

11. Women's Rights as Patients

Ana Paula Cabral

Abstract: Each subject, as a patient, assumes the centrality of modern health systems. As a legal good, the protection of health has the dignity of a fundamental right, even if of social nature, materialized in measures of different nature, namely political and legislative. Therefore, each patient, as such, is a holder of a set of rights. Having analyzed the fundamental right to health protection, a set of patients' rights of universal dimension were identified. The specificities of women's rights as patients were analyzed, and it was concluded that there is a set of rights that women hold due not only to biological and reproductive particularities but also to the special social environment women live in. The possible connection between these rights and the principle of gender equality was analyzed, concluding that there is a bi-univocal relationship between both. It was also considered that the intervention of new digital technologies, including artificial intelligence, may contribute to guaranteeing the basic right of access to high-quality healthcare services, and also to gender equality.

1. Introduction

The issue of ill patients' rights assumes outlines of great relevance in today's health systems, with ill patients at its core. The focus of health systems in the so-called civilized world determines (or should determine) their development and characterization. Thus, the guarantee of ill patients' rights appears as an imposition of the good development of health systems, materializing the right to health protection, as a fundamental social right, common to the different legal systems of the States of old Europe, humanist nature, and other similar systems in the so-called developed and civilized world.

Ill patients' rights or, rather, their defense, is a path toward the realization of the fundamental right to health protection. The principle of equality, in all its dimensions, requires affirmation and effort toward the respective realization of the principle of gender equality. The link between the protection of ill patients' rights and this principle determines the consideration of whether there is any specificity of ill patients' rights or, at least, of some of them when they are conferred on women.

Thus, this study reflects on the defense of the latter as a means of contributing to gender equality. Notably, it only considers gender equality between men and women. Any reference to gender excludes any other dimension of the human gender. Moreover, by way of delimitation of the object of this work, this study only focuses on the rights of ill patients, excluding the approach to their corresponding duties. This methodological strategy delimits the object of reflection, which has nothing to do with forgetting or devaluing these duties, as the study recognizes their mandatory and necessary existence.

Note that the systematic use of the term "ill patient" instead of just patient, user, or client, among other possible designations is because not all users of healthcare facilities or patients are sick or ill. Although most of them are ill, sometimes patients are only seeking to prevent a disease for preventive health benefits, considering the broad sense of the word according to the concept defended by the World Health Organization (WHO).

2. General Framework of the Problem

As the ill patient is at the center of the health systems of the so-called civilized nations, the issue of the rights of healthcare users is of paramount importance. Accordingly, this study reflects such importance. Subordinated to the theme identified, it fundamentally aims for a transnational approach. However, in some respects, the study references the Portuguese legal framework, broadening, from there, the spectrum of the reflection.

The right to health protection is a fundamental social right, integrating different catalogs of fundamental rights of various legal systems. Notwithstanding its social nature, as it concerns the health of every individual, it is one of the most relevant rights. Consequently, it is one of the rights to which a Social State, such as the Portuguese State, must pay more attention. After all, the health of each person, considering the concept of health in a broad sense and following the WHO, which considers it as “a state of complete physical, mental and social well-being and not merely the absence of disease and infirmity” is, without a doubt, of immeasurable value for each individual. Further, the right to its protection is of extreme relevance for each individual and their society of residence in general.

As ill patients’ rights are an extension, a concretization of the right to health protection, the analysis and reflection on the latter is an inescapable and approachable consequence of that fundamental right. Given that the protection of ill patients’ rights should be a priority for health systems or that ill patients should be at the core of these systems, this study must note the new reality of Artificial Intelligence (AI) in all areas of life, with great emphasis on the health sector. This reality will certainly, in the short term, have a major impact on health in general and the rights of ill patients in particular.

Unfortunately, gender equality still does not exist in the 21st century. Thus, achieving gender equality and the empowerment of women and girls is recognized as the fifth objective of the sustainable development (SDG) goal of Agenda 2030 (United Nations 2015), where gender equality, more than a fundamental human right, is taken as a “necessary basis for a peaceful, prosperous and sustainable world” (United Nations 2015).

