



The misuse of the Maria da Penha Law as an instrument of “revenge” and the accountability of women in the face of false accusations

The misuse of the Maria da Penha Law as an instrument of “revenge” and the responsibility of women in the face of false complaints

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SUMMARY

In the context of the Maria da Penha Law (Law No. 11,340/2006), when discussing domestic and family violence, the prevailing understanding is that the woman has suffered violence, whether physical, psychological, sexual, financial, or moral, in which the aggressor lives or has lived with the victim. This article analyzes the misuse of the Maria da Penha Law as an instrument of “revenge” by women in interpersonal relationships, whether within the domestic unit, the family, or any intimate relationship of affection.

problematizing the accountability of women who falsely report crimes. Although the legislation represented a milestone in combating violence against women, its distorted application can lead to serious violations of fundamental rights, including the social and legal condemnation of falsely accused men. The study addresses the historical evolution of the law, its protective purpose, the problem of unfounded reports, the jurisprudential treatment of the issue, and the mechanisms for holding women who unduly benefit from the law accountable. This ensures that the protection of real victims is not compromised. It is imperative to balance the protection of women's rights with observance of procedural good faith and the presumption of innocence, ensuring the effectiveness of the justice system and the legitimacy of the Maria da Penha Law.

Keywords: Maria da Penha Law. Misuse of the law. Constitutional principles. Female accountability.

ABSTRACT

In the context of the Maria da Penha Law (Law No. 11,340/2006), when talking about domestic and family violence, the prevailing understanding is that the woman has suffered violence, whether physical, psychological, sexual, patrimonial or moral, in which the aggressor lives or has lived with the victim. This article analyzes the misuse of the Maria da Penha Law as an instrument of “revenge” by women in interpersonal relationships, whether within the domestic unit, within the family or in any intimate relationship of affection, problematizing the accountability of women who falsely report. Although the legislation represented a milestone in combating violence against women, its distorted application can lead to serious violations of fundamental rights, including the social and legal condemnation of falsely accused men. The study addresses the historical evolution of the law, its protective purpose, the problem of unfounded complaints, the jurisprudential treatment of the issue and the mechanisms for holding women who unduly benefit from the law accountable, so that there is no harm to the protection of real victims, since it is imperative to balance the protection of women's rights with the observance of procedural good faith and the presumption of innocence, guaranteeing the effectiveness of the justice system and legitimacy to the Maria da Penha Law.

Keywords: Maria da Penha Law. Misuse of the law. Constitutional principles. Female accountability.

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1. INTRODUCTION

In the context of Brazilian Law, especially in Criminal Law, the Maria da Penha Law is a great achievement, as it creates mechanisms to curb and prevent domestic violence and family against women, regardless of class, race, ethnicity, sexual orientation, income, culture, educational level, age and religion, being an important legal framework in the fight against gender inequality in Brazil. Its implementation has enabled significant advances in the protection of women, by establishing urgent protective measures, rapid procedures and instruments aimed at preventing and suppressing violence.

On the other hand, with the more effective action of the Public Power in curbing violence domestic against women, there is a growing discussion about the possibility of their use inappropriate, especially when some women allegedly use it as a way of revenge, retaliation or judicial manipulation, in marital disputes, custody conflicts or property disputes, which poses serious risks to the credibility of the justice system, large legal uncertainty and may lead to violations of fundamental rights. The occurrence of unfounded allegations not only compromise the image of the accused, but also harm the real victims, who face greater social discredit.

This paper will address the issue of the misuse of the Maria da Penha Law by women, violating individual constitutional rights and the principles of Good Faith and Presumption of Innocence, as well as female accountability in the face of the misuse of the law, but never restricting or minimizing its importance and necessary applicability in combat and prevention of domestic and family violence against women.

The study is justified by the need to preserve the legitimacy and effectiveness of the Law Maria da Penha, since it is imperative to reflect on how to guarantee the effective protection of women in a vulnerable situation without opening space for injustice, ensuring balance between constitutional protection and guarantees.

The approach will begin with an analysis of the Maria da Penha Law, its origin, its foundations and purposes through definitions of what it is, its contextualization in the legal system, as well as its effective application in practice.

Afterwards, we will deal with the misuse of the Maria da Penha Law as an instrument of revenge, retaliation or judicial manipulation, showing the vulnerability of the law in the face of complaints unfounded, the social and legal consequences for falsely accused men and the risk of trivialization of domestic violence and social discredit of the law.

