violence perpetrated by the elderly against the caregivers is brought to the attention of those responsible, measures must be taken to prevent its recurrence, under penalty of liability.

In some situations, family members responsible for the elderly must ensure that the professional caregiver does not suffer violence while performing her duties. For example, this could involve cases where the person receiving care consistently displays aggressive behavior or when the caregiving tasks require the professional to engage in intimate physical contact with the individual being cared for.

³⁶ COLINS, P.H; Bilge, S. *Interseccionalidade*. Trad. Rane Souza. 1. ed. São Paulo: Boitempo, 2021, p. 33.

³⁷ COLLINS, P.H. *Bem mais que ideias: A interseccionalidade como teoria social crítica*. Trad. Bruna Barros e Jess Oliveira. 1. ed. São Paulo: Boitempo, 2022, p. 56-58.

³⁸ HIRATA, H. *O cuidado: teorias e práticas*. Tradução de Monica Stahel. 1. ed. São Paulo: Boitempo, 2022, p. 35.

³⁹ VIEIRA, R.S.C. "Teoria Feminista do Direito do Trabalho: uma introdução". In: TRAMONTINA, Robison; VIEIRA, R.S.C. (orgs.). *Desafios presentes e futuros do Direito do Trabalho: buscas entre intersecções por um novo alvorecer*. Joaçaba: Editora Unoesc, 2020, p. 85-92 (pp. 85; 90).

Inappropriate behaviors, such as sexist and racist comments, physical violence, or sexual misconduct, should not be justified by the general incapacity for discernment often attributed to people who are dependent on care.

Therefore, an intersectional gender perspective proves to be appropriate for the Judiciary to analyze the relationships between professional caregivers and the individuals receiving care, as well as between the caregivers and those responsible for organizing caregiving services. This analysis should consider the various personal and social characteristics of the worker that may render her more vulnerable. According to Fabiana Severi, interpreting the law from a gender perspective "requires that those responsible for delivering justice understand that they are obliged to construct more complex, comprehensive, and networked responses."⁴⁰

There is no incompatibility between the impartiality required of judges and the practice of judging with an intersectional gender perspective. From a subjective standpoint, it does not involve judging based on personal interests, and from an objective standpoint, the goal is to ensure that the various circumstances leading to inequalities are considered when analyzing the facts and the law.

Furthermore, it aligns with international legal instruments such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW – 1979) and the Convention of Belém do Pará. It also adheres to the principles of human dignity, the social value of labor, equality, and non-discrimination, which are the foundations of the Brazilian State.

Given the framework of the issue presented, it can be concluded that an intersectional gender perspective in analyzing cases involving women who provide in-home care for elderly individuals can help reveal workplace violence that is often hidden by the very nature of the work performed. To achieve this, it is necessary to investigate the workplace environment to identify situations stemming from vulnerabilities, behaviors conditioned by gender stereotypes, and indications that gender-based violence has occurred.

⁴⁰ SEVERI, F.C. "Justiça em uma perspectiva de gênero: elementos teóricos, normativos e metodológicos". *Revista Digital de Direito Administrativo*, v. 3, n. 3, p. 574-601, 2016, p. 598.
@ **Direito e Linguagem**, Extraordinário nº 02, vol. 01, DOI 10.5281/zenodo.13774067, 2024.

5. FINAL CONSIDERATIONS

This article analyzed the relationship between paid in-home care work for elderly, sick, or incapacitated individuals and the sexual division of labor, emphasizing that it is predominantly performed by women. This situation results from the sexual division of labor and the social stereotype that women are naturally more suited to caregiving, which does not reflect reality.

It was demonstrated that the fact that care work is performed in the home of the person being cared for exposes women who are professionally dedicated to caregiving to various forms of harassment in their workplaces.

Next, the article examined the evolution of the concept of workplace violence and harassment following the approval of ILO Convention No. 190, highlighting how traditional concepts of moral and sexual harassment were profoundly modified, especially regarding the explicit recognition of gender-based harassment and the removal of the requirement for repeated and intentional conduct to characterize harassment.

Finally, the article demonstrated how acting and judging with an intersectional gender perspective contributes to uncovering harassment that is often hidden due to the very nature of care work for elderly, sick, or incapacitated individuals. To make this possible, it is essential for judges to be aware of gender stereotypes and the multiple vulnerabilities present in society, so they can identify these when called upon to rule on cases of gender-based violence committed against caregivers in the home environment.

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