



## Review article

# Domestic violence and the applicability of the Maria da Penha Law as a prevention of femicide

## *A violência doméstica e a aplicabilidade da Lei Maria da Penha como prevenção ao feminicídio*

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### Resumo

**Objetivo:** discutir como a lei n.º 11.340/2006 pode contribuir para diminuir os casos de violência doméstica contra as mulheres e feminicídios no Brasil. **Materiais e Métodos:** realizou-se uma breve análise histórica da violência contra a mulher, identificando diversas formas de violência e como o descumprimento das medidas protetivas determinadas por lei pode levar ao feminicídio. Para tanto, utilizou-se uma pesquisa descritiva, bibliográfica, reunindo informações acerca do tema proposto.

**Resultados:** o presente estudo demonstrou que ainda há aspectos a serem melhorados na efetividade da lei n.º 11.340/2006, como fiscalização, aplicação da pena, conscientização social, os quais, com os avanços das medidas públicas aplicadas, poderiam resultar na diminuição da violência contra a mulher.

**Conclusão:** os resultados possibilitaram uma reflexão sobre a importância das campanhas e conscientização para a prevenção da violência contra a mulher, enfatizando a necessidade de reforço para garantir eficácia e minimizar a incidência de feminicídios e violência doméstica.

**Palavras-chave:** Lei n.º 11.340/2006. Violência contra a mulher. Medidas protetivas. Conscientização social.

### Abstract

**Objective:** discussing how Law N. 11.340/2006 can contribute to reduce cases of domestic violence against women and femicides in Brazil. **Materials and Methods:** a brief historical analysis of violence against women was carried out, identifying various forms of violence and how non-compliance with protective measures determined by law can lead to femicide. A descriptive and bibliographical research was used to gather information on the proposed topic. **Results:** this study showed that there are still aspects to be improved in the effectiveness of Law N. 11.340/2006, such as monitoring, enforcement of penalties and social awareness, which, with the advances of the public measures applied, could result in a reduction in violence against women. **Conclusion:** the results allowed us to reflect on the importance of campaigns and awareness-raising to prevent violence against women, emphasizing the need for reinforcement to ensure effectiveness and minimize the incidence of femicides and domestic violence.

**Keywords:** Law N. 11.340/2006, Violence against women, Protective measures, Social awareness.

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## Introduction

Law N. 11.340, of August 7, 2006<sup>1</sup>, became known as Maria da Penha Law, in honor of Maria da Penha Maia Fernandes, who was left paraplegic after suffering two attempts of murder by her husband, who had his conviction only nineteen years later. However, he was imprisoned for only two years due to the lack of adequate laws, which shows the fragility of specific legislation aimed at protecting women. Thus, the Brazilian legislation implemented this law with the objectives of protecting women, eradicating violence in the family and rehabilitating the aggressor, aiming to achieve greater social harmony<sup>2</sup>. Despite the elaboration of laws and protective measures, countless women continue to suffer violence and death in their homes.

The Criminal Procedure Law introduced a qualification for femicide in the criminal type of homicide. This qualification increases the penalty of the individual who commits the crime, as a coercive element, aiming to prevent these mortalities<sup>3</sup>. The Maria da Penha Law, as well as the aggravating factors inserted in the same context were an achievement for society, because they made it possible to punish aggressors and emergency protection measures.

Femicide is defined as the murder of women simply because they are women. This goes back to the dark period of History, when women were subjugated by men, facing impunity and total inequality. They were not treated equally with men and legally considered not fully capable, sometimes confined to domestic tasks, marriage and complete subordination to homes<sup>4</sup>.

In the year 1830, under criminal law, it was considered an aggravating factor the impediment of defense by gender superiority. Art. 43 of the Penal Code of that time determined that the death penalty would not be applied to pregnant women, even if they deserved the punishment; but after forty days after childbirth, women could be judged. "In the pregnant woman, the death penalty shall not be carried out, nor shall she be judged if she deserves it, but forty days after the birth"<sup>5</sup>.

The importance of the above-mentioned aggravating factor lies in the intention to reduce and remedy the lack of existing punishment. What was previously considered a simple homicide has now been qualified, resulting in a more severe punishment. This reflects women's struggle for equality and social recognition, representing a significant victory.

