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**THE RIGHT TO SEXUALITY OF PERSONS WITH DISABILITIES AND  
DEVOTHEISM*****O DIREITO À SEXUALIDADE DAS PESSOAS COM DEFICIÊNCIA E O  
DEVOTEÍSMO*****SANDRA REGINA MARTINI**

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**ABSTRACT**

**Objective:** This research seeks to analyze the attraction behavior of people with disabilities in the offensive context, not as a pathology similar to paraphilias, but as a type of sexual violation, similar to harassment. Based on studies in the field of psychology, devoteism is the sexual attraction that people without disabilities feel for the other's disability and, in this work, we seek to observe the legal consequences of this behavior.

**Methodology:** in this article, the deductive method was used, with bibliographic and documentary research, analysing data from the IBGE Census and considering the perspective of paraphilic crimes under Brazilian law with a focus on specific criminal types for people with disabilities.

**Results:** as a result, we conclude that there is no penal type in Brazilian law similar to devoteism.

**Contributions:** The subject is of great relevance and can contribute to society with the development of public policies by the entities of the federation, including in the training of human beings, awareness raising actions, also promoting the education in minority human rights, in which rights are included people with disabilities.



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**Keywords:** Disabled people; Sexuality; Dignity of human person; Crime; Devoteism.

## RESUMO

**Objetivo:** esta pesquisa busca analisar o comportamento de atração por pessoas com deficiência no contexto ofensivo, não como uma patologia semelhante às parafilias, mas como um tipo de violação sexual semelhante à importunação. Baseada em estudos do campo da psicologia, o devotismo consiste na atração sexual que pessoas sem deficiência sentem pela deficiência do outro e, neste trabalho, buscamos observar as consequências jurídicas deste comportamento.

**Metodologia:** neste artigo foi utilizado o método dedutivo, com pesquisa bibliográfica e documental, analisando-se os dados do Censo IBGE e considerando a perspectiva de crimes parafilicos dentro das leis brasileiras com enfoque em tipos penais específicos para pessoas com deficiência.

**Resultados:** como resultados, concluímos que não há no ordenamento brasileiro tipo penal semelhante ao devotismo.

**Contribuições:** o assunto é de grande relevância e pode contribuir para a sociedade com o desenvolvimento de políticas públicas pelos entes da federação, incluindo na formação do ser humano ações de conscientização, fomentando, ainda, a educação em direitos humanos das minorias, no que se incluem os direitos das pessoas com deficiência.

**Palavras-chave:** Pessoas com Deficiência; Sexualidade; Dignidade da Pessoa Humana; Crime; Devotismo.

## 1 INTRODUCTION

During many years, many human behaviors were rejected and hidden for they were considered savage and inappropriate, but up to today, there is a stigma related to them, mainly when it comes to sexuality, and people with disabilities' sexuality, our study topic, the prejudice increases with intensity. Although the theme can be approached from a historical perspective in the following reflection we will analyze only the current period, and, most specifically the Brazilian reality.



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We know that the dignity of the human person is a right of modern society claimed in order to improve the quality of life for all people, with no distinction, and that the personality is a legal good belonging to all those born alive, unlike civilian capacity, which is the ability of taking decisions and being held responsible for them.

The three institutes are the base for the right to sexuality, with includes not only the sexual act, but the right to choose partners, constitute family, as full exercise of their wills, without distinction or prerequisites for such. Note that the disabled person already lives on the margins of society due to their own condition and the right to sexuality is understood as absent in these people, given that there is not always the discernment to make these choices as well as it is often repressed, containing the judgment that these people cannot exercise it. Despite these considerations, the most part of the disabilities that were investigated in our country do not affect the cognition or are acquired over time, and, so, not congenital.

In the current scenario, in which is observed we all have rights, in which we see a socio-legal evolution in rights for people with disabilities as well, the sexuality becomes fundamental for the insertion of people with disabilities in the society, decreasing the prejudice that there is and making these people recognized<sup>1</sup> as citizens. But on the other hand this is a hard task due to the practice of crimes that currently happen by the cybernetic environment, what undermines the investigation of crimes.

Although the crimes against sexual dignity (against the body itself), as are called the crimes that attack the sexuality and the sexual freedom itself, have a general prediction of penalty increase in specific cases, there is not a penal type that includes the violations whose victim is only the person's disability. Such practices became common also by the absence of responsabilization, which is the case of devotism<sup>2</sup>,

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<sup>1</sup> It is important the recognition of people with disabilities in the first place by themselves and then by the community in general, because as Honneth says (following the Hegelian theory): "...the recognition relationship imposes implicitly to the subjects reciprocal claims; which, in the first place occupies above everything in the recognition relationship of 'love' is the special function that will fit in the process of forming the self-awareness of a person under law." (HONNETH, 2009, p.79

<sup>2</sup> According to Limoncin et al. (2013), devotism is: Sexual attraction to disability (minor, such as missing fingers, or severe, such as blindness, limb amputation or quadriplegia) is known as devotism, and subjects who are specifically interested in and sexually aroused by people with disabilities call themselves devotees. They have two additional subgroups, including people who want to become



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expression that emerged on social networks to address the sexual fetish aimed at physical disabilities.

This study evaluates the need for criminalization of these situations showing that the same society that attacks is the one able to pacify<sup>3</sup>, based on the studies about paraphilic diseases, on the principle of the human person dignity, on the rights to personality and the free exercise of sexuality, as a reduction of inequality and stigmas surrounding people with disabilities.

## 2 THE DIGNITY OF THE HUMAN PERSON AND THE PEOPLE WITH DISABILITIES

It is well known that people with disabilities throughout history has suffered several stigmas. Because they are a marginalized population, up to today, there are those who doubt their capacity to exercise functions exercised by people with no difficulty, or even strange that they can carry out daily activities without major problems.

