

The validity of women's witness in court cases of gender violence

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Abstract

In many cases of reports about gender violence abuses, the women's witness is not validated by the executive and judicial forces. This is fed by a patriarchal system which quite a few times minimizes the abuses, puts the victim's witness in doubt, and adds difficulty to the judicial process. A suspicion that the accusations may be false is so much commoner than the reality of false reports. That affects not only the women who dare to speak up, re-victimizing them, but also those who are thinking of reporting these situations.

Reasons for selecting this human rights issue

Only in 2023, there were 199,282 reports of gender violence to the authorities in Spain, and also there was a total of 54,157 judicial proceedings (General Council of the Judiciary of Spain, 2023). These statistics show violations of diverse human rights as attempt to their liberty, their physical and psychological integrity, and others. All of these rights are contemplated in the Universal Declarations of Human Rights (1948). Nevertheless, even that the judicial and executive powers in Spain condemn lots of gender violence cases, it also often takes the witness of those women who report a situation of violation of gender not conclusive, and these causes end being closed without a sentence to the aggressor. (Zurita, B., 2021) The acknowledgment of this situation causes lots of women not to speak up and creates unfair and vulnerable situations for them. That's why we decided to choose this topic.

A factual description of the issue

It's not a mystery that our society is built in a patriarchal system, and this causes lots of inequalities to the feminine gender. Lots of these inequalities we live every day with them, for example, a difference on the wages, where, in Spain, women get paid, on average, an 18.36% less than the men. (SEPE, 2021). A result of this patriarchy is the judicial system, which was built with that perspective.

This led to a proof-based system that focuses mostly on the medical proofs, which only constitutes one type of violence against women, the physical one. The difficulty of proving another type of violence “just” with the witness, is increased by the skepticism received first by the police, who take in the reports and process them, discouraging the victim to go to a trial, and also by the judges who lots of times try to make complex questions to the victims to make them contradict themselves and revictimizing them.

This puts the already vulnerable women in a worse situation of vulnerability, in fact, in 2023, over 19,500 women dropped their reports, which constitutes a 10.02% of the total (General Council of the Judiciary of Spain, 2023). The popular belief within the population that lots of these reports are false, also contribute to the fact that lots of women make false accusations and reports just to hurt the aggressor's reputation. In reality, nothing could be further from the truth. In the 2022, the State Attorney General's Office of Spain, did a report on gender violence where it was shown that “The average [of false reports] between 2009 and 2021 is 0.0084%”. Thus, we can see that it's a belief based on rumors.

Relevant legal articles

In this topic there's involved two main sources of legal articles: The Universal Declaration of Human Rights (1948) (from now on UDHR) and the Organic Law 1/2004, on Comprehensive Protection Measures against Gender Violence, reviewed and modified on 2022, of the Spanish legislation. (Head of State) (from now on CDMGV)

The first article of the UDHR that we would like to address is Article 3: "Everyone has the right to life, liberty and security of person." Which, in this case, women that suffer from the violence not only gender-based, also from the system, have their liberty and security at risk.

The second one is article 5: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." This refers to the degrading treatment or sometimes even considered mental or physical torture from their aggressors that women face.

On the third place, there is Article number 7: "All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination." In this case, the ones that violate these human rights are the judges who invalidate some of the witnesses for gender-based causes. This also relates to article 10: "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him."

Finally, article 22 states that: “Everyone, as a member of society, [...] is entitled to realization [...] of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.” These social rights are in danger when the situations spoken in this article occur.

The other law that applies in this human rights issue is from the law CDMGV, which, in the article 17 states: “All women victims of gender violence have guaranteed the rights recognized in this law, without discrimination in access to them.” This, in some cases, is not guaranteed by the police or the jury.

The article 18 states that: “Women victims of gender-based violence have the right to receive full information and counselling appropriate to their personal situation, without discrimination in access to them, through the services, bodies or offices that the public administrations may have available.” Focusing in this case on the second part, as it refers to equal access to information that sometimes does not match the reality.

Applicable ethical dilemmas

Nowadays, the testimonies of victims of gender violence are constantly questioned, as long as they are not backed up by physical evidence that clearly proves the facts stated in the complaint. There are cases in which this evidence is inconclusive, as sometimes much of the violence is psychological rather than physical, making it more difficult to prove.

This results in cases where the victim's testimony is the clearest evidence at trial, causing an ethical dilemma for the jury, as it is unclear whether a person should be convicted simply on the testimony of another when there is no physical evidence to prove it. But disbelieving this testimony could result in exonerating a person who has been perpetrating gender-based violence against another, using gender stereotypes such as women are exaggerators, it was probably a fight, it wasn't that bad, etc.

Sometimes the victim's testimony is called into question when the victim decides to file a complaint years later. This makes it more difficult to extract evidence, as the physical consequences of the act are mostly already healed. This leaves only a psychological assessment of the possible trauma, which in most cases is considered insufficient by the judge, who ends up leaving the accused free and the victim in a state of vulnerability after having relived the events suffered in the past and feeling helpless due to the lack of support from the laws of her country. In these cases, the ethical dilemma arises as to whether the protection of the aggressor's rights or the protection of the victim outweighs the need to protect the rights of the aggressor.

A potential solution and a critical evaluation

Over the years, legislation on gender violence has been evolving and increasingly protecting women. Although it is true that we live in a sexist society, this would be the first point to improve in order to reduce these cases.

If we started to educate in schools from an equalitarian point of view, if we stopped making comparative comments between men and women and if children saw that men and women are equal before the world and before the law, it would probably not be necessary to have a law to protect women who suffer this type of situation, as it would be reduced or eradicated.

Another point to improve with regard to this type of violence would be the laws and the judiciary. It is true that we have made progress, but there are still cases in which women's testimonies are called into question and sometimes the result of the judicial process is not entirely in accordance with the victim's expectations, establishing sentences that are less than expected or even once the aggressor begins to serve the sentence established, it is notably reduced, and he ends up serving less than half of what he was given. This causes great insecurity for women when it comes to reporting and probably greater security for men when it comes to carrying out this type of act, as they can see that the penalties they face are not so serious.

Therefore, although the laws against gender violence are constantly evolving and are providing greater security to all citizens, as long as we live in a patriarchal society these cases will continue to occur, so we must try to provide greater security for women, more support and shelter, and begin to end gender roles and stereotypes.

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