

**APPLICATION OF THE
MARIA DA PENHA LAW
IN THE PREVENTION OF
DOMESTIC VIOLENCE
DURING THE COVID-19
PANDEMIC**

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Abstract: This article aims to reflect on the applicability of Law *Number* increase in cases of domestic and family violence against women. In view of this scenario, Bills of Law were proposed as legal mechanisms in order to provide greater protection to women, while the period of public calamity caused by the pandemic in Brazil lasts.

Keywords: Maria da Penha Law. Domestic violence. Violence prevention.

INTRODUCTION

The year 2020 will be marked in the history of humanity, as it brought to light the challenge of facing an unprecedented viral pandemic with devastating consequences for societies ranging from lives taken by the new coronavirus to complex issues related to the economy and health.

The World Health Organization (WHO) has recommended sanitary measures to contain the COVID-19 pandemic, including social distancing, restricting the movement of people and quarantine to prevent the spread of the virus and the collapse of hospital care units, as that at the time there was no specific treatment or vaccine available. These measures weakened many women in abusive and violent relationships by exposing them to daily living with the abuser for a long time, and at the same time contributed to the increase in cases of domestic and family violence against women.

The present study is a qualitative and bibliographic research, using the Federal Constitution, laws, jurisprudence and doctrine, also using the deductive method to reflect on the applicability of the Maria da Penha Law in dealing with cases of violence domestic violence against women during the period of quarantine and social isolation during the COVID-19 pandemic in Brazil.

ANALYSIS OF THE MARIA DA PENHA LAW

In Brazil, Law Number 13,979, of February 6, 2020, was published in order to provide for measures to combat the COVID-19 pandemic, with the aim of collectively protecting public health. It is noteworthy that the legislator was concerned with ensuring the rights of citizens, in particular, the right to health and information, free care and treatment by the Unified Health System (SUS), in addition to guaranteeing respect for dignity, human rights and fundamental freedoms of individuals. Among these measures were the isolation and quarantine of sick people or people suspected of contamination by the coronavirus. However, it was observed around the world that such sanitary measures accentuated social conflicts, such as the increase in violence against women (BRASIL, 2020; WORLD BANK, 2020).

Law Number 11,340, of August 7, 2006, known as the Maria da Penha Law, is the legal device used by legal practitioners to address domestic and family violence against women (BRASIL, 2006). This legislation brought significant changes to the protection of women in situations of domestic and family violence, as it broke several paradigms, such as the rupture with the model of Law 9099/95, making crimes of violence committed against women in the domestic and family crimes were no longer recognized as crimes of lesser offensive potential.

With the advent of the Maria Penha Law, it was possible to define domestic and family violence against women based on gender, that is, taking into consideration, the physical, psychological and cultural characteristics that differentiate men and women. The legislation goes further, defining that domestic and family violence against women can be physical, psychological, sexual, patrimonial and moral, among others, not exhausting the

list of hypotheses for situations of violence against women.

It is important to understand the complexity of the phenomenon of violence against women, especially the violence practiced by the conjugal life that, according to the psychological approach, presents itself in the form of cyclical episodes. In this context, WALKER (1979) describes three phases of violence:

- a. The first is described as a period of tension in which the exacerbation of conflicts is observed, followed by verbal abuse;
- b. The second phase is marked by an increase in tension that becomes acute and evolves into physical and sexual assaults, abuse, accusations, etc.;
- c. The third is the so-called honeymoon phase, the aggressor shows repentance, promises to change and not repeat the violent practices.

However, it is quite common that after a period of calm and tranquility, the cycle repeats itself and with each repetition, the aggressions tend to be more serious, and women trapped in the cycle of violence find it very difficult to break this affective bond without support. external.

Confronting domestic and family violence against women is a worldwide necessity. There are reports of violence against women in different countries of different cultures. The impact of violence against women goes beyond the negative changes in physical and emotional integrity, as in many cases the violent act can culminate in death, violating the precepts of the right to life and representing total disrespect for legality and human rights (PAHO, 2017).

Violence against women has been defined by the United Nations (UN) as “ any act of gender-based violence that results in, or potentially results in, physical, sexual,

psychological harm or any type of suffering to women.” (UN, 1993).