Despite the progress in gender equality in recent decades, the advances have not been sufficient. Indeed, recent years have seen a regression, partly because of events such as the pandemic, making it impossible to achieve the goal of gender equality by 2030.

The Sustainable Development Goals Report 2022 (SDGs 2022 Report) (United Nations 2022), reveals the state of implementation of the 2030 Agenda for Sustainable Development, using the latest data to make the most recent estimates in its approach. Accordingly, the data demonstrates the regression. Despite the ever-increasing intervention of women in the relentless struggle, equality remains non-existent. Thus, it is necessary to reinforce the adoption of measures to achieve gender equality of a political and legislative nature and raise the awareness of all, particularly women, such that they learn about their rights and are encouraged to win them.

As this research provides neither the forum nor the time to present the data that prove these assertions, it is limited to stating this reality and presenting its contributions to this cause regarding health. For example, the financing of certain healthcare services for women, which is not always conducted in an equal manner in the different healthcare “systems,” has, at least in some of these systems, in recent

years been undermined and even interrupted. Therefore, the rights of ill women, even when they are recognized, have not followed a linear path and have sometimes been violated as noted below.

This study begins by considering the rights of ill patients and outlining a general overview of these rights, drawing attention to the existence of some specificity when they are held by women. It endeavors to identify a common thread between them and their connection to the realization of a health policy for gender equality policy. It also identifies some specific rights of women.

Considering that the current reality is, without a shadow of a doubt, a period of change, transition, modification of life, and integration of individuals worldwide, at a global level, the study addresses the theme of the influence of technological evolution and digital transition, specifically AI in the rights of ill patients. AI is already present in our daily life. This presence is felt in several areas, and the level of its intervention is varied.

Sometimes visible, sometimes not so visible, the perspective is that this presence will be increasingly reinforced. As the health sector is among the areas where technology and the evolution of knowledge are felt most, AI appears as a field of application par excellence to improve the provision of healthcare and contribute to improving human health, preferably by prolonging life, with the best possible quality. Again, this intervention may affect the rights of ill patients and, consequently, the rights of ill women. For this reason, it is mandatory for this study to address it.

3. State of the Art

- (i) The right to health protection as a fundamental social right has already induced much discussion about fundamental rights. The rights granted to ill patients, increasingly considered to be at the core of health systems, have also been the subject of study. Gender equality is an issue that is important in academic circles, for women, and for human beings in general (Correia et al. 2021). It is a topic that is studied as much as the rights of ill patients. However, the study of the rights of ill patients from women's perspectives (i.e., the analysis of the rights of ill women patients and the specific rights of ill women) have not received the same attention.
- (ii) A literature review revealed examples of work on women's rights in states that ostensibly, according to the values advocated in Western democracies, do not recognize these rights, or, even if they do, often violate them. Most of the literature on women's rights, gender equality, and health focuses on the perspective of women as health professionals, mainly physicians, and the respective limitations to their professional development in the field of medicine and certain specific areas, such as surgery, with emphasis on certain types of surgeries (Cil and Easson 2018).

4. Objectives

This study analyzes the rights of ill women patients, their relationship with the principle of gender equality, and the possible current and foreseeable influence of AI. It subdivides these general objectives into specific objectives: identification of normative instruments of international scope on the rights of ill patients, women's rights, and gender equality; analysis of and reflection on these normative instruments;

consideration of the ethical implications of the rights in question and evidence of the connection between the defense of the rights of ill patients and women; and the contribution to the realization or reinforcement of the principle of gender equality.

5. Materials and Methods

Accordingly, to achieve the above-mentioned objectives, this study reviewed Portuguese and foreign bibliographies and national and international normative contents. It employed search engines and reference management programs, such as Mendeley, consulting reference databases, such as Pubmed and Scopus, and the Web of Science portal.