Notwithstanding, the Brazilian law had a similar behavior. An example of this was the 1984's trial from the Federal Court of Justice at the extraordinary resource nº 10.001-5/DF which decided that it was discriminatory the decision that made impossible for a person with total bilateral blindness, approved in a public exam of evidence and titles, to perform the position of Magistrate, since that person could not fully perform all the duties inherent to the position.

Not only the jurisprudence, but the ordinary legislation itself establishes discrimination to people with disabilities as the Law 8.112/90, in its article 5, paragraph 2, repeated in Decree nº 3.298/99, article 37, *caput*, which ensures the person with disabilities vacancy in federal public tenders as long as "compatible" with their

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amputees and refer to themselves as wannabes and able-bodied people who act as if they have a disability by using assistive devices (pretenders).

<sup>3</sup> Our perspective of studies is that we have concrete possibilities to change this situation, following the assumptions of Fraternal Law of Elgio Resta, we see that society is the place of ambivalences that at the same time can destroy and build, love and hate... according to the author: "essere uomini non corrisponde per niente ad avere umanità". RESTA, 2005. Page 21



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limitations which, if interpreted inappropriately, may be considered unconstitutional (ARAUJO; MAIA, 2016, p. 146).

Such treatments, in addition to suppressing rights, giving unduly unequal treatment, corroborates the cultural construction of the social invisibility of people with disabilities. The personality and recognition of this community as a subject of rights is a very recent achievement, as are the rights of groups that are in inequality. It is in this context that the law can present itself as an agent of social transformation or as the maintainer of a certain order<sup>4</sup>.

The discussion among the philosophers about the human person dignity, according to Campello and Silveira (2010, s.p.), is ancient in the western, being that, with the christian thinking, was developed the “notion of personal dignity assigned to each individual. In the philosophy of São Tomás de Aquino, this is the lesson that ‘dignity is inherent to man, as species’”.

Kant (s.d., s.p.) already said that:

(...) the man, and in general all rational beings, are as an end in itself, not only as means, from which this or that will can dispose of your talent; but, in all your acts, both those who refer to himself and those who refer to other rational beings, he must always be considered at the same time as end. (...) the rational beings are not ends simply subjective, whose existence, as effect of our activity, has value for us; they are objective ends, that is, things whose existence is an end in itself, and just such an end that cannot be replaced by any other, and at the service of which subjective ends should be put simply as means, since without it nothing can be done. find endowed with absolute value

Although ancient the definition, even today it is discussed by anthropologists and sociologists, in a way that is difficult to find a delimitation that embraces the greatness of the expression. Etymologically, ‘dignity’ comes from latin *dignitatem*, from italian *degnità*, from french *dignité*, from spanish *dignidad*, meaning decorum, nobility, composure, respectability” (BUENO, 1963, p. 1018).

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<sup>4</sup> The role of law and its relationship with society is increasingly discussed, precisely because of the ambivalence it presents. On the subject, we return to Eugen Ehrlich, who, concerned with all the legal positivism, leads us to think of Legal Dogmatics as a theoretical knowledge that needs practice: “El jurista no crea Derecho, sino que tiene que encontrarlo...toda decisión judicial puede generar el reconocimiento de un nuevo principio jurídico. EHRlich, 2005. pg. 59



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Fábio Konder Comparato says that the first principle of all ethic is that the human being exists as an end in itself and not only as a mean from which the will can serve to its desire and adds that:

The person's dignity does not consist only in the fact of being it, differently from things, a being considered and treated, in itself, as an end in itself and never as a mean for the achievement of a certain result. It results also in the fact that, by its rational desire, only the person lives in condition of autonomy, this is, as a being able of guiding itself by the laws that he himself edits. Hence it follows, as the philosopher pointed out, that every man has \_dignity and not a \_price, as things (2003, p. 15).

However, there is a dichotomy between theory and practice, as human beings are not always considered worthy of being the subject of such a Fundamental Principle provided for in our legal system in Art. 1, III, of the Federal Constitution. It should be noted that dignity also involves the recognition of the person and the community, that is, it is necessary that the disabled person is recognized in his identity to recognize himself as a person worthy of rights and, as Honneth (2005) is in the struggle for the recognition that we have an important moral force to boost social development.

Based on the assumption that dignity is a foundation of our Republic, we must pay attention, therefore, to the applicability of these premises, since they are essential to the good consolidation of Brazilian society. In such a way, minorities are not always among the priorities of public administrators and legislators, even though, nowadays, a lot has been done to welcome them.

It is interesting to highlight that people with disabilities, despite being in the group called minorities, correspond to about 24% of the Brazilian population, according to data from the last population census conducted by the Brazilian Institute of Geography and Statistics (BIGE) in 2010 (2012, p. 73). This differentiation is only due to the fact that the struggle for space that is the right of people with disabilities, as subjects of rights, took on an international *corpus* with the advent of the Universal Declaration of Human Rights (1948), which included them in its preamble and in its text on several occasions, although to this day there is an absence of rights, guarantees and public policies that expand their quality of life.



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The disabled person has all the rights already guaranteed to all other people, from their protection as an unborn child, education, health, voting, housing, among others. However, not all rights can be exercised freely, due to the absence of norms that regulate it or even due to prejudice, because their skills are underestimated, what we call capacitism<sup>5</sup>; on the other hand, due to the lack of effectiveness of the rules that already exist and are in force. The current challenge is how to guarantee and ensure what we constitutionalized in 88 and move forward in the elaboration of specific legislation.

