

CRIMINAL LAW AND GENDER VIOLENCE: A REVIEW FOR LATIN AMERICA

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Abstract

A documentary review was carried out on the production and publication of research papers studying the variables *Criminal Law* and *Gender Violence*. The bibliometric analysis proposed in this document was to know the main characteristics of the volume of publications registered in the Scopus database during 2017-2021, identifying 19 publications at the Latin American level. The information provided by the said platform was organized using graphs and figures, categorizing the information by Year of Publication, Country of Origin, Area of Knowledge and Type of Publication. Once these characteristics were described, the position of different authors on the proposed topic was referenced through qualitative analysis. Among the main findings of this research, it is found that Brazil, with 9 publications, was the country with the highest scientific production registered in the name of authors affiliated with institutions of that country. The area of knowledge that made the most significant contribution to the construction of bibliographic material referring to the study of Criminal Law and Gender Violence was Social Sciences, with 11 published documents, and the type of

publication that was most used during the period mentioned above was the journal article, which represents 84% of the total scientific production.

Keywords: Criminal Law, Gender Violence, Latin America.

1. Introduction

Gender violence is any act that threatens a person's physical, mental, psychological and emotional health based on their sex or gender. It has been called Gender Violence to distinguish it from other types of violent manifestations since within this category are registered all those acts that are detrimental to the individual's physical and psychological integrity solely because of his or her sexual and gender condition. The basis of this type of violence is precisely the violation of fundamental rights based on the differences inherent in the gender assigned or with which the person identifies. For this reason, it has been a vital aspect in the generation of new knowledge about the consequences that are carried in terms of criminal law through the crimes and sentences to which there is placed, thanks to the identification of this conduct. Criminal law is then understood as follows:

“Criminal Law is the important branch of law responsible for establishing a compendium of penalties and punishments imposed on those who have committed a crime, which merits a conviction for the acts committed. Criminal law comprises a series of legal laws with the power to deprive liberties and ensure compliance with the penalties imposed. Moreover, criminal law dictates all types of sentences in situations that may negatively alter the order of life in society. If a person violates the civil code and the moral statutes imposed by the ethics and morals of the surrounding environment, he will be forced to pay for his infractions” (Taken from Definition of Criminal Law, 2015).

Therefore, the aim has been to criminalize all acts of violence based on the inequality rooted in a culture where male dominance has traditionally been defended by all state and non-state institutions, working hard on gender balance and equity. However, there are still many cases in which certain social groups are repressed because of their sexual condition. This does not mean that only the male gender is imposed with force against the opposite gender because although in smaller numbers, there are cases in which this type of violence is seen in the opposite direction to those mentioned above, so the concern of the authorities is to categorize each violent act without distinction of gender, seeking social justice. For Latin America, gender violence reveals exorbitant figures, which motivate the scientific community specialized in the field of law to generate new knowledge that allows more information to feed support networks to support complaints about this scourge. For this reason, this article seeks to describe the main characteristics of the compendium of publications indexed in the Scopus database related to the variables Gender Violence and Criminal Law, as well as the description of the position of certain authors affiliated with Latin American institutions, during the period between 2017 and 2021.

2. General Objective

To analyze from a bibliometric and bibliographic perspective, the production of research papers on the variables Criminal Law and Gender Violence was registered in Scopus during 2017-2021 by Latin American institutions.

3. Methodology

Quantitative analysis of the information provided by Scopus under a bibliometric approach on the scientific production regarding the study of Criminal Law and Gender Violence in Latin America is performed. Likewise, it is analyzed from a qualitative perspective, with examples of some research works published in the study mentioned above, from a bibliographic approach to describe the position of different authors on the proposed topic.

The search is performed through the tool provided by Scopus, and the parameters referenced in Figure 1 are established.

3.1 Methodological design



Figure 1. Methodological design

Source: Own elaboration

3.1.1 Phase 1: Data Collection

The data was collected from the Scopus web page search tool, through which 19 publications were identified. For this purpose, search filters were established consisting of:

- ✓ Published documents whose study variables are related to the study of Criminal Law and Gender Violence.
- ✓ Limited to Latin American countries.
- ✓ Without distinction of area of knowledge.
- ✓ Without distinction of type of publication.

3.1.2 Phase 2: Construction of analysis material

The information identified in the previous phase is organized. The classification will be made employing graphs, figures and tables based on data provided by Scopus.