Next, an analysis will be carried out regarding the accountability of women who make false accusations against men, taking advantage of the efficiency and rigidity of the Maria da Lei Penha and what this could entail for the Brazilian judicial system.

The methodology related to the present study involves an approach based on predominantly in bibliographical research, through a method that allows the examination of theoretical basis in national and foreign doctrine and analysis of the Federal Constitution. The study also uses the deductive method, starting from general constitutional principles to understand its concrete application in cases of domestic violence, especially in hypotheses of unfounded complaints.

Regarding the objectives, this research is classified as descriptive and exploratory, since it aims to provide greater familiarity with the problem, aiming to make it more explicit or build hypotheses (Gil, 1994). Regarding the approach to the analysis of content, the research is qualitative, as there is a concern in the social sciences, which cannot be quantified. That is, it works with the universe of meanings, motives, aspirations, beliefs, values and attitudes, which corresponds to a deeper space of relationships, processes and phenomena that cannot be reduced to the operationalization of variables. (Minayo, 2001).

This article aims to encourage academic reflection on the effectiveness of current and presumed normativity in the Brazilian context. The main focus is to offer a in-depth understanding of the contemporary challenges faced in building a fair and egalitarian society, with special emphasis on the realization of constitutional rights, ensuring the effectiveness of the Maria da Penha Law as an instrument of protection without allow its distorted application to result in violations of fundamental rights.

2. THE MARIA DA PENHA LAW – LAW Nº 11.304/2006

During part of the 20th century, domestic violence was treated as a matter of “intimate” or “private” forum of the couple, without adequate recognition by Criminal Law and Constitutional. This scenario changed with the expansion of the international system of protection of human rights, especially after the Universal Declaration of Human Rights (1948), which served as a basis for demanding that violence against women be understood as a violation of human rights and not just as a family conflict.

According to the United Nations – UN:

Violence against women is a mechanism to guarantee female subordination in society, which arises in the domestic space, but is projected into the public sphere. Its existence is a blatant manifestation of gender discrimination. It is not about of an isolated and particular act, as it creates and sustains the most varied types of stereotypes based on gender, so that women are relegated to just one place: the sphere private (FEIX, 2011, p.202).

The Universal Declaration of Human Rights speaks of all human beings, that is, makes no distinction of gender, applying all its articles to both women and men, and ensuring that women's human rights are inalienable, unconditional and a part integral and indivisible part of all universal human rights, demonstrated in its Article I: All human beings are born free and equal in dignity and rights. They are endowed of reason and conscience and should act towards one another in a spirit of brotherhood (UN, 1948).

In 1979, the Convention on the Elimination of All Forms of Discrimination against Women - CEDAW, approved by the UN in 1979 and ratified by Brazil in 1984, was known as the “Magna Carta of Women’s Rights”, as it obliges States to adopt legislative, administrative and judicial measures to eliminate discrimination against women in all spheres of life (political, social, economic, cultural and family).

While CEDAW does not exclusively address violence against women, it has provided the basis for recognizing that structural discrimination and gender inequalities contribute to the perpetuation of domestic violence and, in Brazil, has driven changes constitutional and legislative, culminating in the Federal Constitution of 1988, which incorporated the principle of equality between men and women (art. 5, I) and established special protection for family (art. 226, § 8).

Law No. 11,340/2006, also known as the Maria da Penha Law, received this name in tribute to Mrs. Maria da Penha Maia Fernandes, victim of domestic violence, with constant aggression from her husband. In 1983, her husband tried to kill her with a shotgun blast, which didn't kill her, but left her paraplegic. After much suffering, had the courage to report him.

With the case still ongoing in court, in 1998, Maria took legal action against the Center. and International Law (CEJIL) and the Latin American and Caribbean Committee for the Defense of Women's Rights (CLADEM). Its process is forwarded to the Commission Inter-American Commission on Human Rights of the Organization of American States (OAS). But

only in 2002, the case was solved, when the Brazilian State was convicted of omission and negligence by the Inter-American Court of Human Rights. With this conviction, Brazil had to commit to reforming its laws and policies in relation to domestic violence, being decisive for the creation of Law No. 11,340/2006.

Thus, it can be stated that this law is a clear expression of the dialogue between law domestic and international human rights law, reinforcing the State's responsibility Brazilian law to protect women from all forms of violence. Emphasizing that this law supports all people who identify with the female sex, as Maria Berenice says Days:

Another important factor is that to be considered female, necessarily it must be a woman subject, but any subject that this gender identifies itself, and in the position of this gender is in power relations, thus, lesbians, transsexuals, transvestites and transgenders, who have a social identity with the female sex are covered by the Maria da Penha Law (DIAS, 2010, p.61).