6. Development

6.1. *The Protection of Health as a Legal Asset Versus Ill Patients' Rights*

A prerequisite for the recognition of the rights of ill patients is the right to health, which in some legal systems, such as the Portuguese system, is a constitutional right (i.e., a fundamental social right). Regarding the protection of health as a legal asset at the international level, the Universal Declaration of Human Rights (UDHR), adopted and proclaimed by the General Assembly of the United Nations (resolution 217 A III) on 10 December 1948, already enshrined health. Article 25 affirms the right of every person to a standard of living, adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care, and necessary social services (de Oliveira et al. 2021; Cançado Trindade and González-Salzberg 2024; Gruskin 2019; Smith 2019).

Note that, throughout the UDHR text, equality is very much a constant. Starting with this statement in its preamble: “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world.” It expressly refers to equality between men and women when it states that “in the Charter, the peoples of the United Nations reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women.” Article 1 expressly stated that “All human beings are born free and equal in dignity and rights.” It continues in Article 2 that “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status.” Article 7 then states, “All are equal before the law and are entitled without any discrimination to equal protection of the law.”

Throughout the text, it is repeatedly stated that “Every human being” has the rights identified in the UDHR. That is, the principle of gender equality is a presupposition throughout the document. The Ottawa Charter for Health Promotion (“Ottawa Charter,” 1986) was approved at the first International Conference on Health Promotion, held on 21 November 1986. This document was intended to set out guidelines for achieving Health for All by the year 2000. The health concern, at a global level, somewhat became concrete in this document. Although the needs of the most industrialized States had determined relevant discussions, the promotion of Health is defended as a continuum, which should involve individuals and communities acting as organizations within themselves to develop their capacity to take control to improve their health (Taket 2019).

The goal was “to achieve a state of complete physical, mental and social well-being, the individual or group should be able to identify and fulfill their aspirations, satisfy their needs and modify or adapt to the environment.” Indeed, Rui Nunes (2022b) notes that the right to health protection should be universal. In this digital world, health must be global (Nunes 2022a). Therefore, this Charter consecrates Health in a “positive” sense, and its achievement does not depend only on the action of the health sector “*stricto sensu*” but involves all sectors of the economy, which should strive to promote it.

The Charter of Fundamental Rights of the European Union (European Parliament 2012), proclaimed in Nice on 7 December 2000, the right to the protection of health, enshrined in Article 35. It states that “Everyone has the right to preventive healthcare and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities.” (Rechel and McKee 2014; van de Gronden et al. 2011; Becchi and Mathis 2019). Health as a legal asset in some legal systems, as is the case in Portugal, deserves fundamental protection (i.e., the right that protects it is recognized as a fundamental social right) (Canotilho and Moreira 2007; Canotilho 2018). The guarantee of the fundamental right to health protection is a long-standing and constant task of the State, which is social in nature and whose citizens are requesting, or rather demanding, certain services following the last armed conflict on a global scale. The implementation of this right falls within the scope of its duties (de Andrade 2019).

Hence, some consider it to be a “mandate for continuous performance, in the constant fulfillment of the State’s duties in this area” (Monge 2019). Notwithstanding this positive dimension of the right to health protection, it also has a negative dimension. For instance, consider the words of Gomes Canotilho and Vital Moreira in the annotation of an article of the Portuguese Constitution (Canotilho and Moreira 2007): “The right to health protection has two aspects: a negative one, which consists of the right to demand that the State (or third parties) refrain from any act that is harmful to health; another, of a positive nature, which means the right to state measures and benefits aimed at the prevention and treatment of illnesses. In the first case, we are in the domain of traditional rights of defense, sharing the corresponding characteristics and legal regime; in the second case, we are dealing with a social right in the proper sense, with the corresponding constitutional configuration.”

Notably, regarding the characterization of the negative dimension of the right to health protection, its intrinsic connection with the principle of the dignity of humans (Monteiro and Nunes 2020) and corresponding autonomy is at the core of the Portuguese legal system of humanist and democratic nature, even the right to life and integrity (Miranda and Medeiros 2005).