It is worth to highlight that the dignity is an inherent feature to any human being<sup>6</sup>, considered a fundamental and universal principle. Legal personality is the institute that allows the exercise of rights from birth with life in our legal system, according to Gagliano and Pamplona Filho (2012, p. 108) and is not to be confused with the civil capacity contained in art. 1st of the Brazilian Civil Code. The ability of people with disabilities is sometimes impaired, as it is inherent to various types of disabilities such as intellectual disability, for example, requiring that these people have their wishes represented by a tutor or curator to demand them.

The Rio Grande do Sul Court of Justice, in a recent decision, confirmed that the trustee exclusively affects acts related to patrimonial and business rights, and its extension to other acts of civil life is not possible, which includes the right to sexuality, see:

CIVIL APPEAL. TRUSTEE. INTERDICTION ACTION. SUBMISSION TO THE TRUSTEE WHICH ONLY AFFECTS ACTS RELATING TO RIGHTS OF PATRIMONIAL AND BUSINESS NATURE. IMPOSSIBILITY OF EXTENSION TO OTHER ACTS OF CIVIL LIFE. According to art. 85 of Law No. 13,146 / 2015, which establishes the Brazilian Law for the Inclusion of Persons with Disabilities (Statute for Persons with Disabilities),? The trustee will only affect acts related to patrimonial and business rights? the extension of the trustee to other acts of civil life. Although marriage is allowed, the eventual celebration

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<sup>5</sup> According to Campbell (2001, p. 44), capacitism (ableism), is defined as: "a network of beliefs, processes and practices that produces a particular type of understanding of oneself and the body (body pattern), projecting a typical pattern of the species and, therefore, essential and totally human. The disability for the capacitist is a diminished state of the human being.

<sup>6</sup> In relation to the concept of dignity Honneth, he warns that: "... a person can only feel valuable when he knows he is recognized in accomplishments that he just does not share indistinctly like everyone else." ( 2005, p. 204)





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of a prenuptial agreement will always depend on the assistance of a trustee, as it is an act of patrimonial disposition, which is extracted from the combined reading of articles 1,772 and 1,782 of the BCC. Therefore, the intended extension of the curatorial decree, as the appellant wants, in order to reach all acts of civil life, related to political rights, marriage, testament, sexuality, driving a motor vehicle, among others, is unreasonable. the restriction / reservation of the law itself. (...) (TJ-RS - AC: 70081457095 RS, Rapporteur: Luiz Felipe Brasil Santos, Judgment Date: 11/7/2019, Eighth Civil Chamber, Publication Date: 11/26/2019)

Another important international diploma that advanced a lot in the equality of people with disabilities was the Declaration on the Rights of People with Disabilities, when the old term was still used, but which was only ratified by Brazil in 2007, after the International Convention on People with Disabilities' Rights, which took place in New York. The purpose of the Declaration "is to promote, protect and ensure the full and equitable exercise of all human rights and fundamental freedoms by all persons with disabilities and to promote respect for their inherent dignity (Art. 1º, UN, 1975, p. 21)."

The Declaration further establishes in its art. 1st that:

People with disabilities are those who have long-term physical, mental, intellectual or sensory impairments, which, in interaction with various barriers, can obstruct their full and effective participation in society on equal terms with others

The United Nations Convention on the Rights of Persons with Disabilities has established an internationally viable social and legal base for addressing human rights violations among this public. According to a study published in 2011 by the medical journal *The Lancet*, which was carried out with people with disabilities in several countries in the world with low and medium population income, questioning what were the most common human rights violations, with data from different countries, in their most Africans and the Middle East, concluded that sexual rape is among the most practiced attitudes, let's see:

PANEL 3 - Most common human rights violations, as described by respondents, sorted by decreasing frequency: - Exclusion, marginalization and discrimination in the community; -Denial or restriction of employment rights and opportunities; - Physical abuse / violence; -Inability to access effective mental health services; - Violence / sexual abuse; - Arbitrary



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detention; - Denial of opportunities for marriage / right to found a family; - Lack of means to enable people to live independently in the community; - Denial of access to general medical / health services; -Financial exploitation. (DREW et al., 2011, p. 1666, our translation)<sup>7</sup>

The study shows that people with disabilities have severe difficulties in exercising their dignity, not only in our country, but worldwide. This does not mean that we will always maintain this situation, on the contrary: it is exactly in global society that we can seek joint ways of changing the current and dramatic situation, the recognition of this great global social conflict is an important step for these people who are not completely adapted to the conventional medium, having difficulties in expressing themselves, moving around and making their opinions known, factors that give rise to the violations mentioned here.

It is noted that these people are denied basic rights, such as support for mental and physical health, issues that are still under discussion. The labor issue is an excellent example of a tool for the exercise of dignity, it provides people with disabilities with social interaction, contribution to the economy at all levels, works on issues of self-esteem because the employee feels useful, among many other advantages.

We can list many violations in addition to those cited by the study, but, however, this article aims to address the violation that hovers in the social interaction of people with disabilities, their right to have a family, choose partners and, especially, their right to exercise of their sexuality, which is still very stigmatized. Although this violation in the list presented is not among the first, this is a very important social problem that has been little discussed, in the shadow of the feminist cause and the autonomy of people in general in a community.

The ideal of a right to sexuality and its full practice is still a distant reality and that, despite all the advances that have been occurring in this sense, needs to be

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<sup>7</sup>Panel 3: Most common human rights violations as described by respondents, sorted by descending frequency: \*Exclusion, marginalisation, and discrimination in the Community; \* Denial or restriction of employment rights and opportunities; \* Physical abuse/violence; \*Inability to access effective mental health services; \* Sexual abuse/violence; \* Arbitrary detention; \* Denial of opportunities for marriage/right to found a Family; \*Lack of means to enable people to live independently in the Community; \*Denial of access to general health/medical services; \*Financial exploitation.