- ✓ Word Co-occurrence.
- ✓ Year of publication.
- ✓ Country of origin of the publication.
- ✓ Knowledge area.
- ✓ Type of Publication.

3.1.3 Phase 3: Drafting conclusions and final document

After the analysis carried out in the previous phase, the study drafts the conclusions and prepares the final document.

4. Results

4.1 Co-occurrence of words

Figure 2 shows the co-occurrence of keywords within the publications identified in the Scopus database.

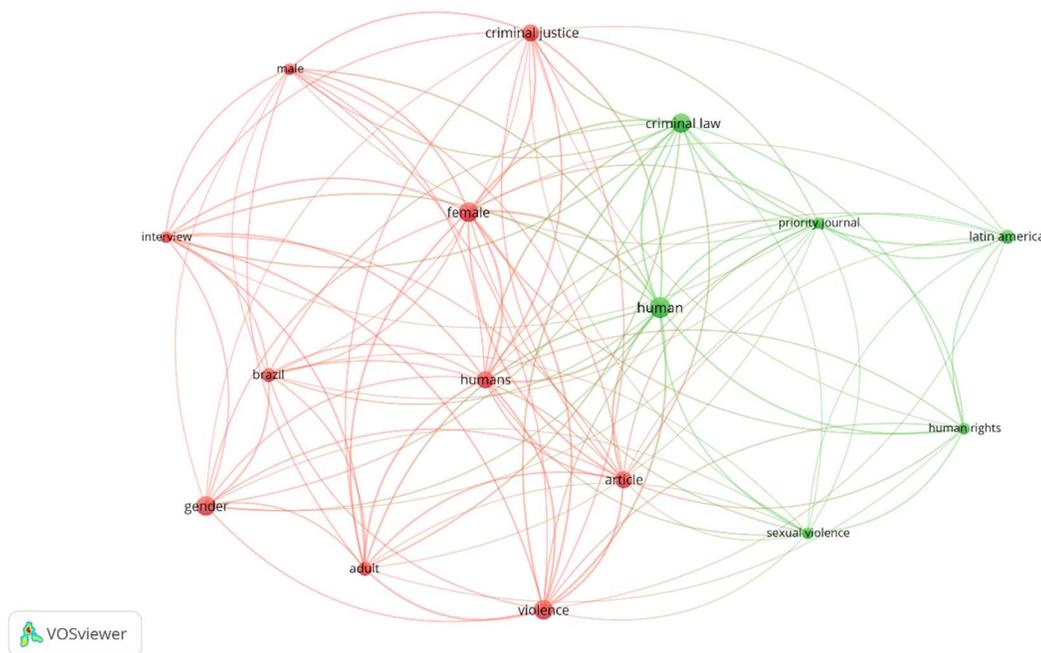


Figure 2. Cooccurrence of words

Source: Own elaboration (2022); based on data provided by Scopus.

Within the study of the research reported by the Scopus platform, referring to the variables of Criminal Law and Gender Violence, the object of this scientific debt, it is considered that exposing gender violence as a topic of discussion in the criminal field involves multiple interpretations, not only due to the analysis of human behavior but also to the diverse, broad and complex cultural approach where the such situation is present, talking about gender violence requires the multidisciplinary observance of knowledge. It is for this reason that through the interpretation of Figure 2, it is possible to determine as key words of the publications reported in Scopus, Human, Women and Criminal Justice, in attention to the marked inequality as a common denominator in the cases of domestic violence in the penal framework and other territories that as a function of absurd policies and religions with extreme approaches, women suffer abuse throughout their lives, justified precisely by ideologies and beliefs of socio-cultural types, which find support in theological theories and which point out the marked inequality towards the female gender. In this same sense and according to the graph interpreted, words such as Men, Criminal Law and Sexual Violence are recurrent in the works under analysis since, although it is true that a couple of decades ago, the world interest in defense of international human rights has turned, it has become necessary to establish policies that mitigate the atrocious figures that reflect gender violence in the world and exemplary penalties to men who through their conduct and actions attempt against the legal good of women's lives and their integrity.