In Brazil, data from the 1980s pointed to violence as the second leading cause of death. It must be noted that intrafamily violence reflects the drama of psychosocial problems arising from violent experiences and affirms the need to implement policies and actions of the legal and enforcement systems. health, in an intersectoral way, for the prevention and treatment of victims of domestic and family violence (SOUZA & MINAYO, 1995).

In 1983, this discussion was intensified from the case nº 12.051 of the Organization of American States (OAS) of Maria da Penha Maia Fernandes, victim of domestic aggression by her husband, featuring a double attempted murder, which resulted in an irreversible paraplegia (INTER-AMERICAN COMMISSION HUMAN RIGHTS, 2001).

This case took international proportions because despite more than 15 years after the crime and despite the aggressor having been convicted by the Ceará Jury Court in 1991 and 1996, no final decision had been taken and the aggressor remained free. The case was sent to the OAS Inter-American Commission on Human Rights and in 2001, the IACHR held the Brazilian State responsible for omission, negligence and tolerance in relation to domestic and family violence against Brazilian women (Idem, Ibidem).

In the Brazilian legal system, the Federal Constitution provides for equality between men and women (article 5, I, FEDERAL CONSTITUTION) and the family as the basis of society, with State protection (article 226, FEDERAL CONSTITUTION) and there is no way to talk about social justice without respecting these basic articles (BRASIL, 1988).

Gender equality needs legal recognition and guardianship instruments capable of guaranteeing this equality in practice (DIAS, 2010). In Brazil, violence against women was

typified in the Criminal scope as de facto, threat and light bodily harm, which enabled the aggressor to carry out a criminal transaction through the application of an alternative penalty that resulted in the delivery of a “food basket”. Thus, the law allowed conciliation for domestic violence.

The doctrine teaches us thus:

“The Maria da Penha Law – a law of the same hierarchy – removed domestic violence from the aegis of Law 9099/95. Thus, if the victim is a woman and the crime took place in the domestic environment, it cannot be considered of little harm and will no longer be appreciated by the Special Criminal Courts - JECrims. Even though the legislator used the expression ‘crimes’ to repudiate the Special Courts, not even criminal misdemeanors continue in these courts. It is completely unreasonable for bodily harm and other crimes to be referred to the JVDfMs, and misdemeanors, offensive harassment and disturbance of peace, for example, continue to be appreciated in the JECrims. (...)”

The Maria da Penha Law, Law 11,340, of August 7, 2006, the result of feminist movements, emerged as the legal instrument capable of protecting and creating an interdisciplinary system for the confrontation and prevention of domestic and family violence against women. From then on, it is observed that the decisions began to increasingly distance Law 9,099/95 from cases of domestic violence against women (CAMPOS, 2011).

It is worth noting that the Law forbade the application of basic food basket sentences or other pecuniary benefits in cases of domestic and family violence against women, or even the replacement of the sentence by payment of a fine, removing the conciliatory tone of the criminal proceedings instituted in cases of domestic violence (BRASIL, 1995).

In this sense, researchers and legal practitioners claim that the Maria da Penha Law innovated by breaking with the traditional

criminal procedure, creating a process coated with social effectiveness for the protection of women and prevention of violence (CAMPOS, 2011; LIMA, 2013).

In fact, this innovation can be seen throughout the articles of the aforementioned Law, which in its article 6 defines violence against women as a violation of human rights and makes reference to international principles for the elimination of all forms of violence against women present in Conventions and Treaties ratified by Brazil: The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), of the United Nations (1979) and the Convention of Belém do Pará (1994).

The CEDAW Convention brought to light the need for equality and non-discrimination against women, and the Convention of Belém do Pará, in turn, evidenced the deepening of facing violence against women, defining domestic and family violence and all their shapes.

The article 9 of the Maria da Penha Law, emphatically stated that the effectiveness of the Law will depend not only on understanding the principle of equality between men and women, but on the urgent need to recognize the situation of female vulnerability, when imposed on abusive relationships regardless of orientation. sex and the social class to which it belongs.