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constantly pursued, as taught by Rios: "it is necessary to develop a" democratic right to sexuality " , that is, an examination, from the perspective of human rights and fundamental constitutional rights, of the different legal norms whose scope of protection is attentive to the various manifestations of human sexuality. (2006, p. 4)", regardless of the perspective of the person who wishes to carry it out.

### **3 THE SEXUALITY OF PEOPLE WITH DISABILITIES**

With the advent of the Civil Code in 2002, the personality started to have a definition that encompasses not only the person's physical body, but also everything related to it, such as dignity, honor and image. Just as dignity is an intrinsic quality of the human person, personality has similar characteristics, such as unavailability, imprescriptibility, untenability, vitality, among others (GAGLIANO; PAMPLONA FILHO, 2012, p. 164).

Civil capacity is not a prerequisite to the choice of exercising sexuality, nor of conventional people, perhaps people with disabilities, because it is a question of dignity, going far beyond the carnal act, passing through social interaction, happiness, quality of life, among other social and even more, cultural issues. In this case the institute limits a person's judgment and, for this reason, there are exceptions to the exercise of this right provided for by law.

Disability already differentiates people, either because it is apparent or because it gives the impression that they need care, greater attention than others demand. This inequality alone already segregates the disabled community, as we saw earlier, but some other factors still influence the relationship in society, such as gender, skin color, sexual orientation, physiognomy, etc.

Based on the premise that, in Brazil, only 1.4% of the population has a mental or intellectual disability that possibly affects their civil capacity, according to the IBGE Census in 2010 (2012, p. 76), the necessary cognition to manage acts and wills in relation to civil life, including sexuality, do not affect other people with disabilities.



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Therefore, this right must be exercised, as part of his personality, that is, inherent to his dignity as a human being, his fulfillment as a person and citizen.

Even because according to ARAUJO and MAIA:

[...] the realization of equality involves the need to identify differences and their consequences, in order to lead the operator of the Law (be it the legislator, the administrator or the judge) on the path of promoting the inclusion of everyone in society, on equal opportunities (2016, p. 138)

After all, as Ghislene, Lucas and Santos put it, the relentless pursuit of equality does not seem a viable alternative because it ends up showing the differences themselves:

Equality, as it was established and is still reproduced today, fulfills only the cruel objective of hiding chaos, disorder and diversity, traits that precisely translate the luminescence of each human experience, which is so unique and precisely for that reason, so rich. Equality, in those terms, takes difference as a negative attribute, reducing it to smaller forms, when in reality our identity is swallowed up by difference (DELEUZE, 1988), so that existing is enough to be in the condition of being different. (GHISLENI; LUCAS; SANTOS, 2020, p. 21)

Thus, the importance of looking carefully at this need of people with disabilities lies not only in the individuality of each person, but also in the instruction about all the consequences of exercising this right, whether they are concrete and related to conventional problems, such as pregnancy in adolescence, or abstract, like the duties of a marriage, for example.

Having overcome these discussions about equality and civil capacity, it remains for us to analyze the factors that encompass sexuality. The personality determines preferences based on the values and experiences that the person acquires throughout his personal trajectory and this concept is also sculpted in this sense.

Based on Freud's theoretical framework, the neuropsychiatrist Paulo Bearzoti defines sexuality as:

[...] instinctive vital energy directed towards pleasure, subject to quantitative and qualitative variations, linked to homeostasis, affectivity, social



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relationships, the stages of the development of infant libido, eroticism, genitality, sexual intercourse, procreation and sublimation. (1994, p. 117)

Although the Brazilian legal system does not allow the disposition of our own bodies in some situations, sexuality and the sexual act are legal assets protected by the State that can also be exercised by people with disabilities, so that, being a victim of any abuse, appropriate measures must be taken. The Brazilian Penal Code brings in its Title VI a list of crimes against sexual freedom, from rape to the exposure of sexual intimacy, with different types that apply to these cases.

Sexuality is an important factor in human development and even Freud mentions that the expression does not include only the genital, also because of its premise that every human act has a meaning. Thus, we note that:

It is sexuality that makes a man have a history. If a man's sexual history offers the key to his life, it is because in man's sexuality his way of being is projected about the world, that is, about time and about other men (MERLEAU-PONTY, 1999, p. 219).

Another study that combined empirical data and theoretical references, with extremely interesting results, was carried out with people between 22 and 54 years old, visually impaired, in Brazil, and concluded, among other relevant information, that although many people with disabilities abandon their desires for fear to relate, it remains, and has a meaning similar to what happens to ordinary people, let's see:

The statements reveal equality of thought about the importance of sexual intercourse and the appreciation of that moment in intimate life. However, some speeches revealed differences as to when to perform the sexual act, before or after marriage (it is interesting to note that the participants that referred to the sexual act after marriage are both young and adult individuals). There is a great similarity in the way of thinking about sexuality between the visually impaired and ordinary people. That is, everyone considers sexual intercourse to be important in a loving relationship. They consider that there needs to be interaction, affection, trust, etc. Camilla Bezerra (2007, p. 03), affirms that "people with disabilities have no special need in relation to sex that others do not have". But it is clear that the individual beliefs of each one, will direct the moment and the circumstance in which this sexual activity will happen. (BURTETT; PEREIRA; CASTELÃO, 2011, p. 7)



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In such a way, the weight of sexuality is evident in the development of the dignity of the person with a disability, who feels needs of this nature like any other person, but sometimes, he does not fully exercise his will, for fear of prejudice or for feeling inferior, only for believing that your difference is a major factor in relating.