It is worth emphasizing that the right to health protection is a social right, requiring realization by the State, “with a certain degree of normative binding force.”¹ This fundamental right and others of the same nature integrate legal norms that are binding, determining that the legislator carries out actions that embody its

¹ In the 1980s, the Portuguese Constitutional Court considered the right to health protection as a constitutional obligation of the State, a means of realization of a fundamental right “and not a vague and abstract line of action of a merely programmatic nature.” (Constitutional Court 1984, 1989).

exercise.² Assumedly, this right is common to all and translated into the enjoyment of the best state of physical, mental, and social health, presupposing the creation and development of economic, social, cultural, and environmental conditions and guaranteeing sufficient and healthy standards of living, work, and leisure.

This right implies a shared responsibility between individuals, society, and the state, covering access to health promotion, prevention, treatment and rehabilitation, long-term care, and palliative care during the course of one's life. It also recognizes the obligation of society to contribute to health protection, which entails action, not only at the level of health policy but across all policies and sectors of the economy.

6.2. *Ill Patients' Rights*

The defense of the aforementioned rights of ill patients is of the utmost relevance in health systems where the citizen or ill patient occupies a central place. Regardless of the strict enshrinement of ill patients' rights, the type and number of diplomas in any legal system, and their formulation, their recognition is general.

This study has identified a plurality of ill patients' charters of rights, hosted in different States and issued by international organizations and professional associations (Declaration of Lisbon on the Rights of the Patient by The World Medical Association (1981)) of ill patients, even having the status of a legislative act (Active Citizenship Network 2002).

These documents, although they vary in some respects, have in common, as a starting point, the affirmation of the human dignity of the ill patient, their autonomy, and their right to access healthcare, without discrimination and with justice. Indeed, this is an area where the traditional principles of bioethics have great application (Nunes 2017). Starting from the affirmation of the right to health protection, regarding the principles of autonomy, equality, non-discrimination, confidentiality, and privacy, this study identifies some rights we defend as being common to all ill patients, thus designating them as universal (Farrell and Dove 2023).

Notably, some of these rights may have to be reconciled with each other or may not be fully realized, given a *de facto* impossibility, such as the right to treatment innovation, regardless of the financial implications of such innovation. The realization of this right may have to be adjusted to the resources available. In line with the Convention on Human Rights and Biomedicine (Convention for the protection of human rights and dignity of the human being with regard to the application of biology and medicine: Convention on Human Rights and Biomedicine, 1997) of the Council of Europe (1997), it is necessary to reconcile health needs with the availability of resources and ensure "equitable access to appropriate quality health care" (Article 3).

In any case and under all circumstances, human dignity, identity, integrity, and other fundamental rights of each ill patient must be protected and guaranteed, even in the face of the thirst for knowledge and attempts to evolve, specifically in the field of medicine. Accordingly, this study proposes a Charter of Rights for ill patients, following a systematization that is, arguably, the most defensible.

² This is the case in the Portuguese legal system, such as Law no. 95/2019 of 4 September, in *Lei de Bases da Saúde* (Law establishing the Basis for Health), where its definition and the enunciation of ill persons' rights are provided, or Law no. 15/2014 of 21 March, where the legislator consolidated ill persons' rights scattered over various legal diplomas.

