

BEYOND FICTION: THE PROTECTION DERIVED FROM GENDER AND INFORMATION

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ABSTRACT

There are many opportunities that indicate that a topic should be addressed. Of course, the importance of gender has already been a topic of valuable analysis and has even been studied on a personal level; However, the call was now felt to tell real facts, not taken from jurisprudence, since it was absent for the specific case that will be narrated. The events have a bit of the whole family in which I grew up, which is why understanding is asked, because in the first section an existing story will be told, which I know because I heard it from its protagonist. For this reason, after locating a reality and its current classification in criminal law, we will deal with tools such as science and technology, which contribute to dissemination, pedagogy and even sanction, when applicable, in pursuit of women's rights.

Keywords: Women, crimes, gender, information, justice, technology.

1. Introduction

The purpose of this paper is to reflect on the violence that girls and women have suffered from a real and close history, being that after remembering some episodes in the life of a woman and the mistreatment of which she was a victim, it reflects on what should have been formal and material justice within criminal law and the gender approach. To add to what has been said the importance of adequate information, of the visibility in which technology is the protagonist to achieve truth and reconciliation with a past.

Reconstructing facts of a close life is not an easy task in a world that intends to adopt an end point to move forward after an apparent normality, because after arguing that the accused events are already part of a time that has been overcome and that it must be closed, but it happens that this is not easy when the need and importance of the right to truth is known.

The assumed past tense leaves historical debts due to the absent conception of gender ideology, now studied in more depth from differential approaches, also acclaiming the need for its successful dissemination with the use of recent technological incursions; That is where the reflections of these lines are located.

2. Method

Once the problem that arises from the study of gender ideology emanating from facts that in the deontic should have been erected in criminal cases and that are irradiated and analyzed from human rights and the constitutional, it is possible to determine that in the face of Dantesque situations, events of a reality are observed, argued and reflected, Therefore, with the depth offered by the qualitative method, the different foundations and the epistemological fields from which decisions would be adopted, the reasons for the importance of gender ideology are sought and analyzed, and after making typical adjustments, it was visualized how it is required that the practice of legal hermeneutics of

gender be implemented without delay and with depth, as a guarantee for this historically invisible population group.

It should be noted that, at the same time, it was necessary to carry out a study of the bibliography and jurisprudential files that contain the study material, facilitating the understanding of the objective and the evaluation of the results critically obtained.

3. An approximation

There are many opportunities and moments that indicate that a topic should be addressed. Of course, the importance of gender has already been a topic of valuable analysis and even, on a personal level, it has also been studied; however, the call was now felt to tell real and close facts, not taken from jurisprudence, since it was absent for the specific case that will be narrated. The events have a little bit of the whole family in which I grew up, that is why understanding is requested, because in the first part an existing story will be told, which I know because I heard it from its protagonist, also knowing the antagonist. I can say, I also lived it because I felt the pain that blood and solidarity demand.

3.1. What it represents in me

With the possibility of covering a few lines, we have thought of doing something that also exhorts and purges the spirit and historical burden of my family, hoping that this writing will serve someone who may go through a similar Dantesque situation. With fear of being reproached for not doing what I always do, that is, not hiding the raw experiences of the women in my family, due to the social name of an emerging nucleus of people, I will allow myself to tell this story, in large part: my life.

For this reason, having to comply with the requirements of an academic article, in some sections that will serve as a basis for atoning for pain, it will be spoken in the first person, resuming methodological and scientific rigor as soon as possible.

3.1.1. A reality that screamed

In a bed in a modest house where lay the still alive body of a woman who suffered from cancer that advanced from her bowels to invade her entire body, I arrived one day in passing, because my destination that afternoon was my university. The rush took hold of me, because I had to go and try to understand the complex chairs of legal sociology, which, to a villager like me, seemed impossible.

With a latent feeling of guilt and shame that are part of another story, I visited that body that would tell me passages of its world, which became images and reproaches that still keep me awake at night.

It is not a novel. *She* said that, in the dusty streets of her southern and forgotten town, a circus show arrived that toured various places without illusions, becoming temporary spaces of tenuous recreation, not because of the good, but because of the unique. With the upstart characters came the being who destroyed it.