This oppressive scenario in relation to the sexuality of people with disabilities has everything to do with what is defended by Michel Foucault regarding the recognition of the Victorian bourgeois era as a symbol of the repression and interdiction of sex. In this era, according to the Author, bourgeois morality brought sexuality into the bosom of the heterosexual conjugal family, legitimizing it through the reproductive function, imposed as a model and discourse of truth. Forms of repression of sexuality function as ways of interdiction, non-existence and silencing of sexual practices considered illegitimate, considering that these do not correspond to the heterosexual model of the reproductive conjugal family (1988).

Thus, it was certainly far from this bourgeois ideal to have a couple in which one of the subjects, or both, presented any type of physical problem. As Foucault (1988) shows, in the West a sexual science was formed that produces discourses of truth about sexuality, and it is up to the medical field to enunciate these truths. There is an oppression of sex and practices considered deviant from the norm by discourses that establish relations of power / knowledge. Species associated with sexual practices and individuals are characterized by medical discourse as pathological cases or anomalies. This leads us to conclude that the disabilities, according to this discourse, enter exclusively into the list of diseases, never in a context of sexual empowerment, for example.

Regarding the constitution of a family, the Statute of Persons with Disabilities in our country accepted what was established in the Declaration on the Rights of Persons with Disabilities ratified by Decrees nº 186/2008 and 6949/2009. Art. 23 requires states parties to take effective measures to eliminate discrimination in relation to marriage, family, parenting and relationships.

It is evident that the person with a disability is still very stigmatized, as a being who is not a subject of rights and who does not have wills, regardless of his own opinion. They are human beings perfectly capable of expressing themselves, acting



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and bearing the consequences of their attitudes, but in terms of sexuality, family and government education are lacking to clarify any doubts and provide an effective sex education, including to avoid related crimes.

This is an issue that deserves the concern of the public authorities, since educational and information campaigns are not promoted, or even bills to avoid or punish more severely people who see in the other's disability an object for their own pleasure, regardless of consent.

In addition to all the questions about acceptance and prejudice, the disadvantage as a more fragile person hangs over the disabled person; not in the sense of disability, but in the sense of being a potential target for violations. Our Penal Code foresees in many articles the aggravating crime committed against children and adolescents or people who cannot express their will and do not have the discernment to do so, but, on the other hand, does not foresee any crime about the violation motivated by disability.

As we have seen, in the universe of people with disabilities in our country, a small portion of the population is, at first, unable to express their will and has no civilian capacity in their actions. Among people who can exercise their sexuality, it should be noted that not everyone has some congenital disability, which should also be taken into account when analyzing this scenario, in light of previous experiences.

Again, it is worth mentioning that sexuality cannot be provided only to a certain group, let's see:

In other words, "the right to sexuality cannot be exhausted in the protection of identity, whatever group it is" (RIOS, 2007, p. 22), which means weaving a right to sexuality that escapes from predefined labels and sexual practices. After all, rigid sectarian classifications, based on sexual distinctions, reinforce machismo and compulsory heteronormativity in current law, negatively impacting the lives of sexual, erotic and aesthetic minorities, a situation that will be analyzed subsequently from the here called "limit situations". (GHISLENI; LUCAS; SANTOS, 2020, p. 23)

The issue of sexuality and the dignity of people with disabilities go hand in hand, representing an important discussion that has come a long way, although we are still at the beginning of this process. We will now study some consequences of the



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lack of this protection and regulation faced by the community, based on the criminal types that attack sexual dignity in the national legal system.

#### **4 THE CRIMES AGAINST SEXUAL DIGNITY AND THE PROTECTION OF PEOPLE WITH DISABILITIES**

According to Proton (2017, sp), “at the beginning of civilization, with the absence of man's moral and mental evolution, his libido was satisfied through an almost animalistic brutality, without limits” and, little by little, humanity transformed this almost animal sexual behavior to a behavior based on affection. Regarding the sexuality of people with disabilities, according to the author, several myths have emerged<sup>8</sup> throughout history, leaving the margin for discussions and denying them rights and guarantees of sexual freedom.

However, the sexual education of people with disabilities is precarious and there are still severe difficulties in accepting the exercise of their sexuality. As subjects of rights, these people are also the target of several violations, both those provided for the Brazilian Penal Code and specific violations of their privacy.

We know that sexual preferences are now more accepted, some more, some less, depending on the context in which they are inserted. The sexual act can be based

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8 According to Maia and Ribeiro (2010), “The myths about sexuality and disability refer to the ideas, discourses, beliefs, untruths, which are ideological and which exist to maintain and reproduce the relationships of domination over one another. This is not about anthropological myths cited as a language used by different cultures to explain the phenomena of nature and the world (HIGHWATER, 1992; NUNES FILHO, 1994; FURLANI, 2003), but myths as an expression that identifies the set of prejudiced and limited ideas; in general, beliefs reproduced without foundation, only based on precepts or preconceptions and attributed to a specific group in a certain condition”. For these records, four are the myths that deal with prejudiced and limiting conceptions for the full expression of human sexuality: myth 1. People with disabilities are asexual: they have no sexual feelings, thoughts and needs; myth 2. People with disabilities are hypersexual: their desires are uncontrollable and exacerbated. Explicit sexual expression for those with disabilities is a perversion; myth 3. People with disabilities are unattractive, undesirable and unable to win a loving partner and maintain a stable relationship of love and sexual relationship; myth 4. People with disabilities are unable to enjoy normal sex that is spontaneous and involves penetration followed by orgasm, so they are people who always have sexual dysfunctions related to the desire, excitation and orgasm.





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on infinite possibilities based on different types of pleasure, which must always be practiced with the consent of those involved.

One of the practices, which in some cases is considered personality disorder, is paraphilia<sup>9</sup>, the most common being the sexual preference for people with disabilities, mostly physical, which gained adherents mainly through the digital medium, given the ease of remaining anonymous or the shame for the approach.