On another side, about female sexuality, there was a concern to protect the reputation of the victim in rape crimes, especially virgin women, which amplified the concern for the safety of women. Thus, it is obvious that in the past what really mattered was the dishonor or act performed by the woman, not taking into consideration the crime she had suffered<sup>6</sup>.

At that time, women were evaluated according to their conduct, for example, the woman who had lost her virginity before marriage was considered unworthy and even inferior. Thus, victims of rape, in addition to losing what was considered their honor, were stigmatized as the scum of society<sup>7</sup>.

As demonstrated, the crimes committed against women led them to develop an emotional barrier of fear, preventing them from speaking out and claiming their rights, which over time made access to justice increasingly distant. The creation of laws, protective measures and public projects is contributing to break down this barrier, allowing women to recognize that it is now possible to protect them, although there is still room for improvement.

Moreover, over time, women have been gaining their rights. Inserted in society, they could start their studies and seek independence through work, even with access to the labor market, initially limited. Yet many continued to play their essential role as mothers, wives and caregivers of children<sup>6</sup>.

This insertion of women in society happened gradually and, even today, still faces a lower social rate than men, especially in the labor market, where companies prefer to hire men. The justifications of employers are often rude and insensitive, based on arguments such as maternity leave, concern for health during pregnancy, absence from work, breastfeeding period, in which the reduction of hours is seen as a detriment to the employer. These justifications show the persistence of a macho men society.

One of the major milestones in the struggle for equality was when women won the right to vote. In 1967, the Federal Constitution equalized men and women, providing for voting and conscription for both genders<sup>8</sup>. However, it was with the 1988 Constitution of the Federative Republic of Brazil (CRFB/88) that these rights were consolidated, by including the dignity of the human person as one of its main principles. This principle, applicable to all citizens, is evidenced in Art. 1, which declares: "The Federative Republic of Brazil, formed by the indissoluble union of the States and Municipalities and the Federal District, is constituted as a Democratic State of Law and has as its foundations: [...] III - the dignity of the human person; [...]"<sup>9</sup>.

The right to vote acquired by women was extremely important for the fight for equality, allowing them to fully exercise their citizenship. Previously, they felt like second-class citizens, however, with the release of the vote, they could elect their own representatives in politics. Over time, these representatives began to defend the rights and interests of women – which constitute a large portion of the electorate – who sought to elect representatives who supported them socially. Even with this great social advance, there were still numerous resistances to the granting of this right.

CRFB/88 also provided for the equality of rights between all citizens. In its Art. 5<sup>th</sup>, paragraph I, ensures that all are equal before the law, without any distinction, guaranteeing equality of rights and obligations between men and women. It also guarantees everyone the right to freedom, life, equality, security and property<sup>9</sup>.

Notwithstanding the provisions of equality between genders in the higher law, it is noted that this is not enough for women to occupy their rightful place in society. Often, they remain submissive to their fellow aggressors, perpetuating a cycle of fear and silence imposed by a macho

men culture. In this reality, men are placed at the top of the social pyramid, while women move away from social equality<sup>10</sup>.

It is necessary to break with this culture so that social rights really meet their objectives and have full effectiveness. From this perspective, domestic violence persists over time, encompassing all forms of violence that occurred in the family or domestic environment, involving an interpersonal relationship, in which the aggressor has or had a home-based living with the victim<sup>11</sup>.

In view of the above, it is notorious the fragility that the absence of regulation can bring. Thus, the Maria da Penha Law was created to combat domestic violence and femicide, accompanying the victim throughout the process and avoiding possible reprisals and violence from the aggressors, who are revolted when being denounced and arrested for their acts.

In this way, violence against women, which often ends in femicide, raises questions about the need to criminalize this specific homicide. This is the product of relations of inequality, submission, dependence and exclusion. In many homes, victims remain inert before the attacks, either because of fear and social anxiety or because of a lack of security to seek help from the judicial system, which makes them more vulnerable.

It remains to be considered that, in the course of the research carried out, a deficiency can be observed in the regulation and in the norms of the judiciary to judge and prosecute crimes related to violence against women effectively. This gap contributes to the fact that many women are dependent on society or voluntary shelters for their protection. For example, even if precautionary or protective measures are provided for in the legislation, the relaxation of these measures sometimes exposes the victim to the risk of greater violence by the aggressor, which can be vengeful. In these cases, besides the aggression, there is an imminent risk of femicide, making even more distant social and family harmony desired.