Fascinated by a virgin and innocent beauty that he recreated between housework and childhood illusions, he planned an idea so that he would not be vetoed from an engagement with that girl. His idea was to tell the conservative ascendants that he had sullied the honor of the infant by having carnal access to her with her consent and that, to remedy this, the blessed union of the two should be organized. Her family, far from a criterion of authority and respect, part of another story, decided that the ritual should be

carried out in the city, where *Ella* arrived with flip-flops and her daily clothes, encouraged only by traversing the sidewalks of the nearby capital, unaware of what was to come.

When the bells rang, a white coat was entered into the church of San Agustín, suddenly worn by a city aunt in misunderstood eagerness. At the back of the altar, he with an unmistakable smile of triumph over the green illusions that painted the path. Hell descended for *Her*, She was subjected to all forms of violence, even the uncategorized ones, everything would be a drama; being that here we will remember only those of sexual aggression that had as a victim the one who lay in bed, perhaps saying goodbye with me to her bloody memories, to die with tranquility.

That's how he said that the lie raised to obtain it, as if it were a trophy, was put in the flesh with all kinds of physical aggressions and, that was not all. He recalled that in a Holy Week, the circus activity was announced with the passages of pain experienced by Mary Magdalene, as the main character, she was recreated being stoned, retouching passages before Jesus interceded; the scene put into the nomadic show brought from the viewers, congratulations for the makeup of the actress, who did not notice that the blows, tears and clothing were *Ella's*, they were her blows, it was her crying, her request for help had everything, except being fallacious.

At home and for the entire time that the marriage lasted, which was a very effective sentence, "until death do them part", where she left this world *Ella*, was marked by constant sexual aggression, from which she could not be freed by her small children, in an impotence that converged in the pain of a woman and a mother.

Because of the effects of substances that exacerbated barbarism: he tied her up, abused, beat, insulted her and made known her multiple paid encounters with all kinds of people dedicated to prostitution, as if deception were the right of men. The inclement acts of violence, on two occasions, ended in spontaneous abortions. Pregnancies, although they were often the product of the impossibility of exercising reproductive freedom, were a life that I accepted as a surrogate mother.

And this is nothing of everything that comes to mind to tell.

Today *she* is not here, he lives, everyone knew it, no one did anything, justice was never done, not even that so-called *poetic justice has been presented*.

4. In the light of criminal law

4.1. The crimes that are presented

It would be easy with hypothetical exercises used in the chair, that, as if it were a fictitious case that helps to understand special criminal law, each line is coupled in a strict typicity, which would even demand the sensitivity of professionals in training, since in each line what happened is shocking, but they are also situations very typical of the daily life of the time and of all the social staircases. although without neglecting that the importance of bringing up this type of theme focuses on making visible the victims' injuries, especially psychological, which can remain over time (Suárez & González, 2003).

On the real level, it is with sadness that the commission of various punishable acts in Colombia today is extracted, which would begin with palpable domestic violence, which has an aggravating circumstance since the victim is a woman.¹ This crime was committed

¹ For more information on this aggravating circumstance, see Article 229 of Law 599 of 2000 or the Colombian Penal Code.

in the form of a homogeneous competition due to the multiple times that, over time, there were psychological and physical aggressions.

In chronological order, the first event that is recorded is a sexual harassment in front of an infant who did not find charm in the pretensions of a foreigner older than her, who came as a circus performance staff. Today, in the special Colombian penal regulations, this abstract conduct is enshrined, which is represented under the alternative verbs of pursuing, harassing and harassing for sexual purposes, showing age or a position of social order (Penal Code [C.PEN], 2000, art.210-A).

Now, forcing a minor to marry her aggressor, after being sullied because under his saying she had consensual sexual relations, which for the time was a personal and family dishonor, typically fits into an illegal constraint;² however, at that time it was a shield to guard an absurd virtue, an assertion far from reality that led to multiple and greater facts that fortunately are already reprehensible. Culpable or preterintentional abortions as a result of the physical and psychological violence exercised are added to the catalog of behaviors committed and easy to identify in the facts of study, resulting in another criminal type, to be added to the concurrence of criminal acts.