It highlights the importance of protecting the physical and psychological integrity of women by applying protective institutes to the detriment of the aggressor who appears in most cases in the male gender. It is important to make an observation at this point, although most cases of domestic and family violence against women are committed by men, husbands, boyfriends or partners, this type of violence can be committed within the family by women, mothers, aunts, sisters. We can advance and go further in the interpretation

of the Maria da Penha Law that can be applied in homosexual relationships according to the decision of the Public Law Section of the Court of Justice of Pará.

The rapporteur's understanding was:

“Women are under the protection of the law, without distinguishing sexual orientation (lesbians, transvestites, transsexuals and transgenders), as long as the intimate relationship of affection is maintained in a family or convivial environment. Therefore, in all these relationships, situations of violence against the female gender justify special protection”.

There is also a need to carry out a reinterpretation of the criminal process in cases of domestic and family violence, incorporating multidisciplinary concepts that go beyond the legal world and go through the concepts of social sciences and health, recognizing the hyposufficiency of women. To this end, it is up to the State to provide, in cases of violence against women and their dependents, comprehensive and multidisciplinary assistance for coping with the violent situation and protection against the aggressor (PASINATO, 2015).

The principle of equality guaranteed by the Federal Constitution motivated criticism of the Maria da Penha Law, under the doctrinal argument of violation of equality to the detriment of men, due to the stricter legal treatment and the inapplicability of Law 9,099/95.

On the other hand, according to CAMPOS (2008), the application of the “equality test”, proposed by Bandeira de Mello, allows us to conclude that the aforementioned Law does not violate the principle of equality and non-discrimination because it refers to a group, in this In the case of women, it has a differentiating factor, from the moment that violence harms women's citizenship rights (MELLO, 2017).

In addition, the Maria da Penha Law is a

norm of unequal protection, as it is women who suffer domestic violence in general, in domestic spaces and not men. The Law aims to guarantee the dignity and fundamental rights of women, supreme values in the Brazilian legal system, considering the State's duty to protect women against all forms of violence (article 226, § 8, FEDERAL CONSTITUTION) (BRAZIL, 1988).

This way, the effectiveness of the Maria da Penha Law will depend on an unequivocal understanding of the principle of equality by recognizing in fact the situation of vulnerability of women who will need to protect legal assets such as life, physical and psychological integrity, using the application of protective institutes to the detriment of the aggressor, appearing as a partner, husband or boyfriend.

Still in the context of the Maria da Penha Law, it was up to the legislator to assume the commitment to create proper and appropriate environments for the reception of women victims of violence, such as the creation of Courts of Domestic and Family Violence against Women and Specialized Police Stations in Assistance to Woman (DEAM).

It is noteworthy that one of the protective measures for women in situations of domestic and family violence includes removing the aggressor from family life to prevent the woman from being attacked. The Superior Court of Justice ruled that, according to the jurisprudence established by the Court: “the failure to comply with protective measures authorizes the ordering of preventive detention, provided that the presence of the requirements provided for in article 312 of that diploma” (STJ, 6th T., *HC* n° 179.785/SC, Rapporteur Maria Thereza de Assis Moura, j. 05.31.2011, electronic justice diary in 06.08.2011).

In 2020, the Maria da Penha Law was added, with the publication of Law 13,984, which

gives the judge the possibility of referring the aggressor to recovery and reeducation programs and psychosocial care (BRASIL, 2020).

Although there are legislative measures aimed at curbing violence against women in Brazil, cases remain at unacceptable levels, recidivism of aggression suffered by women is high and can culminate in the death of the victim. It is reiterated that the coronavirus pandemic has imposed on women a daily contact with men who can become potential aggressors (SILVA et al, 2020).

INCREASED DOMESTIC VIOLENCE DURING QUARANTINE

International data released by the World Health Organization indicate that 35% of women worldwide have experienced some type of violence, whether physical or sexual, and that 38% of women's homicides were committed by victims' partners (BARUFALDI et al, 2017).

In 2018, the head of the United Nations declared during an event at the UN that violence against women is a global pandemic and that it reflects a problem of fundamental human rights, as it violates the integrity of women and girls (UN, 2018)

According to the Atlas of Violence (IPEA, 2020), in 2018, more than 4,000 women were murdered in Brazil, this number represents that one woman was killed every two hours. Considering that the female population in cities is 83 million and 14 million women live in the countryside, the number of women vulnerable to domestic and family violence is significant. This scenario points to the need to apply the Maria da Penha Law in cases of domestic and family violence against women and sparks the discussion about femicide, a criminal classification given by Law 13.104/2015 that defined the crime as the

murder of women in of domestic and family violence or due to contempt or discrimination for the condition of the female gender (BRASIL, 2015).