1. Right to information:
 - a. The right to access own health information without recourse to a health professional.
 - b. Right not to be informed.
 - c. The right to obtain information about waiting times for the healthcare needed.
 - d. The right to appropriate, objective, complete, and comprehensible information about own health status and foreseeable evolution, healthcare to be provided and/or delivered, possible treatments, their advantages and risks, and alternatives.
2. Right to privacy:
 - a. Right to the protection of personal data and privacy.
 - b. Right to confidentiality regarding personal data.
 - c. Right to confidentiality and secrecy about one's health situation, even after death, except, among descendants, to determine health risks.
3. Right to decide on the type of healthcare received and/or to be received:
 - a. Right to consent (and/or refuse consent) to healthcare.
 - b. Right to issue advance directives and/or appoint a healthcare proxy.
 - c. Right to choose the healthcare provider within the limitations of existing resources.
 - d. Right to participate in the decision-making processes regarding own health.
4. Right to participation:
 - a. Right of association to defend their rights, promote health, and prevent illness or other forms of participation.
 - b. The right to make suggestions, complaints, and claims regarding the provision of care.
5. The right to be accompanied in the provision of healthcare by a person of their choice.
6. Right of access to healthcare.
 - a. Right to adequate and personalized care.
 - b. Right to care in a medically acceptable time.
 - c. Right to care with dignity.
 - d. Right to care using the best scientific evidence.
 - e. Right to best practice care, quality, and safety.
 - f. Right to innovation in care, such as AI, following the best international standards.
7. Right to opt for and to receive religious assistance and refuse it.
8. Right to health education.

The noted rights of ill patients, some of which are asserted in absolute terms on a case-by-case basis, may have to be reconciled with the available resources. This study expresses an opinion only on the right to information and the right to decide on care. This option stemmed from the evidence of the connection of these rights to bioethical principles, such as the principle of autonomy. The right to information is justified by the need to know the situation involving the ill patient to allow for an

informed decision to be made regarding their health, as a subject with the capacity to self-determine.

Exceptionally, information may be withheld from an ill patient if the patient is firmly convinced its transmission could create a serious risk to health or even life. The principle of the autonomy of each individual, as one of the principles of bioethics (Nunes 2017), determines the consecration of the ill patient's right to only be the object of any care provision if the patient consents to it (except in legally prescribed situations, such as when the ill patient is not in a position to freely give consent) (Nunes 2014). Naturally, this right must not affect the situations established by law, which may justify, occasionally and exceptionally, the inexistence of this consent.

First, consent must be free. No individual may be forced to accept or refuse care. However, it should be noted that this consent presupposes its prior clarification. Consent can only be considered valid if its author is consciously aware of the consent. Moreover, given a right that constitutes a voluntary limitation to personality rights, which is a legal mechanism of generic protection of the personality, the consent of the respective holder may be withdrawn at any time. Nothing prevents the inherent consequences resulting from this action, such as the obligation to compensate for the damages resulting from the alteration of the person's will, embodied in the withdrawal of consent.

6.3. The Rights of Ill Women

Despite all the campaigns and efforts toward gender equality, empirically, it is evident that equality has not yet been achieved, even in the so-called civilized countries. The conviction from experience is confirmed by the evidence of statistical data.

Contributing to the necessary gender equality, numerous initiatives and projects are emerging. This study highlights, for its significance and importance, the proposal of the Universal Declaration of Gender Equality, signed by a team led by bioethics expert Professor Rui Nunes, and presented to the UNESCO National Commission.

In his words: "This project is born from the awareness that certain values emerge from equal opportunities and that all people, at birth, have the same dignity and the same fundamental rights."

The lack of gender equality, or rather the ostensible gender inequality in some environments, even in some so-called developed States (Cil and Easson 2018; Pucci et al. 2017), is such that the UN, in the "Transforming our World: 2030 Agenda for Sustainable Development" resolution, approved by world leaders at the summit on 25 September in New York, notes that gender equality is among the 17 goals to be achieved. This international document openly assumes the non-existence of gender equality and sets itself the goal of achieving it by 2030. Hence, the necessary measures must be taken to eliminate discrimination against women and all forms of violence against women.

Measures are also needed to value women's work, guarantee their full and effective participation in all sectors of activity, and ensure equal opportunities at all levels and in all decision-making areas. In the area of health, there is a need to ensure universal access to sexual and reproductive health and reproductive rights in conformity with the Program of Action of the International Conference on Population and Development and the Beijing Platform for Action, including the review conference documents (Lamačková 2008).