By the time of the events, the idea was surely circulating among the other residents of the town, that the wives owed the duty, almost sacred, to satisfy within the conjugal eroticism, the requests of their consorts as indicated, regardless of time, strength, mental and bodily pathologies, under the exclusive idea of the deontics of the wife's fulfillment in front of her husband. The mistake in the current clock would be obvious, since nothing is stronger today than respect for the will, at least, in theory already clarified. This has been clarified: the marriage bond or the relationship of a couple does not grant the man any right over the woman's sexuality and when intimate contact is obtained with the clear refusal of the victim and resorting to intimidation or force, as happened in this case, there is an affectation of her freedom to decide about her own sexuality (Ámbito Jurídico, 2022).

With the typical adjustments made, it is understood, *roughly*, what the life of a victim turns out to be due to stigmatizing gender patterns, protected by culture and stereotypes that sought and appeased the voices of pain, with the consent and at least silence of the authorities.

4.1.1. Awareness of what was happening and the response of the authorities

Logically, *she* was besieged by guilt. He narrated that he felt that he had committed all the attacks against God and his family; she never noticed that she was a victim and that she should be protected and cautioned, since there was no way to do so, while the superiority of the man, the husband and more so if he was older than the woman, was preached, speaking of the environment of the home formed.

But this responsibility extends to the family from which she descends, because they considered that she had failed as a daughter, surely this made her feel, a shamelessness that even put in the eyes of the small population the family name, not wealthy, but known to the eyes and the lurking tongues of the neighborhood. In this context, it became impossible to consciously and plausibly understand the degree of aggression and damage committed, on the contrary, reproach was the order of the hours.

² For more information on this crime, see Article 182 of Law 599 of 2000 or the Colombian Penal Code.

The lack of commitment and rather, complicit role of the authorities is also astonishing. Think first of the ecclesiastical representation that blessed the union between a girl, who cried as she entered the altar, the nugatory review of documents to verify the minimum consent of the union and, at least alert to what is palpable to the eye, a rather disparate wedding. Followed by silence in the face of the evident commission of domestic violence, normalized for decades.

It is appropriate to inquire about which state authorities? in the normality of functions and for some time now, there has been an executive order in Colombia that under its command would be medical, psychologist and legal professionals based in family police stations and police inspections, any of these, empowered to warn about aggressions against women and minors. This alert could be raised and is now raised to the judicial authorities, in order to investigate and punish. All this, a simple illusion, a dead letter, even today, more in the time of *Ella*, and although nothing could be worse, in different lines to this installment, it will be known, that what she had to live was more discouraging.

Once this reality and its consequences have been established, the importance of gender and of the abundant and never sufficient pedagogy of it will be brought to the debate, to which must be added a conscious and harmonious dissemination, which, as far as possible, must be constant and supported by today's technologies.

4.2. Gender ideology

Today, from various areas of law and society, the universal and historical debt that humanity has with women is recognized, for having been, as a social group, systematically discriminated against, under various forms of command and subjugation that cataloged them for many as invisible subjects of rights.³

But it is also unfair to ignore the fact that for some decades and extending to the present day, the recovery of their rights has been set in motion, so that strong currents of activists have managed to interweave not only in the legal system positive provisions aimed at eradicating these odious practices, but also to stimulate at the real level official attitudes with the same direction. through the so-called affirmative actions, which refer to those "public policies whose objective is to compensate for the conditions that discriminate against certain social groups in the exercise of their rights" (Inmujeres, 2024, para. 1), therefore, it could be said that such actions range from the search for material equality in education, health, work and all the spaces where the daily life of the same being is carried out. Similarly, in Colombian jurisprudence it has been mentioned with regard to material equality, that it is necessary:

A political organization committed to the satisfaction of certain material conditions and rights, which recognizes the inequalities that arise in reality, and in the face of which it is necessary to adopt special measures to overcome them in order to guarantee an equitable starting point among citizens (Constitutional Court, Plenary Chamber, C-220, 2017, p.23).