The Maria da Penha Law is a milestone in the prevention and punishment of domestic violence, as broke with the social pattern of impunity for aggressors, creating protection mechanisms, safety and assistance to victims, creating Domestic and Family Violence Courts against Women (JVDFM), whose purpose is to provide faster service to woman and resolve civil and criminal actions in the same court; prohibiting the application of the law from the courts to domestic violence; bringing urgent protective measures, which protect the victim of domestic violence; making the crime of minor bodily harm subject to investigation and prosecution, even if the victim does not want it; giving the assaulted woman the right to assistance in multiple sectors, such as psychological, social, medical and legal.

3. THE MISUSE OF THE MARIA DA PENHA LAW WITH THE GRANTING OF MEASURES PROTECTIVES

The Maria da Penha Law, as previously stated, was created to prevent, punish and eradicate violence against women by offering immediate protection to victims (such as urgent protective measures) and breaking the cycle of violence, promoting autonomy and dignity to women. Therefore, the focus is on protecting women in vulnerable situations, which means that the law is protective in nature, and not just punitive in the traditional sense.



However, there is a growing debate regarding the possibility of its misuse, since the very protective nature of the law can be exploited by malicious individuals who can use the legal apparatus as a mechanism for revenge, manipulation or retaliation, often in the context of separations or legal disputes, such as in cases of divorce, child custody, or property issues. These are often serious accusations and deserving of effective investigation, since the consequences of applying the Maria da Penha Law to men are extremely strict.

The importance of emergency protective measures to stop the real aggressions suffered by women. Due to the urgent nature of a protective measure, it requires if the judiciary has the speed to enforce them in time to avoid tragedies. However, this speed puts the adversarial system in check, since, as a rule, the alleged aggressor is not heard before the aforementioned measures were approved (Navarro, 2022).

The vulnerability of the law in the face of false accusations is due to the relativization of evidence required at first. The initial complaint was only made by the woman, many times, it may be sufficient for the judge to order urgent protective measures, such as removal of the abuser from the home or prohibition of contact with the victim, without an investigation deeper investigation that can prove the veracity of the accusation. In cases of accusations unfounded, these provisional procedures may cause irreparable harm to the accused, damaging your image, your right to defense and even your freedom.

About this, Hugo Regis (2023) states that:

Despite its extreme importance, there is no way to eliminate the existing vulnerability. In the Maria da Penha Law, this is mentioned because the simple word of the offended party is enough for there is application of urgent protective measures, either by the police authority or by court order, which may result, in cases of false reporting of a crime, an immense emotional, family and social shock for man.

Furthermore, the Maria da Penha Law does not initially require the presentation of robust evidence from the victim. This can lead to legal proceedings that often depends on subjective testimonies, which leaves room for abuse and manipulation by of the person making the accusation, leading to undue protective measures.

In this vein, according to the understanding presented by Machado (2011):

Now, it is necessary that there are sufficient elements in the procedural notebook to demonstrate the violence suffered and the need for a provision that guarantees the

security, such as prohibiting approach and contact. It is not possible not even question that, although an emergency precautionary measure is admitted within 48 hours, its maintenance requires demonstration in court of the facts and its gravity, this is indeed an unavoidable prerequisite for the pronouncement guaranteeing the protection. In this regard, it is necessary to demonstrate, inherent to all and any request, of the sufficient evidence to support a decision to be given by the State-Judge, during the analysis of the claim (MACHADO, 2011, p.41).

The social and psychological impact of a false accusation of domestic violence is profound. The man who is falsely accused can have his personal, professional and social life destroyed. The accusation of domestic violence carries a social stigma that can result in dismissal from work, social ostracism, loss of relationships with children and even irreversible consequences on your mental health. In Brazil, the simple fact of being accused of domestic violence can already generate a negative public image, regardless of whether the accused to be innocent.

Legally, the falsely accused man faces a number of obstacles to prove your innocence. Although there is the right to a full defense and to adversarial proceedings, the weight of initial accusation is so great that many end up being harmed even when they are later acquitted. In addition, the accused may have to bear the costs of a long and exhausting legal process, not to mention the damage to your reputation that, often, are irreparable.

In legal terms, the consequences may also include restrictions imposed by protective measure, such as prohibition from approaching the victim, which may affect the accused of significantly, even if he is innocent. Another serious problem is that the measures protective measures, once imposed, are not easily reversed, and the accused has to wait for the completion of the entire judicial process so that the error can be corrected, if applicable.