Reforms are needed to equalize women's rights to their economic resources and access to ownership of different types of property following their national legal order (Council of Europe 2020). The empowerment of women, advocated in Agenda 2030, largely depends on access to and use of technologies, especially information and communication technologies.

In summary, the 2030 Agenda foresees the need to adopt and strengthen legislative measures to promote gender equality and the empowerment of women. After mentioning the rights of ill patients and reflecting on some of them, it is important to consider the specific rights of ill women.

Undoubtedly, regarding the rights of ill patients in general, the formally pursued and affirmed objective is that of their defense in favor of human dignity. Every person (regardless of their gender) should have their rights guaranteed without discrimination. However, we would like to highlight some of these rights which, arguably, have specific characteristics when held by a woman.

First, consider the right to give or refuse consent to healthcare, the right to protection of personal data and privacy, the right to information about the healthcare provided or to be provided, and the right to be accompanied in health services. Regarding the right to give or refuse consent to the provision of healthcare, this issue satisfies the noted specificity. The fact is that their autonomy and right to self-determination can often be called into question regarding, for instance, care relating to their reproduction. The guarantee of autonomy or the power of self-determination for women, who have the right to give consent, duly clarified, to the provision of care or to refuse it, regardless of the indication of a third party other than the physician, constitutes a contribution to the realization of the principle of gender equality, which demonstrates the noted specificity.

Interference in the exercise of this right by a third party is much more likely to occur when it corresponds to a woman than to a man, especially when the person interfering is a man, even if he is the physician. Despite the legal imperative, in some environments, there remain those who do not consider equality between men and women to be a reality and give men the decision-making power in the family, especially regarding the woman with whom they form a family, either formally or in a non-marital partnership. This situation is certainly aggravated when the type of healthcare is related to the woman's ability to reproduce.

Women's right to reproduction, like the right to sexual health, is intrinsically linked to other human rights, such as "the right to life, the right not to be tortured, the right to health, the right to privacy, the right to education and the prohibition of discrimination" (United Nations 2014). Moreover, the Committee on Economic, Social and Cultural Rights and the Committee on the Elimination of Discrimination against Women have assumed, as obligations of the States, the duty to respect and protect the rights relative to the sexual and reproductive health of women.

Intrinsically linked to this is the right to information about the healthcare to be given or provided to the woman. The woman must be given all the necessary information, unless she does not want it or cannot receive it, to be properly informed such that she can consent to or refuse care. The specific nature of this right coincides with that of the right noted above.

Another right with specificity, when held by a woman, is the right to the protection of personal data and confidentiality of her private life. Arguably, despite the systematic formal affirmation of a gender equality status, women are often in a

more fragile situation than men. Proof of this situation is the frequency with which we hear news of ill women being taken advantage of by others, usually men, and sometimes health professionals in whom they legitimately confided. This situation is aggravated when, beyond being women, there is a cause for fragility such as age or advanced disease. Thus, guaranteeing the right to the protection of personal data and the privacy of the ill woman certainly contributes to gender equality.

Finally, as with the rights above, there are specificities in the right to accompaniment in health services when this right is held by a woman. The ill woman has the right to be accompanied in situations foreseen for any ill patient, as previously identified. However, there is a case that is exclusive to women: only a woman can be in a parturient condition.

From the principles in the Declaration of Lisbon on the Rights of the Patient (World Medical Association 1981), adopted by the 34th World Medical Assembly in Lisbon, Portugal in September–October 1981, amended in 1995, revised in 2005, and reaffirmed in 2015, there is the repeated affirmation of the denial of discrimination in the provision of healthcare.

In this document, the concern is with the affirmation of the prohibition of discrimination in the provision of healthcare to all people. No one can be discriminated against; thus, women cannot be discriminated against in the provision of healthcare. Consider, for example, the right to accompaniment, which should be recognized for ill patients in general, though not absolutely, becoming more specific when it is held by a woman.