Another discussion point to add is the homicide rate for black women, which is higher compared to the same rate for non-black women. In the period from 2008 to 2018, there was a decrease in the number of homicides of non-black women in the order of 11.7% and an increase of 12.4% in homicides of black women. These percentages of violence committed against black women show an important marker of social inequality, as these women face yet another difficulty that is related to the racial issue.

In the same way that the COVID-19 pandemic began in China, the perception of an increase in cases of violence against women was evidenced in that same country with alarming data: cases of domestic and family violence would have tripled as a result of social isolation (FIOCRUZ, 2020). In Italy, a 161.71% increase in telephone complaints was reported in April and in Argentina, the complaint channel received a 39% increase during the second half of March.

In Brazil, the State Court of Rio de Janeiro reported that there was a 50% increase in cases of violence against women after confinement, generating the initiative to prepare a booklet aimed at women -"COVID-19 - Confinement without violence". - to ensure the dissemination of information and reinforce that social isolation must not be an impediment to facing domestic and family violence against women (EMERJ, 2020).

This panorama of increased cases of violence against women within the family during the COVID-19 pandemic was observed across the country. In Paraná, there was a 15% increase in records of domestic violence attended by the Military Police. Similar cases have been described in states such as Ceará,

Pernambuco and São Paulo (MARQUES et al, 2020).

In view of this scenario, legislative measures were proposed to protect vulnerable women in order to reaffirm the importance of the operation of the Maria da Penha Law as a legal instrument to protect women during the critical period of the COVID-19 pandemic. The main measures include the provision of temporary residences for women and children in situations of domestic and family violence, expansion of channels for disclosing cases of domestic and family violence against women through the Dial 180 channel. the measures to combat and prevent domestic violence provided for in the Maria da Penha Law and in the Penal Code, changes were proposed in Law 13.979/2020 (PL 1291/2020) to provide guarantees of assistance to women in situations of violence, during the declaration of state of emergency of a humanitarian and sanitary nature, throughout the national territory. These changes refer to the increase in penalties applicable to crimes of domestic and family violence against women, increasing the minimum and maximum penalty to double that originally provided for by law, while the state of calamity due to COVID-19 lasts.

PREVENTIVE MEASURES AGAINST DOMESTIC VIOLENCE AGAINST WOMEN

Given the evidence of the increase in cases of violence against women during the COVID-19 pandemic, the WHO issued an alert considering as acts of violence against women: a) preventing women from washing their hands with soap and alcohol gel; b) disseminating wrong information about the pandemic and isolation as a way of controlling women and c) not allowing women to communicate through social networks with their families (EMERJ, 2020).

It is undoubted that the Maria da Penha

Law constituted a landmark for the defense of women in situations of violence in Brazil, bringing the necessary innovations to face domestic and family violence, which configures a multidisciplinary problem and which took on greater proportions due to the confinement in the period. quarantine during the COVID-19 pandemic (LIMA, 2013).

It became clear, in the face of this scenario, that other legal measures must be taken to protect women from domestic and family violence in times of quarantine and social isolation. Despite this, to date, no changes have been made to the Maria da Penha Law specifically addressing cases of domestic violence against women committed during the COVID-19 pandemic.

On the other hand, Law 14,022 of July 7, 2020 was approved, which amends Law 13,979/2020 with the purpose of establishing measures to combat domestic and family violence against women and also to combat violence against children, adolescents, elderly people and people with disabilities, during the COVID-19 pandemic period (BRASIL, 2020).

With this new legal provision, it was broadly intended to ensure face-to-face or online care, not only for women in situations of domestic violence, but also for other vulnerable groups, represented by children, adolescents, the elderly and people with disabilities. The proceedings in these cases will be considered of an urgent nature and the procedural deadlines and consideration of matters, as well as the service to the parties and granting of protective measures were maintained without suspension.

