

WOMEN'S MANIFESTO AGAINST VIOLENCE

Proposal for Changes in the Brazilian Penal Code

At a moment when the Executive Branch in Brazil is making a series of proposals to change the country's Penal Code, the Brazilian Women's Movement has united in an effort to adjust national legislation to the world's present-day values and needs and the principles written into our 1988 Constitution. After in-depth study and discussion, the Women's Movement hereby proposes the following changes in the Penal Code

1. To legalize abortion.
2. To consider sexual crimes as "crimes against individuals".
3. To broaden the definition of intercourse in rape to include oral and anal intercourse.
4. To create the legal concept of "sexual abuse".
5. To eliminate the following crimes: sexual possession by fraud; lewd behavior using seductive fraud; violent abduction or abduction through fraud; statutory abduction.
6. To eliminate the crime of adultery.
7. To create the legal concept of "family violence".
8. To create the legal concept of "sexual harassment".
9. To regulate reproductive technologies.

Proposals for Changes in the Penal Code

1. Legalization of abortion.

Current Brazilian legislation only allows for abortion in case of rape or if there is no other way to save the woman's life. Nevertheless, we know that some 3 to 4 million illegal abortions are practiced every year in Brazil, resulting in approximately 400 thousand deaths of pregnant women yearly. Middle- and upper-class women have safe, clean abortions in clandestine clinics, and as a result are not exposed to health risks. Meanwhile, poor women risk their very lives, delivering their bodies over to "abortionists", who have no health-care training and do not use proper aseptic techniques. Many poor women even perform abortions on themselves, either by using sharp objects that destroy their uteruses or by taking drugs with ominous side effects. We are aware that INAMPS, the Brazilian Federal health-care system, does thousands of curettages a year following improperly-performed abortions and spends millions of dollars on such surgical interventions. This proves that legal prohibition does not avoid abortions. Abortion must be seen as a public health issue and a right which must be ensured for women. Legalization of abortion has long been demanded by the Women's Movement, and its prohibition should thus be eliminated from the new Penal Code.

2. To consider sexual crimes as "crimes against individuals".

Under the prevailing Penal Code, sexual crimes are included in the chapter concerning "crimes against customs", which means that Brazilian legislation gets moral and religious aspects of sex mixed up with those related to freedom. Women and men are considered less important than social morals. Protection always focuses on society and the family and not on the individual/victim. Therefore, it is essential to transfer such acts to the chapter on "crimes against individuals", since we know that in rape or sexual abuse the victim is a person, a human being - whether a woman or man - and not society or the family.

3. To broaden the definition of intercourse in rape to include oral and anal intercourse (Article 213).

The proposal is to merge the crime of "rape" with that of "violent lewd behavior" and to broaden its meaning. According to the Penal Code at present, rape is "to force a woman into carnal conjugation through fraud or serious threat" and violent lewd behavior is "to use violence or serious threat to force someone to practice or permit to be practiced with him/her a libidinous act other than carnal conjugation." If the feminist proposal is approved, the article will read: "To force a person to have sexual intercourse, using violence or serious threat. Sentence: 6 to 10 years' imprisonment. Proviso: sexual intercourse includes vaginal, anal, and oral intercourse." This broadening of the concept of sexual intercourse is highly important and necessary, since in anal or oral coitus through violence, the victim is just as abused and humiliated as in vaginal coitus. Another innovation is to replace the word "woman" with "person". It is notoriously common for young boys and teenagers and even adult males to be raped anally or orally, and that it is now impossible to convict the perpetrator for such a crime, since prevailing legislation only considers it rape when practiced against women.

4. To create the legal concept of "sexual abuse".

The feminist proposal is to create a new concept for a crime called "sexual abuse", with the following wording: "To force someone to submit to an act of a libidinous nature, other than sexual intercourse. Sentence: one to six years' imprisonment." "The sentence will be increased by one-fourth if the crime has been committed jointly by two or more persons and by one-half if the

person convicted is an ancestor, adoptive father or mother, stepfather or stepmother, uncle or aunt, brother or sister, tutor, guardian, or employer of the victim or has any type of authority over her/him." This means to use force on any person, whether female or male, to practice an act for the purpose of pleasure related to sex without including sexual intercourse per se.