This right takes on the dimension of exclusive entitlement of women when it comes to the accompaniment of pregnant women during childbirth. However, this right of the birthing woman also applies to the father of the unborn child. Even so, the woman's right not to be accompanied, if she so wishes, should be defended. This refusal can always be grounded, on a case-by-case basis, on medical advice. Even further, guaranteeing the realization of this right, in this negative dimension, contributes greatly to gender equality.

6.4. Human Rights, Ill Women's Rights, and Gender Equality

Clearly, human rights are embodied in various international documents and replicated in many legal systems at a global level, constituting an irreversible human achievement (Brill 2000, 2024).

One of the principles intrinsically linked to these rights is the principle of gender equality. The affirmation and defense of the above-mentioned rights and this principle do not prevent violations of these rights. However, there is already an awareness of the need for an evolution in the recognition of human rights, which should be seen from a gender perspective. In concrete terms, it is sufficient to affirm and defend the human rights of women, which should be translated into a new formulation of rights with its specificities (Askin and Koenig 2000).

Peters and Wolper (1995) argue that "traditional formulations of human rights are based on a male model applied to women, as an afterthought." Another criticism, among several, of women's specific human rights is that of Charlotte Bunch, who considers these human rights in a restricted formulation, arguing for the need to affirm the specific rights of women (Bunch and Carrillo 2015).

Some studies attest to the value of these positions, highlighting examples where the condition of an ill patient being a woman, by itself, determines the damage to her

health situation. This situation is the case regarding gender differences in the neurobiology of Alzheimer's disease that disadvantage women or, considering resilience in enduring pain, undermine diagnoses (i.e., depression and personality disorder).

As noted, the right of access to reproductive healthcare, as a right of the ill woman, is specific. The limitation of access to certain types of treatment, as is the case of artificial insemination, results in the violation of the right to access care with equity and, consequently, the violation of the principle of gender equality. That is, if ill women's rights are properly formulated, defended, and guaranteed, they contribute to realizing the principle of gender equality, guaranteeing the fundamental principle of equality.

Hence, some norms shape health systems, which are translated into restrictions instead of the expected creation of conditions of effective gender equality. This situation is because the affirmation of the rights of ill patients is made in a classic, traditional way, whose definition was based on the male model and not adapted, when necessary, to the specificities of the feminine gender.

Moreover, this lack of attention to the female gender in the ownership of rights as ill patients is often replicated with women when they are health professionals. However, this study will not comment on this aspect, as it is beyond the scope of this research.

Despite the recognition of some ill patients' rights, it is not uncommon to observe the violation of health rights, from a sexual and reproductive perspective, in different forms. On close examination (United Nations 2014), it is possible to list examples of the refusal of access to healthcare specific to women, provision of such care without the required level of quality, provision of care dependent on the authorization of third parties, the performance of procedures without their consent (e.g., forced sterilization, forced virginity tests and abortion), female genital mutilation, and even early marriage.

In fact, the violation of the rights of ill women is closely related to traditions and values that despise these rights in a society with patriarchal roots, which in many areas of the world has evolved little or not at all. In others, it only underwent an apparent evolution. These traditions and values jeopardize women's right to health and may have fatal consequences; they damage overall health, violating the principle of gender equality.

It is necessary to adopt solutions in the different health systems that consider the specificities implied by the gender difference in the right to health protection and the rights of ill patients, contributing to access to health, in a broad sense, for all, and, thus, to sustainable development (Hay et al. 2019). The European Union, in Horizon 2020, has considered gender equality as a priority.

Of particular relevance, regarding gender equity/equality in biomedicine at the European level, is the Council of Europe's commitment to gender integration (Goal 6 of the Gender Equality Strategy 2018–2023) and the Recommendation CM/Rec(2008)1 of the Committee of Ministers for Member States on the inclusion of gender differences in health policy (adopted in 2008), openly acknowledging the possibility of a link between gender inequalities and problems of access to healthcare.