Keywords such as *Latin America*, *Human Rights* and *Gender* are also present, given the marked tendency in

third-world countries that, due to their cultural roots, tend to commit crimes of this nature against women in large percentages. However, the problem is global and worrisome; atrocious facts are presented continuously. The transgression of human rights is palpable, and although there is a high interest in correcting such behaviors, the road is not simple. Therefore, it is required to restructure not only the institutionalized policies of each nation but to impart a collective awareness of this situation, leading to effective processes in the field of global criminal law.

4.2 Distribution of scientific production by year of publication.

Figure 3 shows how the scientific production is distributed according to the year of publication, taking into account the period from 2017 to 2021

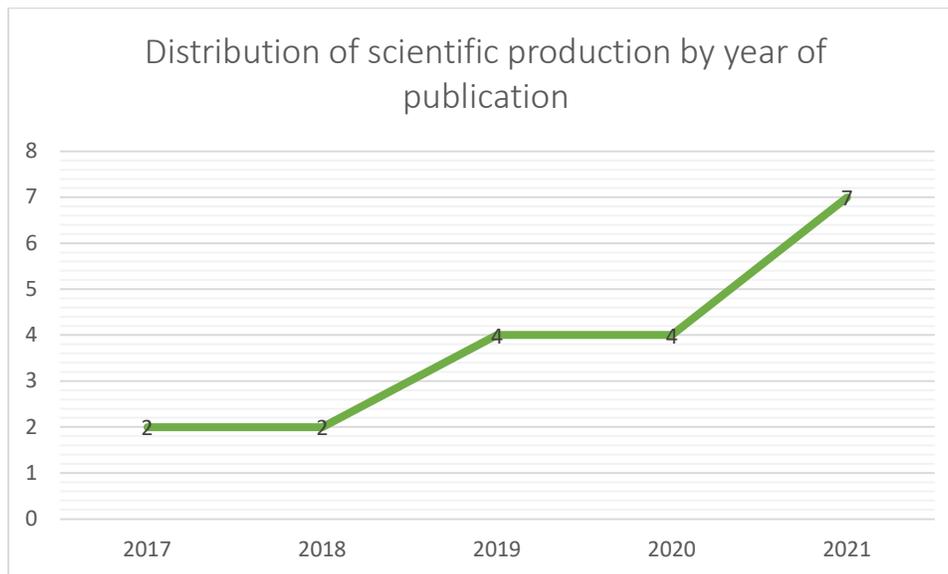


Figure 3. Distribution of scientific production by year of publication.

Source: Own elaboration (2022); based on data provided by Scopus.

Figure 3 shows the scientific production around the variables of Criminal Law and Gender Violence in the period between 2017 and 2022, where the increase in the volume of production in the year 2021 is evidenced, with a total of 7 publications related to the keywords, among which the article entitled “The gender defense: Some evidentiary problems in matters of self-defense” stands out (Ezurmendia et al., 2021). The scope of the study was an interesting perspective on criminal cases in which the woman victim of gender violence is accused of having committed self-defense against her victimizer. Therefore, this study was carried out with attention to a perspective of gender mainstreaming throughout the stages that make up the criminal process, from the materialization of the fact to the evaluation of the material evidence, the rules of exclusion and the evaluation of the same and the inference of determination of the unlawful and guilty conduct. Therefore, it was concluded that the analysis, study and inclusion of policies based on the feminist study are required to counteract the structural asymmetry of the penal system.

4.3 Distribution of scientific production by country of origin.

Figure 4 shows the distribution of scientific production according to the nationality of the authors.



Figure 4. Distribution of scientific production by country of origin.
Source: Own elaboration (2022); based on data provided by Scopus.

Brazil was the Latin American country with the highest number of publications registered in Scopus referring to the study of Criminal Law and Gender Violence during the period 2017-2021 with a total of 9 publications, followed by Chile with 5 registrations and Colombia with 4. Of the latter, the article entitled “Advances inequality from a gender perspective in Colombian constitutional law” stands out (Ibarra et al., 2021), whose objective was to analyze the development of the concepts of gender and gender identity in Colombian constitutional law and their impact on criminal law. The authors suggest the expansion of the term *gender* and the incorporation of *gender identity* in such a way that there is the possibility of criminalizing crimes against the transgender population that historically have been violated without the possibility of finding legal feasibility in charging the aggressors. This would open the door to the generation of precedents that feed the legal apparatus in that country.