5. Elimination of the following crimes: sexual possession through fraud (Article 215), lewd behavior using fraud (Article 216); seduction (Article 217); violent abduction or abduction through fraud (Article 219); statutory abduction (Articles 220, 221, and 222).

These five crimes should be stricken from our Penal Code, since they are no longer in tune with modern morals in the world.

6. Elimination of adultery as a crime.

Adultery: betrayal, conjugal infidelity. In addition to being very difficult to prove, this accusation is now used very little, and even then it is usually against the woman, as an argument for "defense of honor" (the man's, that is). It should be considered an obsolete concept in our Legal Code. Therefore, the proposal is to eliminate it as a crime and foster mutual respect and consideration as the couple's duty.

7. To create the legal concept of "family violence".

According to Paragraph 8, Article 226, of the 1988 Constitution, "The state will ensure aid for individual members of families and establish measures to discourage violence in internal family relations." Based on this paragraph, a group of Congresswomen with advice from the CFEMEA and feminist attorneys submitted a bill (no. 3381/92) which acknowledges this kind of crime and establishes the respective penalties according to the following definitions:

Family violence: "A standard of conduct associated with abuse of power manifested by the use of physical force, psychological violence, sexual violence, intimidation, or persecution of a member of one's own family." In most cases this type of violence affects powerless members of the family, like women and weaker family members such as children, the elderly, and the sick, but there are also cases of violence against adult men.

Psychological violence: "Any conduct producing serious emotional damage and which is manifested in the following ways: threat, disgrace, discredit, or belittlement of personal value, unreasonable restriction of access to and use of common goods, blackmail, constant surveillance, restrictions of family emotional ties, destruction of objects valued by a family member, or any act intended to restrict personal freedom or development."

Psychological injury or damage: "Any assault on an individual's mental life, including her/his thoughts, feelings, desires, aspirations, achievements, and social conviviality, manifested in the form of paralyzing fear, a feeling of abandonment or despair, feelings of frustration and failure, insecurity and emotional dependency, precariousness, worthlessness, isolation, undermined self-esteem, or similar symptoms."

The proposal includes:

7.1 Rape by spouse or partner: It is common for the husband or partner to force a woman to have sexual intercourse against her will, alleging that he "has the right" and she "the obligation". This is a fallacy. Any sexual act against one's will can be considered violence, and thus crime. The proposal includes sexual intercourse using violence or serious threat - not just vaginal intercourse, but also anal and oral intercourse.

7.2 Incestuous rape: This is rape using authority deriving from family ties.

7.3 Incestuous sexual abuse: Use of authority to abuse a family member by acts aimed at sexual pleasure, other than sexual intercourse per se.

8 Establishment of the legal concept of "sexual harassment".

Sexual harassment can occur in any kind of environment, but it is most common in the workplace. Sexual harassment by employers is well-known. For centuries, bosses have been "making passes" at employees, especially adolescents and young women.

9. Regulation of reproductive technologies.

"Regulation of human reproduction in the laboratory", "surrogate motherhood", "in vitro fertilization", and "test-tube babies" are terms used to designate the legal concept of "regulation of reproductive technology". This area should be included in the future Penal Code, since it is a current reality in the world of medicine, and there has been little discussion about it in psychosocial and legal terms. It deserves reflection by the Women's Movement, since it concerns our intimacy and our bodies as women.

In addition to the above proposals, there are others referring to "battering", "corruption of minors", "trafficking of individuals", "Inducement to sterilization", and the elimination of the term "honest woman" as the only concept of womanhood ensuring the right to certain protective measures from the state. It is essential for such changes to be approved in order for women to achieve full citizenship in Brazil.