Gender equality in all areas, but specifically in the health sector, is important for obtaining the best health, social, and economic results or gains (Shannon et al. 2019). However, it implies risks for health because, often, the defense of values in which this discrimination is translated and how it is practiced induce exposure to disease

because of different susceptibilities to the disease, the rooting of prejudices, and even obstacles to the evolution of science. Violence against a certain category of people (in this case, women) constitutes discrimination of this nature.

These types of discrimination primarily damage the health of those discriminated against, which can result, for example, in (increased) anxiety, damaging health in general. As noted, gender equality is a basic principle of the UDHR and has been reaffirmed as indispensable for a peaceful and sustainable world, essential for achieving health, social, and economic development.

The principle of gender equality is among the most relevant drivers of the defense of the right to health. The current recognition of the female gender in various areas of knowledge, such as science and medicine, translates as a contribution to gender equality and global health, drawing attention to future opportunities. Thus, beyond quantitative gender equality, it is important to strive for a cultural shift that embraces values such as transparency, integrity, impartiality, and justice. With the evolving landscape, more evidence is required to innovate and realize true gender equality for everyone, everywhere. Promoting gender equality is not simply instrumental to health and development. The impact has wide-ranging benefits, and is a matter of equity and social justice for all.

6.5. The Rights of Ill Patients and the Intervention of Artificial Intelligence

AI emerged in the last century, and, in the last few months, it has advanced so rapidly that it has become the subject of discussion. AI has caused a two-fold reaction: admiration with a desire for its realization and admiration with considerable fear. Unquestionable is this digital evolution of machines that, after being programmed by humans, machines are not limited to processing data with greater speed than humans; they can also learn.

If there is one area where technological evolution can be felt, it is the health area. Thus, the intervention of AI will most likely be impactful in the health sector (“Artificial Intelligence is the Future of Medicine, 2023 is a Standout Year”). The many examples of AI intervention in the health sector will surely multiply, with the emergence of ethical and legal implications. As far as the rights of ill patients are concerned, many changes are necessary (Healthcare Management 2023). An example is the right to make a complaint about a health service.

Admitting that this gives rise to an obligation and compensation and that the provision of care mentioned in the complaint was “operationalized” by an AI, a wide range of questions arise, and an equal number of answers may be offered.

No doubt the AI intervention will impact the rights of ill patients. Some of the impact will be positive. Hence, to avoid, or at least minimize, the negative impact that may eventually arise, it is necessary to regulate the situation as much as possible.

The European Union is already investing heavily in this direction, stating that it intends to play an important role in AI globally (European Commission 2021).

In fact, it is the author of the first AI regulatory document, the Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 (Council of the European Union, European Parliament 2024).

Each Member State, as is the case of Portugal, must address this at the national level. However, given the nature of the issues, regulatory intervention will only be effective if it is a transnational intervention. One among many legal problems to be resolved, in terms of AI intervention, is the emergence of the concept of

cyberpersonhood (Salmen and Wachowicz 2021; Filho 2018), as the dilution of the attribution of liability for actions carried out by AI is possible (Negri 2020; Morais and Santos 2024; Gupta 2024).

7. Conclusions

The protection of health as a legal asset in various legal systems has constitutional protection, consubstantiating, in the first line, a fundamental social right, beyond the protection conferred by other diplomas of ordinary nature. The realization of this right implies political, legislative, and administrative measures to be taken by individual states and at the global level.

Ill patients, as human beings with their own recognized dignity, are granted a plurality of rights—the rights of ill patients. Some of these rights, when conferred to women, have unique specificities. Others may only be exercised by women. The principle of gender equality emerges as the basis for guaranteeing the rights of ill women and the protection of their (overall) health; thus, their protection is imperative.

The intervention of AI in health, with necessary consequences for the rights of ill patients in general and regarding women's rights in particular, even if it needs maximum consideration and mandatory regulation, given the various ethical implications it entails, can contribute to gender equality, or its reinforcement, and improvement of global health.

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