At this point, it should be noted that the production of scientific publications, when classified by country of origin, presents a special characteristic, and that is the collaboration between authors with different affiliations to public and private institutions, and these institutions can be from the same country or different nationalities so that the production of an article co-authored by different authors from different countries of origin allows each of the countries to add up as a unit in the overall publications. This is best explained in Figure 4, which shows collaborative workflow from different countries.

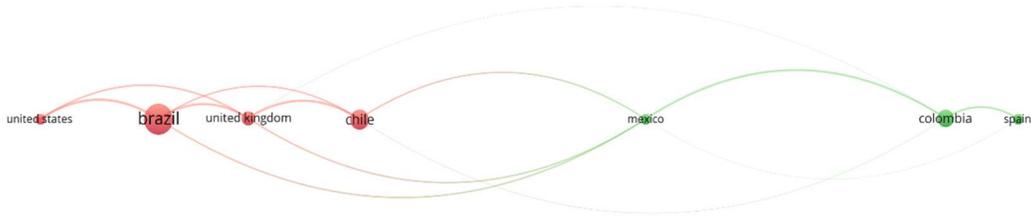


Figure 5. Co-citations between countries.

Source: Own elaboration (2022); based on data provided by Scopus.

Figure 5 shows how research is grouped according to international participation among authors affiliated with different Latin American institutions. There is outstanding participation among authors affiliated with institutions in Colombia, Mexico and Spain, as well as Brazil with authors from Chile and collaboration with researchers from the United States and the United Kingdom.

4.4 Distribution of scientific production by area of knowledge

Figure 5 shows how the production of scientific publications is distributed according to the area of knowledge through which the different research methodologies are executed.

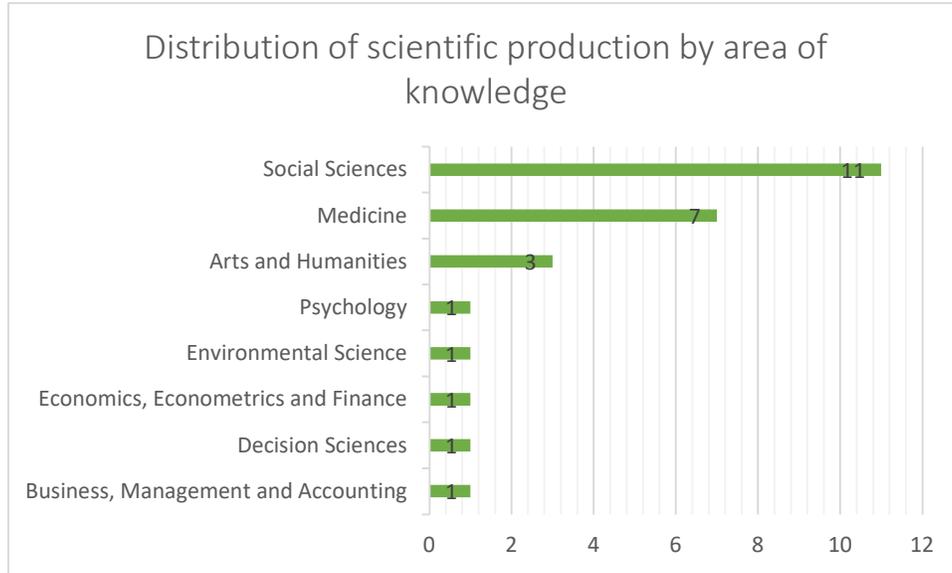


Figure 6. Distribution of scientific production by area of knowledge.

Source: Own elaboration (2022); based on data provided by Scopus.

Social Sciences was the area of knowledge with the highest number of publications registered in Scopus, with 11 documents that have based their methodologies on the impact that gender violence and criminal law have generated at different social levels. In the second place is Medicine, with 7 papers. The study of the effects on the physical health of the victims of this scourge can explain this. The analysis of the mental impact is reflected

in the only article registered by the area of Psychology entitled “Violence against women as discrimination in contexts of criminal violence: The case of femicide in Medellin and the State of Mexico” (Londoño & González, 2020), which explains how the rates of gender violence in countries such as Colombia and Mexico have represented a major social problem against women who have traditionally been mistreated and murdered because of their gender condition, hoping through studies such as the one presented, to integrate the gender perspective to criminal law, thus making the approach to evidence more flexible, allowing the introduction of contextual elements of gender violence.