By prioritizing the protection of women presumed to be victims of domestic violence, in some cases, a distorted application of Law No. 11,340/2006 is observed, resulting in imposing an excessive burden on the alleged aggressor. He not only has to defend himself against an accusation that has not yet been proven, but also, wrongly, to take on the burden to prove his innocence, inverting the constitutional logic of the criminal process. Such conduct reveals an unbalanced application of the rule, which, although it has a protective character, cannot be used to justify the mitigation of fundamental guarantees.

In this context, the affront to the principle of presumption of innocence is evident, enshrined in article 5, item LVII, of the Federal Constitution, according to which 'no one shall be considered guilty until the final criminal conviction is handed down. The anticipation restrictive measures — such as being kept away from home, prohibiting contact and other impositions precautionary measures — without proper investigation of the facts and, often, based exclusively on the alleged victim's word, may constitute a true violation of this principle, putting into risk the impartiality of the process and equity between the parties.

It is therefore necessary that the State, when applying the Maria da Penha Law, observe strictly the constitutional principles governing due process, preventing the legitimate protection of a vulnerable group becomes an instrument of summary punishment or unfair. The balance between the protection of the victim and the guarantee of the fundamental rights of the accused is an indispensable condition to ensure the credibility of the norm and justice in the application of the law.

The misuse of the Maria da Penha Law for purposes of revenge or judicial manipulation also carries the risk of trivializing domestic violence. When false accusations are made become more frequent, the credibility of the law can be called into question, which weakens its effectiveness in protecting real victims of violence. The trivialization of domestic violence occurs when false reports begin to be treated in the same way as reports true, diluting the gravity of violent situations and diminishing people's confidence authorities and society in the justice system.

This trivialization can also affect the victims of domestic violence themselves, as the increase in false accusations can generate a prejudiced view that all complaints are manipulated or exaggerated, undermining victims' willingness to report abuse real. Furthermore, overloading the judicial system with unfounded complaints can lead to delays in responding to legitimate cases, compromising the agility and efficiency of measures protective measures and the judicial system as a whole.

4. FEMALE RESPONSIBILITY FOR FALSE REPORTS OF DOMESTIC VIOLENCE AND IMPROPER APPLICATION OF THE MARIA DA PENHA LAW

Misuse of domestic violence reporting can compromise credibility legitimate reports, resulting in social disbelief and the minimization of real experiences of victims. This scenario contributes to the creation of a hostile environment for those people who,

In fact, they need protection and may even discourage other victims from seeking help with the competent authorities.

False reports of domestic violence have serious consequences, both for wrongly accused individuals and the integrity of the justice system, in addition to jeopardize the adequate reception and protection of real victims. It is therefore essential that the authorities act with rigor and diligence in investigating all complaints, ensuring observance of due process and protection of the rights of all parties involved.

It is essential that women are held accountable and that consequences are anticipated. clear and effective legal remedies for those who make false reports of domestic violence. In addition to the criminal sanctions provided for in the legal system, particularly in crimes of false reporting and false reporting of crime, it is also necessary to ensure that innocently accused people the right to seek compensation for moral and material damages arising from unfounded accusations. This measure aims to protect not only the honor and integrity of those wrongly accused, but also the credibility of the justice system and the effectiveness of public policies to combat domestic violence.

Law No. 14,110/2020 amended Article 339 of Decree-Law No. 2,848 of December 7 of 1940 (Penal Code), to give new wording to the crime of false accusation:

Art. 339. To give rise to the opening of a police inquiry, of an investigative procedure criminal, judicial process, disciplinary administrative process, inquiry civil or administrative misconduct action against someone, imputing a crime to them, ethical-disciplinary infraction or improper act of which he knows he is innocent.

The crime of false accusation bears similarities to the crime of slander, especially with regard to the false imputation of a criminal act to a third party. However, its gravity goes beyond the mere offense to individual honor, since it directly affects the interest of justice. This occurs because the State's repressive apparatus is mobilized in a improperly, being used for purposes other than its legitimate function, compromising the efficiency and credibility of the judicial system.

Another crime against the Administration of Justice is the false communication of a crime or misdemeanor, which determines that provoking action by the authority, communicating the occurrence to him of a crime or misdemeanor that he knows did not occur (Article 340 of Decree-Law No. 2,848, of December 7, 1940 - Penal Code).