The number of women killed, despite the existence of the Maria da Penha law, has increased, as pointed out by surveys conducted by IBGE and the National Household Sample Survey (NHSS). Even with the enactment of the law, the number of cases in Brazil remains alarming, and ways to reduce violence and increase protection for women should be discussed<sup>12</sup>.

In this context, the objective of this study was to analyze how the Maria da Penha Law can contribute to reduce cases of violence against women and femicides in Brazil, given the great social relevance of knowledge and awareness about the said law. The authors of these crimes are to be reported as a way to prevent femicide and ensure the safety of women at risk.

## Materials and Methods

This is a descriptive research with a qualitative approach that incorporated elements of the exploratory research, which allowed the gathering of information about the thematization.

The present study used bibliographical research as a method, allowing "the survey, selection and documentation of all bibliographies already published in books, magazines, newspapers, newsletters, monographs, theses, dissertations, cartographic materials which led to a direct contact with multiple researches already carried out on the subject"<sup>13</sup>. Authors such as Porto (2007), Cabral (2008), Dazzi (2008), Bianchini (2013), Fernandes (2015), Waiselfisz (2015) and Nucci (2019) were the main contributors. Research was also done on the relevant legislation, such as law 11.340/2006, Law 13.104/2015 and the Constitutions of 1967 and 1988.

All research sources were published in Portuguese. Thus, an analytical reading with chickening was performed in the period from December 2020 to February 2021. Initially, the titles of the selected studies were examined, followed by abstracts and key words. Studies that did not satisfy the filter used, which required that the materials contain at least three of the terms: "domestic violence", "violence against women", "Maria da Penha Law", "Law N. 11.340/2006", "femicide", "protective measures".

The article structure presented an analysis of the main concepts about the subject, containing a brief historical and social analysis on the figure of women and the evolution of their rights. Next, the progress in the fight for gender equality and the challenges that are still preventing the full effectiveness of acquired rights was highlighted. It was concluded with notes of possible solutions for the problematization.

## Results

Brazilian society is structured around dominant relations, including the gender one, in which the male gender holds the power to command, protect, provide and decide, while the female is relegated, often, to the domestic chores, leading women not to reflect on this phenomenon and to subordinate themselves sexually, socially, economically and educationally<sup>10</sup>.

The Constitution in its Art. 5, paragraph I, as that "all are equal before the Law, without distinction of any nature"<sup>9</sup>. Already, the Art. N. 226 states that "The family, the basis of society, has special protection from the State"<sup>9</sup>. In its §5<sup>th</sup>, "The rights and duties concerning conjugal society are exercised equally by man and woman"<sup>9</sup>. These constitutional provisions emphasize the importance of equality that must be established between men and women, which allows the overcoming of the stigmatizing paradigm of women as fragile and submissive.

In this perspective, there is a relevant question about the true meaning of the search for equality that would establish social equity. This does not mean treating everyone the same, but treating equals equally and unequally. It is necessary to balance certain structures so that, according to their disparities, everyone has sufficient rights and benefits to be treated as equal before others.



It is important to emphasize that Brazilians have evolved and the State must monitor the levels of inequalities that still persist, seeking to correct them by means of the principles established in CRFB/88. However, even with the legal provisions, jurisprudence and implementation of coercive measures have not been sufficient for women to take their rightful place in society.

The Maria da Penha Law in the Brazilian legal system aims to modify this reality imposed on women, seeking to cease discrimination and violence in family life, removing the quality of second-class citizen, and rescue self-esteem, whose absence affects human dignities<sup>14</sup>.

It is widely recognized that violence against women has an epidemic character, as evidenced by data from 2013, which indicate that two out of five women have already suffered or will be victims of this violence. This highlights the need for State authorities to adopt measures to combat such crimes.

In Brazil, on average, 30% of women suffer violence committed by a man, and between 50% and 60% of the Brazilian population knows or has witnessed women victims of violence in domestic and family settings. In addition, 56% of men acknowledged that they had already committed acts of violence against their partner or ex-partner. These data were collected in the year 2014<sup>15</sup>.