Paraphilia, by the very etymology of the word, refers to the "para" of parallel, next to, "philia" of love to, attachment to. Therefore, in order to establish a Paraphilia, it is implicit the recognition of what is conventional (statistically normal) to, then, detect what would be "beside" that conventional. (BALLONE, 2005). That is, paraphilia is the term used to define people who have unconventional sexual preferences and attraction and force the partner to fill them:

It is understood, therefore, that paraphiliacs may be attracted to objects, animals, people or situations and their excitement will be due to their presence or use. The study done by the MSD states that paraphilia can start in childhood or adolescence, but it is when entering adult life that it, in fact, becomes defined and more elaborate. Thus, it is over the years of adulthood that these anomalous behaviors can both be minimized and can last the rest of an individual's life. Having different sexual behaviors, which do not fit into a socially established "standard", as long as it is with the consent of the partner or partners involved, is considered normal, it is not a sexual deviation that can be considered paraphilia. However, when you start to demand that your partner perform certain sexual acts without his consent or use an object that harms them or causes them anguish and interferes with their ability to perform functions, it is possible to observe that that sexual behavior has no affection or reciprocity, it can be considered that there is a paraphilic disorder. (SILVA et al., 2020, p. 4)

Of course, not every preference comes to hurt the intimacy of whoever is approached and people who have paraphilia do not always consume their fetish, whatever it may be. However, in this regard, people with disabilities are often harassed and there is no protection in the legal system for their dignity in this regard.

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<sup>9</sup> According to Brown (2019, s.p.), paraphilias "are frequent, intense and sexually stimulating fantasies or behaviors that involve inanimate objects, children or adults without consent, or the suffering or humiliation of themselves or their partner. **Paraphilic disorders** are paraphilias that cause distress or problems with the performance of functions of the person with paraphilia or that harm or may harm another person "



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The object of this study, devotism, under the legal panorama, does not have in-depth studies in the area, although its offensive character is notorious, since the profiles of those looking for a disability above the person who has it, are mostly unpleasant, hostile and cause extreme discomfort, especially for women.

The criminal types of rape (art. 213), sexual rape through fraud (art. 215), sexual harassment (art. 215-A), sexual insistence (art. 216-A) and exposure of sexual intimacy (art. 216- B), mediation to serve the lust of others (art. 227) and crimes related to prostitution (arts. 228, 229, 230) do not provide for any aggravating subtype when carried out against people with disabilities in general, but only in relation to mental disability, differently from what happens to women and minors, except for the general provision of art. 234-A, all of the Penal Code.

It is healthy to mention that the Law for Inclusion of Persons with Disabilities in articles 6, item II; 8th; 18, items VI and VII; and yet, 85, §1º affirms that the disability does not affect the ability to exercise sexual rights, which even generated a doctrinal discussion if there would be a conflict of rules with the presumption of vulnerability of the mentally disabled constant in the incriminating criminal type of art. 217-of the Penal Code.

However, this discussion was overcome because the effects of disability must be proportional to the exact measure of the absence of discernment, so that the subject's autonomy is not obstructed, under a protective pretext, but also that it is not abandoned, unprotected, while it needs this protective cloak of the law (MENEZES, 2016).

In this sense, the Court of Justice of Rio Grande do Sul:

CRIMINAL APPEAL. VULNERABLE RAPE. MODERATE MENTAL RETARDER VICTIM. 1. The materiality of the denounced fact and the authorship of the defendant are confirmed with certainty in the procedural notebook, in which the victim, with a moderate mental retardation, confirms that sexual relations with the defendant have been maintained. The victim is consistent and uniform in her reports in the police and judicial phases, with no relevant contradictions regarding the accusation nucleus. The defendant's denial as to the authorship of the fact, on the other hand, remained isolated in the evidential context. 2. It is necessary to preserve the dignity of the person with a disability, under the terms of Law No. 13,146 / 2015. **The right to sexuality of people with disabilities cannot lead to their abandonment of their own luck, allowing them to become victims of sexual violence.** 3. In



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view of the victim's diagnosis of moderate mental retardation (ICD10 F71.1) and considering the peculiarities of the case, especially the trust earned by the defendant in the family, it is necessary to recognize that the victim did not have the necessary conditions to assess the situation proposed by his own aunt's partner. 4. In this case, the major of art. 226, inc. II, from CPB, because it is not narrated or described in the complaint, nor was it ... the object of the procedurality sculpted in art. 384 of the CPP, ipso facto implying a formal violation of the principle of accusatory correlation. As if this were not enough, it was not proven in the file that the defendant had authority over the victim. Thus, the accusatory claim that sought the incidence of this major was disregarded. 5. The definitive prison sentence is reduced, due to the decrease in the level of increase due to criminal continuity to the legal minimum, due to the uncertainty about the number of times the facts occurred. Initial closed regime maintained to serve the sentence. 6. Finally, the defendant's precautionary detention will also be maintained, with the determination to rectify his provisional PEC and his right to (own) retraction recognized when the final execution of his sentence is recognized. MINISTERIAL APPEAL IMPROVED. DEFENSIVE APPEAL PARTIALLY PROVIDED. M / AC 7.697 - S 28.02.2018 - P 09 (TJ-RS - ACR: 70075829895 RS, Rapporteur: Aymoré Roque Pottes de Mello, Judgment Date: 28/02/2018, Sixth Criminal Chamber, Publication Date: Diário da Justice of the day 05/03/2018) – bold

Therefore, the objective of the Inclusion law is to preserve, as much as possible, the autonomy of the disabled, respecting the limitations of the specific case. The rule is that the trustee only reaches patrimonial relations, therefore, the trustee must not interfere in existential relations, thus preserving the autonomy and dignity of the trustee (FIUZA, 2015).