The decision to promote reinforced protection of women's rights stands as one of the most effective state tools, as long as it is understood as a legitimate constitutional

³ Works such as *The Little Prince* allow us to analyze what is related to sociological concepts such as structural invisibility, for this see more in the book *Los derechos y sus garantías : ensayos críticos* de Ramiro Ávila Santamaría.

purpose that, in search of the verifiable materialization of these prerogatives, tolerates and even encourages overcoming the strong general equality clause. That is to say, based on the conception of being in the presence of a population group that is a historical victim of discriminatory practices, it requires that of special and differentiated considerations with arguments on the part of the State, in addition to the above, it is pertinent to coin the term suspect categories, which is based on the fact that since time immemorial various groups have suffered from segregative treatment (Constitutional Court, Plenary Chamber, C-481, 1998, p.38).

As will be seen, there is currently a large regulatory compendium that from the legal system aims to comply with this protective objective, under the understanding that acts of discrimination against women for the fact of being women have not yet been overcome and that consequently it is necessary to generate precautions, both from the level of prevention and also from the coercive point of view. with the sole purpose of achieving parity and with it the reduction of pain and even the reproduction of poverty. As varied as the forms of aggression against women can be, so have the legislative responses to control them; But it should be mentioned that since the decision to intervene in this reality is universal, the interpreter will then be able to find a light in the so-called constitutionality block, a field paved for its study, since it allows the regional human rights systems to be incorporated into such a task.⁴

Thus, the block of constitutionality is based on the understanding that the Constitution not only includes its articles, but that, by order of the Constitution, all those norms, principles or parameters of the national or international order that serve to apply the Constitution, to interpret it or as parameters of constitutionality in relation to the legal system are also integrated (Superior Court of the Judicial District of Pasto, Criminal Chamber, Case 14236, 2017).

Before giving way to international regulations, it is useful and approximate for this analysis to mention Law 1257 of 2008, which was issued to bring into Colombian domestic law the provisions of the Plans of Action of the Vienna, Cairo and Beijing Conferences; In addition, the above-mentioned Act established the definition of violence against women, stating that it is based on:

Any act or omission that causes death, physical, sexual, psychological, economic or patrimonial harm or suffering because of her condition as a woman, as well as the threats of such acts, coercion or arbitrary deprivation of liberty, whether it occurs in the public or private sphere (Law 1257, 2008, art. 2).

Within the panorama of the best-known provisions at the level of international law, it is good for the moment to mention the following:

- In 1974, the Declaration on the Protection of Women and Children in States of Emergency or Armed Conflict was adopted, due to the worrying situation that women and children were going through within these contexts.

⁴ The courts that make up these regional systems have issued important judgments regarding women and the difficult reality they face, such as the *González et al. v. Mexico* issued by the Inter-American Court of Human Rights (IACHR Court).

- In December 1979, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was adopted by Resolution 34/180 of the United Nations General Assembly.
- In 1993, the Declaration on the Elimination of Violence against Women was adopted, which became "the first international instrument that explicitly addressed violence against women and created a framework for national and international action" (UN Women, 2024, para. 5).
- In 1994, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará) was adopted, which was classified as the "first binding treaty in the world to recognize that violence against women constitutes a punishable violation of human rights" (MESECVI, 2014, p.7).
- In 1995, the Beijing Declaration and Platform for Action was adopted, considered the most progressive plan in terms of women's rights.
- In 1999, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women was adopted.

From the comprehensive study of the aforementioned provisions, it is clear that the intention is to confront with effective legal tools endowed with binding universal force, all forms of violence against women, committed by taking advantage of the state of vulnerability erroneously conceived on the basis of gender, which constitutes an affront to the right to equality and, in this way, to the prohibition of all forms of discrimination and destruction of lives. Thus, Colombian jurisprudence has been emphatic that:

Sexual violence against girls and women, when it is committed precisely because of the sex of the victim or by taking advantage of the vulnerability that derives from their sex in certain social contexts, constitutes a violation of the right to equality, as recognized by numerous international instruments and organizations (Constitutional Court, Seventh Chamber, T-843, 2011, p.41).