4.5 Type of publication

Figure 7 shows how the bibliographic production is distributed according to the author’s chosen publication type.

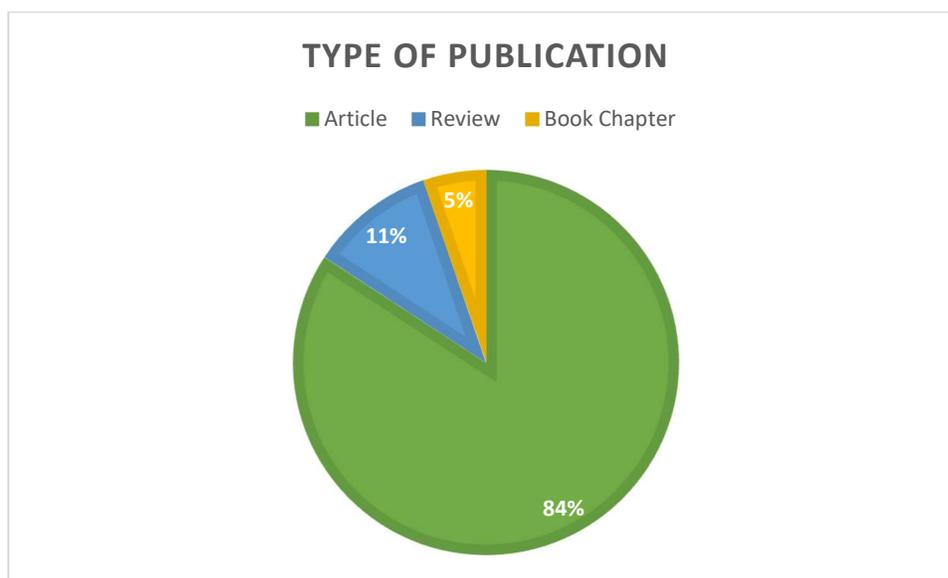


Figure 7. Type of publication

Source: Own elaboration (2022); based on data provided by Scopus.

The type of publication most frequently used by Latin American researchers was the Journal Article; 84% of the total scientific production corresponds to this document. In the second place, Reviews with 11% and Book Chapters with 5%. In this last category, the one entitled “Sexual crimes and transitional justice before the courts in Brazil: Accountability for crimes against humanity” stands out (Peluso & Paiva, 2019), whose objective was to examine the case of Inês Romeu, who interned in the Brazilian torture camp known as the “House of Death,” where she was tortured and raped. Several decades later, in December 2016, the Federal Public Prosecutor’s Office filed a criminal complaint against her rapist. However, on March 8, 2017, the judge rejected the complaint because the crimes would not be punishable by the application of the Amnesty Law and the statute of limitations. Critically analyzes the federal judge’s decision and confronts national jurisprudence international human rights law while exploring the process of incorporating sexual and gender-based violence into the transitional justice agenda.

5. Conclusions

Through the bibliometric analysis carried out in this research, it was possible to establish that Brazil was the country with the highest number of published records regarding the variables Criminal Law and Gender

Violence, with a total of 9 publications in the Scopus database during the period 2017-2021. Similarly, it was possible to establish that the application of theories framed in Social Sciences was the most frequently used in measuring the impact generated by violence based solely on sexual differences. It is important to note that most of the authors support the idea of strengthening the sentences imposed upon the verification of criminal acts such as those incurred through gender violence and that even this term is expanded to include in its definition and classification, the violence derived from hateful behavior towards the transgender community, who have also suffered for many years, harassment and violence because of their sexual condition. In this way, proponents of this idea seek to expand efforts in the categorization of criminal acts, as well as to toughen penalties and punishments. Latin America, as pointed out by the authors cited in this text, has historically presented high figures of gender violence justified by cultural roots and macho attitudes. However, it can be concluded that research related to the study of gender violence and criminal law is still scarce if one takes into account the number of cases that still occur in Latin American nations, so it is hoped that by identifying the main characteristics in the total scientific production reported in Scopus, It is hoped that by identifying the main characteristics in the total scientific production reported in Scopus, the scientific community will be encouraged to intensify efforts in the search for the generation of new knowledge about these variables and thus achieve greater theoretical support in the characterization of cases of this type of violence that facilitates the classification of the crimes committed and their respective penalties.

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