It is noteworthy that the Statute, given the recognition of sexual rights for people with disabilities, made it clear that such people are also subject to the desires, aspirations, wills and needs typical of other human beings, opening society's eyes to this reality (SANTOS, 2017).

It should be noted that the current jurisprudence has been analyzing cases based on the right of persons with disabilities to their sexuality, based on the Statute of Persons with Disabilities, as noted in a recent decision by the Superior Justice Tribunal:

APPRAISAL IN SPECIAL APPEAL No. 1,545,476 - MS (2019 / 0215994-0) REPORTER: MINISTER JORGE MUSSI. AGRAVANTE: PUBLIC MINISTRY OF THE STATE OF MATO GROSSO DO SUL. AGGRAVATED: A DA S E (...) It should be added that art. 6 of Law no. 11,146 / 2015 provides that: Disability does not affect a person's full civil capacity, including for: I - getting married and forming a stable union; H - to exercise sexual and reproductive rights (...). **The Statute of the Person with Disabilities clarifies that the**



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**main objective of the norm is to remove the issue that involves people with special needs from the exclusive orbit of the person's incapacity to that of social inclusion, until even with regard to their sexuality.** In casu, even if there was a carnal conjunction, the evidence in the file shows that Stephany had the necessary discernment to consent to the act, exercising her right to sexual freedom, so much so that she wrote notes saying that he wanted to relate to the defendant and even revealed in audience that the alleged meeting in the library had been previously agreed. [...] Depending on the analysis of the case file, it appears that the Court established two grounds to justify the absolution of the aggravated: (i) absence of reliable evidence of authorship to issue the condemnatory decree; and (ii) the victim had the necessary discernment to consent to the practice of the a to. For its part, the Public Prosecutor's Office only argues in the reasons for the special appeal the absolute vulnerability of the intellectually disabled in relation to crimes against sexual dignity, failing to challenge the plea regarding the absence of reliable evidence of authorship to issue the condemnatory decree. (...) (STJ - AREsp: 1545476 MS 2019 / 0215994-0, Rapporteur: Minister JORGE MUSSI, Publication Date: DJ 09/23/2019) - bolded.

However, along with the sexual freedom of people with disabilities, the protection of their vulnerability must go hand in hand, in addition to the prejudice of their own condition, it can also cumulate some other factors, such as being a woman, skin color, sexual orientation, social class, and when dealing with people with physical disabilities they are also targets of the practice of *devotee*<sup>10</sup>.

Limoncin et al. (2013), in a study based on profiles of paraphilic practices, suggested that this type of attraction would, at first, be an identity disorder, since there were volunteers in the research who wanted to become people with disabilities, only because of the pleasure to be them. The study also demonstrates that devotheism has pillars that converge with fetishism and sadism, although there are no other in-depth studies in the field of psychology, which led scientists to limit the analysis to only those people who had amputations.

The hypothesis of the analysis published in the journal Nature, further states that among the volunteers, the overwhelming majority considered themselves heterosexual and had previously had relationships with people without disabilities,

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10 According to Proton (2017), quoting Kronos (2010, p. 71), *devotee* means "one who has devotion or admiration. 'Men and women who, regardless of their sexual orientation, age, creed, race, origin, intellectual level, social economic level or physical condition, are attracted to people with disabilities. This attraction, in many cases, has a strong sexual nature'. Not all *devotees* deserve attention, but only those who feel physical attraction, paraphilic, which may possibly cause harm to others.



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which reinforces the paraphilia pattern, since there is an exclusive characteristic, emphasizing that the deficiency that caused greater attraction among the participants was related to amputations.

The practice of *devotees*, unlike other paraphilia practices, does not depend on consent, as it occurs only with the idolatry of a person's disability, that is, it is not possible for the victim to choose the aggressor to be his *devotee*, otherwise let's see:

The evils of a *devotee* devoid of respect and kindness are immense. There are reports on various websites of the physically disabled themselves regarding photographs published without authorization, offenses and humiliations, domestic violence (specifically women), the sadness of feeling an object, the melancholy for having their disability as an attraction and not the human being that is. We hardly face any report of sexual crime, but not because it does not exist, but because of the embarrassment that surrounds it. Paraphilics enter the virtual world and also in physical environments, such as rehabilitation centers, meetings, institutes for the disabled. They are often doctors, nurses, physiotherapists and family members. Some are subtle, others more aggressive and incisive, but the psycho-emotional and sometimes physical damage is immeasurable. Several times, due to lack of information, the victims believe it is simply harassment and succumb to it, and then they perceive themselves to be a sex offender, given the consequences suffered. (PRÓTON, 2018)

It is worthy to highlight that, even that it is not a new practice, in spite of the expression *devotee* which is new, what can be verified by the following excerpt from Montaigne's Essays:

In Italy, in a common proverb, they say that they do not know Venus in its perfect sweetness who did not lie with a lame woman. Fortune or some particular fact put these words in the mouth of the people for a long time; and this is said of both males and females. For the queen of the Amazons replied to the appointment that invited her to love, "the lame is the one who does it best". [...] For just because of the authority of the ancient and current use of this proverb, I once believed that I received more pleasure from a woman because she was deformed, which I put in the account of her graces." (2010, p. 505-506)

Even though this practice can be framed as rape of the vulnerable depending on the fragility of the person with a disability, it is essential that devotheism, as it is called, has a specific legal treatment, which, obviously has to be compatible with the freedom to exercise sexuality of people with disabilities, because it is not possible to know if the victim agrees with the admiration disguised as a fetish. In other words, it is



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proposed that devotheism is legally treated as a practice that does not see the disabled person as an end in itself, but as a mere means of obtaining pleasure.