Within this context, it is therefore measures of prevention, punishment and reparation, as well as the guarantee of access to effective judicial protection, that have been issued with the protection of women in mind, thus establishing from the top of the legal system the duty for public servants according to their role, to carry out their function with absolute responsibility and even determining co-responsibility in the consequences derived from the violent exercise against the aforementioned group populational; however, this must begin with a duty of solidarity from the family, the nucleus of friends and society.

See how the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) aims to restore equal rights between men and women, therefore, it requires States parties to adopt appropriate measures to modify or repeal laws, regulations, customs and practices that constitute discrimination against the female gender, modify the sociocultural patterns of conduct of men and women, eliminate discrimination against women in the public life of the country, eliminate barriers for women in the field of education, equality in the workplace, in health care, in economic and social life, and promote state recognition of the equality of men and women before the law (United Nations General Assembly, Convention on the Elimination of All Forms of Discrimination against Women [CEDAW] of 1979).

It is therefore worth emphasizing, in a section of the above-mentioned regulations, that it especially obliges States parties to establish fair and effective legal procedures for women who have been victims of violence (United Nations General Assembly, CEDAW of 1979, art. 2), including a timely trial and the guarantee of access to it, with the duty to establish effective mechanisms to ensure the restoration of their violated rights and reparation for the damage caused by the aggression. It should be pointed out that, although these obligations are in principle aimed at the intervention of the legislature, this does not relieve the judicial bodies of that same mission, since the burden of ensuring in practice the protection of women's rights and of women also falls on the shoulders of the latter. the design of public policies that undermine the thoughts and practices that include the object of this study.

And since judicial interpretation is established as an indispensable tool in the fulfillment of this task, it is precisely there where the justice operator, in his active role, where he must advocate for the purposes, principles and ideals of law (García, 2019), can reach the essence of his function, since:

The application of differentiated criteria of interpretation should be broadened when, for example, the rights of an aggressor and a victim of domestic or psychological violence collide, in a civil or family proceeding. Thus, for the sake of truly effective procedural equality, it is clear that in no case can the rights of the aggressor be judicially valued above the human rights of women to their physical and mental integrity and to live free from any type of violence (Constitutional Court, Sixth Chamber, T-967, 2014, p.51).

And it can be deduced that the rights of the woman are affected when the procedural formalities are prioritized by the judge over the substantial aspects to be resolved:

Both in the explanatory memorandum of Law 1761 of 2015, and in reiterated jurisprudence, it has been denounced that, in the context of discrimination, it is not possible to maintain the veil of equality of procedural arms, without this implying the disregard of the State's obligations to prevent, investigate and punish any type of violence against women. Therefore, it has been said that procedural rigidity and evidentiary formalism show that many times the administration of justice has given excessive space to procedural truth, over and above structurally unequal factual realities and the real truth of what happened (Constitutional Court, Plenary Chamber, C-297, 2016, p.18).

Strong arguments precede and stand as a support for the hermeneutical conception for the situation described in previous lines. Having detected the condition of special vulnerability that she went through at the time of the events of *Ella*, today undoubtedly a victim and, since elements of judgment have been attached to the action that would lay bare the sexual, economic, psychological abuse, and more than what has been said to have been the one submitted, the profuse arguments expressed here stand as the axiological foundation that must resist without fear the construction of judicial decisions issued as precautions in favor of a person who demanded reinforced state protection, where the importance of gender ideology lies.

4.2.1. The importance of a critical gender vision

There are powerful reasons to assert the existence of the transgression of Ella's fundamental rights, in particular because she was subjected to a devastating revictimization, when she was often considered a bad mother and wife who does not attend to and revere her aggressor, so it would be wrong to forget this issue and pass by. On the basis of the right to truth, which in turn is constituted as a mechanism for reparation for victims (Escudero, 2016), and non-repetition for other bodies, the memory of vulnerability and the possibility of their case being studied in academia cannot be taken away from their memory and extracted from there, the analysis that the higher postulates derive from the categorization and materialization of a constitutional State.