The registration of cases of domestic and family violence against women (and other vulnerable groups) can be done electronically or by emergency telephone number. The law also guaranteed that the public authorities will guarantee face-to-face assistance for the following offenses provided for in the

Penal Code: femicide, serious bodily injury, willful bodily injury of a very serious nature, threat made with the use of a firearm, rape, rape of the vulnerable, corruption of minors, satisfaction of lust through the presence of a child or adolescent.

The need for face-to-face assistance was added for the crime of non-compliance with urgent protective measures provided for in the Maria da Penha Law and the priority realization of the forensic examination when the crime involves domestic and family violence against women. The legislator also provided that in cases of crimes of a sexual nature, mobile teams can be established to carry out the forensic examination at the place where the victim is.

The law also guaranteed to women in cases of domestic and family violence, the availability of virtual service channels through which the victim can request urgent protective measures through online communication, also allowing evidence collected electronically or by audiovisual to be considered. prior to the issuance of the police report, allowing the Judiciary to carry out subpoenas and judicial decisions by electronic means.

Law 14.022/2020 intended to give the guarantees provided for in the Maria da Penha Law and which could be harmed by the state of public calamity during the COVID-19 pandemic. The most relevant aspects of the Maria da Penha Law are based on the agility and effectiveness of the protection of women: the victim's postulancy capacity; the extension of protective measures to witnesses and family members of the victim, speedy processing, *rebus sic stantibus nature* of the measures, which can be replaced or revised at any time and decree of preventive detention, including during the course of the police investigation. These aspects also need to be guaranteed in exceptional situations, such as the COVID-19 pandemic.

Measures to prevent and control violence against women must transcend the legal scope, with the aim of generating greater social interest for the creation of public policies that involve the judiciary and health systems for the establishment of support and solidarity networks to in order to accommodate victims of violence. At this point, PL 2029/2020 suggested that the State provide temporary residences for women and children who have suffered domestic and family violence while the state of public calamity lasts. However, this PL did not prosper and was harmed.

The main protective measures to support the effectiveness of the Maria da Penha Law must be aligned with the Dial denunciation channels, a program created in 1995 and which represents an important tool specialized in dealing with crime reports anonymously and the Dial 180 channel, created in 2003 to receive reports of crimes committed against women.

It must be noted that Law 10,778, of November 24, 2003, established that all cases of women treated by public or private health services who have suffered violence must be compulsorily reported in order to compose the database on situation of violence against women, which facilitates decision-making and the creation of public policies by health managers and legal measures by law operators (BRASIL, 2003).

All these efforts to create protective mechanisms for women in situations of domestic and family violence aim to protect women from the vicious cycle of violence, in which the aggressor, after committing the violent act, shows repentance, asks for forgiveness and promises to change his attitude. Then, the woman experiences a brief period of peace, called the "honeymoon phase", but a trigger is enough for the man to return to the aggressor stage (PENHA, 2012).

CONCLUSION

Violence against women is a social, cultural and historical phenomenon that reflects patterns learned and repeated by men of all social classes. Most of the aggressions suffered by women are serious and if they do not cause death, they leave permanent sequelae, whether physical or psychological, therefore, there is a need to face it in a multidisciplinary way. In addition to facilitating women's access to protection programs, it will be up to legal operators, the Judiciary system and other social actors to ensure the application of the Maria da Penha Law in emergency or public calamity situations.

It is important for society to recognize that women victims of violence are exposed to an intimate partner and that other risk factors must be considered, such as: access to firearms by the aggressor, chemical dependence on licit and illicit drugs and the fact that reside at the same address.

The eradication of all forms of violence against women will not be an easy task for society and jurists. In addition to enforcing the Law, we must rethink the roles of men and women in society, in the family, and be aware that social relationships must be guided, aiming at human well-being and dignity, so that the reality of violence is transformed into harmony and respect. It will be necessary to modify and adapt the legislation available to this confrontation, according to social needs, as is the case of violence against women in isolation and social distance.

From a broader perspective, it will be necessary to strengthen democratic instances that allow the exercise of citizenship and social awareness to guarantee the rights of women and other social actors in situations of domestic and family violence, particularly during special situations such as the COVID-19 pandemic.

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