According to the Institute for Applied Economic Research (IAER), murder crimes against women have been growing at an exorbitant rate. There was an increase of 8% in male homicides and 17% in female homicides. Recognizing this increase, the solution was to amend the Penal Code, regulating feminization<sup>16</sup>.

Given the above, it is essential to promote changes in codes, procedures and protective measures to remedy domestic violence. The State plays an important role in confronting these crimes that attack the family institution, which must be protected with full dexterity and effectiveness to achieve social peace.

## Discussion

There are several types of violence against women, such as physical and psychological; whose results can destroy the family nucleus. These assaults may lead to the death of the victim. It is evident that, even though the danger women run is obvious, many of them are silent; others, courageously, denounce. However, when the State does not provide infrastructure to accommodate, women are exposed in an embarrassing way, leaving them totally helpless. In this situation, she is often forced to return to the aggressor, triggering more aggression and, in extreme cases, femicide.

Psychological violence, in turn, represents a silent risk, because most women do not seek help and continue to accumulate trauma, generating such intense psychological suffering that it begins to manifest in their body through symptoms, such as headache, nausea, muscle aches, among others. This can lead to a picture of panic syndrome and depression. With all these feelings accumulated,

there is considerable risk of suicide, since the psychological torture perpetrated by the aggressor can sometimes be more devastating than physical pain. Therefore, it is crucial to combat this type of violence to prevent the situation from reaching extreme levels.

The victim ends up feeling guilty for the aggression he is suffering, leading him to an even more depressing state. Although it is difficult to recognize this form of silent violence, we must observe and possibly help people who are in this framework, in order to prevent them from committing suicide.

The judicial bodies are showing themselves as great allies in defense of women throughout the country, by applying more strictly the Maria da Penha Law. This ensures women's rights and increases the monitoring of any sign of irregularity that may expose women to violence. In addition, the application of the Femicide Law<sup>17</sup> to cases of homicide against women has been an important measure to combat this type of crime and ensure justice for the victims.

The judicial bodies, working with the Forensic Medical Institute (FMI), through reports and through reports of cases, may apply a fair penalty, since impunity is seen as a serious defect. In view of the notes, it is observed that "states that do not take the lead and do not take responsibility enter into a mutual agreement of silence, which leads to understand acceptance and complicity with domestic violence"<sup>18</sup>.

The aggression against women must be firmly repudiated by society, and it is necessary that not only women, but the whole society, be reeducated to understand and denounce actions of domestic violence. The Maria da Penha Law establishes protective measures in cases of domestic violence, which can prevent cases of femicide, since the aggressor is obliged to move away from the victim as a coercive measure. However, a large proportion of women who suffer domestic violence are afraid to report the aggressor. Even when the complaint is made, the aggressor often violates the protective measures and ends up committing murder against his partner or ex-partner. Therefore, the number of deaths of women, even with the validity of Law N. 11.340/2006, is creating<sup>15</sup>.

Thus, it is essential to build a new paradigm in which the concept of the Maria da Penha Law is recognized as a fundamental instrument in the fight against impunity. The powers of the State, both legislative and judicial and executive, must perform their functions effectively to ensure women access to justice and adequate protection. This implies applying more severe and fair penalties according to the crime committed, especially in cases of femicide, where deaths must be properly qualified as such.

Femicide is an extreme form of violence, representing one of the most alarming manifestations of gender inequality, in which men seek to brutally dominate women. The increase in the number of deaths in Brazil is a clear indication that efforts must be redoubled to combat this culture of rampant violence that has been rooted over time.

A survey conducted by the Federal District Public Prosecutor's Office found that, in the 337 homicide reports analyzed since 2006, when the Maria da Penha Law came into force, only 30 judicial cases were analyzed. In addition, the death reports provided relevant information on the homicides, such as strong indications of domestic violence. This resulted in numerous cases where the correct and fair penalty was not applied to the aggressor.

The creation of the Femicide Law was a State response to protect women, demonstrating recognition of their rights. This law was fundamental to increase knowledge and awareness about the violence practiced and its results. However, it is known that even with the creation of this coercive measure, it has not yet been enough to reverse the situation completely.

Despite the implementation of the Maria da Penha Law, additional measures were needed to combat violence and encourage women to seek help. Thus, the Women's Police Stations were created, specialized in their protection and have been expanding in several locations of Brazil. Another important measure was the transit houses, where victims can stay with their children, receiving assistance and psychological care. It is noted, therefore, that these locations are confidential and not disclosed to prevent the aggressors from persisting in disturbing the victims<sup>19</sup>.