Furthermore, there is also an action for Compensation for Moral and Material Damages for the man wrongly accused of domestic violence, and he may file a lawsuit legal action seeking compensation for moral and, possibly, material damages. Proven case that the false report caused harm to your reputation, emotional, professional or financially, the woman may be forced to repair these damages. In addition to the woman being able to face legal consequences in the context of civil actions related to custody and cohabitation with children.

It is essential to highlight that the legal consequences arising from the formulation of a false reports of domestic violence by women must be investigated within the scope of due process of law, with strict observance of the constitutional guarantees of adversarial system and broad defense. Liability cannot be presumed, and each case to be analyzed individually, in light of the evidence specifically produced and in accordance with the fundamental principles of the Democratic Rule of Law. This accountability is essential for protecting the integrity of the justice system, for the preserving the seriousness of public policies to combat gender-based violence and to prevent that abusive practices compromise the credibility of the real victims.

By prioritizing the protection of women presumed to be victims of domestic violence, if, in certain situations, an unbalanced application of Law No. 11,340/2006 is found, which imposes on the alleged aggressor not only the duty to defend himself, but also the undue burden of proving their innocence. This procedural inversion reveals a distortion in the use of norm, compromising its legitimate purpose and resulting in a clear affront to the principle the presumption of innocence, enshrined in article 5, item LVII, of the Federal Constitution, which provides that 'no one shall be considered guilty until a criminal sentence has become final and binding condemnatory'.

The anticipation of restrictive measures based exclusively on accusations has not yet proven, often devoid of any minimum evidentiary element, leads to no only irreparable damage to the image, freedom and fundamental rights of the accused, but It also undermines society's trust in justice and in mechanisms to protect women.

Selectivity in the application of sanctions and the lack of a proportionate response to cases fraudulent use of the law can generate a perception of impunity, weaken protection to real victims and create an environment of widespread distrust. Therefore, it is essential that the legal system ensures equal treatment between the parties, holding them accountable

exemplarily those who distort the purpose of a legal instrument designed to the promotion of human dignity and gender equality.

In view of this, it becomes essential to strengthen the accountability of those — and, especially, those who, acting in bad faith, use the legal apparatus of the Maria da Penha for improper purposes, such as revenge, manipulation of legal disputes or obtaining personal advantages. Just as the aforementioned law was created with rigor to protect and to punish women's aggressors, the same rigor must be demanded in the punishment of women who commit the crime of false accusation or false reporting of a crime against men innocent people. The adoption of more severe measures in these cases is essential to prevent such behavior abusive, ensuring legal certainty, protecting the integrity of the justice system and preserving the credibility of the Maria da Penha Law, which represents a historic advance in the fight for the rights of women who are truly victims of violence.

5. CONCLUSION

The Maria da Penha Law represents a historic milestone in the fight against violence domestic and family rights in Brazil. The result of national and international mobilization, this legislation consolidated important advances in the protection of women's rights, promoting effective mechanisms for preventing, assisting and punishing aggressors, and breaking with a culture of impunity that, for a long time, silenced victims.

However, the misuse of the aforementioned law through false complaints, although not represents the majority of cases, poses significant legal and social challenges. The instrumentalization of the Maria da Penha Law for distorted purposes — as revenge personal, judicial manipulation or obtaining undue advantages — compromises your credibility and harms not only those wrongly accused, but also the real victims of violence, whose voice can be delegitimized in the face of increasing social distrust.

Therefore, it is essential that the State acts with balance and rigor: ensuring maximum protection for real victims of domestic violence, but also ensuring due process, adversarial proceedings and full defense to the accused. The women who abuse the legal system by making false complaints must be held criminally and civilly liable, in accordance with the precepts of the legal system, so to preserve the integrity of the justice system and avoid the trivialization of gender-based violence.

It is necessary to reaffirm the non-negotiable value of the Maria da Penha Law as an instrument of justice and dignity for Brazilian women. However, for its effectiveness to be maintained and its legitimacy protected, its use must be guided by good faith, respect for fundamental rights and the judicious action of public authorities. Only then will it be possible to ensure a balanced legal environment that severely punishes true offenders aggressors, effectively protect legitimate victims and equally firmly restrain those distortions that threaten the credibility and effectiveness of the law itself.

Therefore, just as the Maria da Penha Law is stricter to protect and punish those aggressors of women, the penalties for women who act in bad faith, making false complaints must also be stricter to prevent this type of action and thus not create insecurity legal aid to society, nor discredit the Maria da Penha Law, which is a great advance and gigantic achievement for the protection of women who are truly victims.

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