This paraphilia resides in disability as a condition and not in the person who has it, so that characteristic is only for satisfying the sexual desire of those who idolize it, regardless of the human being who exists beyond it. In this universe there are still several situations to be taken into account, such as the sexual orientation of the devotee, who can also call himself homosexual, for example.

The contempt for the human person in these cases goes beyond the sexual act, injures dignity, freedom, sexuality, among many other circumstances. It is not just the violation of a person, but the exposure of causing pain, frustration, insecurity, which make the person with a disability throb, in addition to their own condition, with weaknesses and vulnerabilities.

In order to ratify our understanding, it is worth rescuing another excerpt from the article by Ghisleni, Lucas and Santos:

In other words, in many cases there is no regulation to be made, which means that in this immense range of unconventional erotic practices, the absence of harm and the freely expressed consent are the only elements that the Law may be able to discuss. . Appropriating all nuances of sexuality requires an articulation between identity, politics, body and legal regime that absolutely escapes the reach of the discursive possibilities of the legal sciences. In fact, what we can conceive of as an erotic justice - and here, it is reiterated, involving only adults without vices of consent - will only be possible if the different signs and contents that each subject lends to his eroticity and to their pacts are left aside. (2020, p. 33)

The Civil Framework of the Internet (Law nº 12.965 / 2014) brought in its core principles similar to those discussed here, such as the protection of privacy and data and the accountability of any agents who commit crimes (Art. 3) taking advantage of the difficulty of track authors.

According to the theory of the democratic right to sexuality idealized by Rios, a solid basis is still needed that addresses the analysis of all fundamental rights linked to the issue, so that only then can the legal system fill the legislative gap that exists in these situations. (RIOS, 2006, p. 2). After all these studies, it would be possible to use



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legal regulation as an instrument to protect a responsible exercise of this individual subjectivity.

It should be noted that regardless of the social discussion that hangs in this taboo, the extreme need to urgently regulate new criminal practices, such as devotheism, was evidenced in this study, so that legislative omission can severely damage the life of a person with a disability, affecting their social relations and negatively impacting their entire trajectory.

As we have seen, even though *devotees* are also present in environments frequented by people with disabilities, their main shield is the cyber universe and, in such a way, this inhospitable scenario tends to worsen the exposure, let's see:

The consequences faced by the offended are immense and extend throughout the exposed person's life. After all, the release of the material in the cyber world is almost impossible to reverse; the speed of circulation of online materials is so great, as well as the network of people receiving this material, in addition to not being able to have an exact idea of the number of servers storing the file. Society also tends to blame the victim in order to facilitate the sharing of content and socially "lynch" it. The absence of specific typification tends to make the protection measures for the victim even more difficult, as, as seen, there are no proper and more effective mechanisms to mitigate as much as possible the inconvenience caused to the victim of criminal conduct. Standardization proposals are already in the Chamber, and even with the defects already presented, they bring benefits to the victims. (OLIVEIRA; PAULINO, 2016, p. 11)

Thus, the condition of vulnerability of the dignity of people with disabilities in our legal system remains evident, due to the absence of specific criminal types that deal with violations of their fundamental rights. It is also worth mentioning that the Brazilian Penal Code has a capacitist and conservative view, that is, it also believes that people with disabilities in general have difficulty in their cognition, when in most cases, there is only one physical disability perfectly adaptable to the environment and which in no way affects their civilian capacity.

The historical construction that people with disabilities are not able to manage their lives, choices and actions is another prejudice that this community faces, but that has been deconstructed over the past few years.



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Dignity should not belong only to those who understand it, but to all human beings because of their pure and simple human condition, as Hannah Arendt teaches us, when all humans are subject to rights, building a more just, altruistic, inclusive society. capable of more support and less judgment.

## 5 FINAL CONSIDERATIONS

Through this study we concluded that crimes against sexual dignity have different consequences and modalities, but all of them only address people with disabilities that affect cognition, without considering other practices that affect the dignity of people with other types of disabilities who are in situations of sexual vulnerability, such as people who have had amputations.

These people are targets of offenders who seek them out only to enjoy their disability, regardless of the person behind them, the so-called *devotees*. Devotheism is still little studied and explored around the world, but it already draws attention to the standards that these people build, since they even mutilate themselves to perform their lust, finding pleasure in these acts.

The Brazilian legal system does not accept this practice satisfactorily, which is why it concludes that there is a need to establish a specific criminal type for such an offense, leaving the field of generalization and adopting punitive measures to restrain the violation of people with disabilities' dignity and sexuality.

The penalty increase is not enough to protect the privacy, personality and sexual orientation of the person with a disability, as is the framework for the promotion of information and education, in addition to the specific legal provision of these abusive practices for people with disabilities, being extremely necessary an in-depth study in order to recognize the democratic right to sexuality, using Brazilian legislation as a tool to promote human rights.

Despite all the guarantees already implemented, the protection of intimacy and the exercise of sexuality by the disabled person as a subject of rights with civil capacity





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still suffers from profound prejudice, due to the capacitism built in relation to them, who are always associated with people who have no cognition and wills..

Brazilian legislation and jurisprudence are aimed at empowering people with disabilities to exercise their freedom in the most diverse aspects of their lives, including sexual ones. However, despite there being a legal concern to protect people with mental disabilities in the exercise of their sexuality, as described in the type of art. 217-A of the Penal Code, little or nothing is said about the vulnerability that people with other types of disabilities suffer in this aspect as well.

In view of these findings, it is clear that the matter deserves even more exploration, given the absence of in-depth discussions in the legal field. In the still capacitist universe in which we live, including also Brazilian legislation itself, defending the freedom and autonomy of people with disabilities is an immense difficulty, although we already have more than enough examples of material equality in practice.

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