Something to be specified is that vindicating the rights of the victim cannot be conceived as a kind of patent to fulminate prerogatives that arise as intangible conquests of those who endure a criminal reproach, this for the sake of the lofty notions of the defense; however, we are not dealing with a defendant today, so it is not possible to invoke the prevailing concepts of the accused. Validly, what is sought is to open a path towards a judicial hermeneutic with a perspective of balance, for the sake of truth, at least forgiveness and above all non-repetition for other women who live situations similar to those narrated.

It is not possible to preach a just society, an egalitarian society, respectful of human rights and ideologically democratic States if it is not part of the constructive and interpretative commitment of gender ideology, with application to every space of daily life and extensive through pedagogy to the whole of society, because it cannot be an elite issue. sullyng less favored classes and, it cannot be understood that it is exclusively for social classes without opportunities, since the scourge of violence against women does not differentiate.

4.3. Information and technology

In this section, it is sought to allude to the fact that it is not only enough to achieve theoretical compendiums that bring together lofty notions of differential categories and gender, but that it is essential to have the possibility of teaching and disseminating it with the help of technology, since, if technological advances and the acclaimed artificial intelligence do not have these tasks in mind, The world's progress in this area is also innocuous.

The sixtieth session of the Commission on the Status of Women, which was held in 2023, was a space where wills were sought to accelerate progress in gender equality for girls and women, as a lag of these with respect to men in terms of the effective use of technology can be observed. it is a capacity that interacts strongly with all other forms of discrimination, such as education and the loss of skills, and the reduction of personal autonomy. The possibility of being able to have access to a basic means of communication is already shown as an impediment to justice itself, just imagine from there everything else that can happen. In the same way, the Under-Secretary-General of the United Nations and Executive Director of UN Women Sima Bahous (2023) has demarcated it by coining the expression that the future of technology cannot be a future of inequality, which she complemented with:

Digital activism and the power of movements like #MeToo demonstrate, without a doubt, the influence of collective digital action in driving change. However, social media has also fostered gender-related disinformation, misinformation, online violence and sexist hate speech targeting women and LGBTQ+ people, human rights defenders, politicians and journalists around the world, and there are growing concerns that emerging AI technology could be used to promote such intolerable trends (para. 7).

Collective actions are therefore demanded that are linked to struggles that also occur in the field of gender and science and that must be marked from the codification of the media without sexism, to the use and easy access of technological tools that lead to the world of communications at the same time. Staging works such as software design from the perspective of gender, assisted reproduction technologies, the ethnography of technology design, cyberfeminisms and the construction of current technoculture, gender and innovation in small-scale agricultural production, are works that demonstrate a panorama that is barely close but valuable to the depth of the problems. The most telling approaches and methodologies today in technology and gender, especially in Latin and Ibero-American culture, since the approaches described provide a notion of achievements that are mixed with denunciations, setbacks and tasks to be fulfilled.⁵

It was a task to begin when *She* required all this knowledge and that it descended in understanding, but there are still actions to be taken, that is why the minimum contributions of this work.

5. A final reflection

As this is a space sought to achieve some reconciliation, it has been allowed to bring a story among those many that are known and others that lie in the oblivion of time, but that have left marks and burdens in many lives; however, it has been possible to extract and raise awareness of the seriousness of what happened in accordance with punitive law, and it is feasible to conclude that, since it is proper to criminology as a construction of social and cultural phenomena and State policies, some of the punishable acts identified in the corresponding section would not have been thought of at the time of the commission. Especially if the principle of legality is reviewed, but from another perspective, more tied to victimology, a victim can also claim their rights depending on where and when they were born, a geographical and chronological injustice with which they will always be burdened.

At the current level, gender advances are setting the tone in the world agendas and this allows us to understand the pedagogy of these issues, in order to generationally overthrow the burdens that were discussed in the relevant section. Technology cannot be set aside, if there is something that can contribute, it is the advanced thinking that rises in minds that clearly outline how digital and communication advances can lead a fight and thus pay the debt that pain and sadness have left.

⁵ It was only in the 1960s that people began to talk about the worrying absence of women in the scientific world. To learn more about the subject, see more in the article entitled Science, technology and gender. Current Approaches and Problems, published in the Ibero-American Journal of Science, Technology and Society.

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