In this context, children are also victims of domestic violence, often without the presence of their mother due to her death, often caused by the father himself. This creates a cascade effect of consequences, in which children, especially female ones, grow up fearing the male figure, afraid to challenge, question or resist future aggressions, because they witnessed the suffering from childhood. These children end up as potential targets of domestic violence. When they do not have a legal guardian, they may be sent to shelters after the death of their mother or the imprisonment of their father.

The stage of created horrors should lead society and the State to an intense search for solutions, since femicide is a murder with mutilation, often preceded by rape. In addition, it can be described as a long journey of physical and psychological aggression that culminates in the woman's death.

The Special Secretariat for Women's Policies offers a range of services to enable and facilitate service and care for victims. Created in 2003, it is constantly developing, advancing, seeking dialogue and the collective construction of women's movements and social movements<sup>20</sup>.

The Maria da Penha Law provides for the implementation of social actions in order to prevent and hold accountable, protecting and promoting the effectiveness of women's rights so that there is a good applicability of the law. It is emphasized that violent deaths are serious acts of domestic and family violence, deserving full social and State attention<sup>21</sup>.



In addition, the Maria da Penha Patrol and the 180 Reporting Call System were created to provide fast and effective service to prevent imminent and future acts of violence. Private programs for women's care have also grown over time.

In addition to seeking "correct" and "punish", a restructuring and social adaptation are necessary, reformulating customs and reversing the image imposed on women and the male domination pattern, allowing over time, Women can walk with their heads held high in their social environment, feeling and being treated as equal to men. They must be able to walk the streets without fear, return home safely and not be afraid to live with their companions, being socially and affectively respected as they deserve.

In the current context, we live in a country where, even with the creation of several bodies and support organizations, still persists the culture of femicide. This is fixed in the woman's psychology, creating roots capable of destroying totally and literally her life.

Therefore, there is still much to be done so that the Maria da Penha Law reaches its full effectiveness and applicability. An even greater social awareness is needed, so that women themselves can recognize themselves in society as equals and not as submissive or inferior. In addition, for the law and all social programs created to be effective, there must be intense supervision in its application, mainly through the public security forces, so that women can feel truly safe and not have to go home in fear.

## **Final Considerations**

After examining the historical and conceptual context, this work sought to demonstrate the importance of Law N. 11340, 2006, named Maria da Penha Law, as an instrument of protection against domestic violence, especially against women, because of the numerous cases pointed out in the research and case records involving this part of the population. It is noted that certain laws and social programs seek to ensure justice in an effective and expeditious manner, not neglecting the homicides resulting from assaults by intimate partners and known procedural failures.

The Maria da Penha Law aims to punish violators, increasing their sentence for atoning against life, a right guaranteed by the 1988 Federal Constitution.

The social advances in legislation contribute to a promising future for women in the social and judicial sphere. However, even with the implementation of various prevention measures, many women continue to be assaulted, raped or killed in the domestic and family environment every day. This is due to the patriarchal and oppressive history that women faced the lack of supervision, the absence of compliance with measures, the lack of police or administrative power to deal with social demands.

The existence of the Law is not enough, since the rates of violence are worrying. It is necessary to create new public policies that are actually implemented. It is also necessary a broad social awareness to recognize that women are not inferior and unequal to men, encouraging them not to silence themselves in the face of threats, aggression and oppression suffered and to denounce in search of justice, thus contributing to reduce the rates of domestic violence.

In this sense, it is noticeable that the Maria da Penha Law brought social advances, but, for there to be effectiveness, it is necessary to launch a reflection and seek solutions to the problem, even if it is not a reality. Drastic social and cultural changes of men and women are needed, aiming at eliminating de facto discrimination and gender inequality, In addition to a policy change that includes more frequent audits to ensure the applicability of the law and generate significant results.

It remains to consider that it also becomes crucial to promote female empowerment, with the aim of reducing and eliminating the barrier and images created socially. This involves the economic independence of women, the recognition of their social value and the reduction of fear of aggressors. It is necessary to raise awareness about the forms of denunciation and seek social support, so that women victims feel increasingly welcomed by society.

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