

The effectiveness of the Maria da Penha law in the Brazilian legal system: between legal protection and the persistence of gender-based violence

The effectiveness of the Maria da Penha law in the Brazilian legal system: between legal protection and the persistence of gender-based violence

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SUMMARY

The analysis developed throughout this theoretical framework demonstrates that the Maria da Penha Law constitutes one of the most relevant instruments in Brazilian legal history for combating domestic violence and promoting women's human rights. Since its enactment, the law has consolidated significant advances by recognizing gender-based violence as a violation of fundamental rights and by structuring legal mechanisms for protecting and holding perpetrators accountable. However, the law's effectiveness still depends on structural and cultural factors that go beyond the normative realm and require ongoing commitment from the State and civil society in its practical application. It appears that, although the protective measures and psychosocial support provided for in the legislation are essential to guarantee the integrity and dignity of victims, their implementation still faces challenges related to a lack of infrastructure, judicial delays, and a shortage of trained professionals. Therefore, it can be concluded that the legal effectiveness of the Maria da Penha Law is directly linked to the realization of women's human rights, the expansion of public policies for shelter and re-education, and the strengthening of a culture of respect and equality. Only with a solid safety net, investment in professional training, and gender education will it be possible to ensure that the legal text translates into real protection, autonomy, and justice for all Brazilian women, fully fulfilling the emancipatory and humanist role that inspired its creation.

Keywords: Maria da Penha Law; Human Rights; Domestic Violence; Protective Measures; Legal Effectiveness.

ABSTRACT

The analysis developed throughout this theoretical framework shows that the Maria da Penha Law is one of the most relevant instruments in Brazilian legal history in the fight against domestic violence and in the promotion of women's human rights. Since its enactment, the law has consolidated significant advances, by recognizing gender-based violence as a violation of fundamental rights and by structuring legal mechanisms for the protection and accountability of aggressors. However, the effectiveness of the law still depends on structural and cultural factors, which goes beyond the normative field and requires continuous commitment from the State and civil society in its practical application. It is verified that, although the protective measures and psychosocial support provided for in the legislation are essential to ensure the integrity and dignity of the victims, their execution still faces challenges related to the lack of infrastructure, judicial delays and the shortage of trained professionals. It is concluded, therefore, that the legal effectiveness of the Maria da Penha Law is directly linked to the realization of women's human rights, to the expansion of public policies for

reception and re-education, and to the strengthening of the culture of respect and equity. Only with a solid protection network, investment in professional training and gender education will it be possible to ensure that the legal text translates into real protection, autonomy and justice for all Brazilian women, fully fulfilling the emancipatory and humanist role that inspired its creation.

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1. INTRODUCTION

The Maria da Penha Law (Law No. 11,340/2006) constitutes an important milestone in legislation that aims to combating domestic and family violence in Brazil. Established with the aim of providing more robust protection mechanisms for women who find themselves in situations of vulnerability, the legislation in question has been the subject of discussions about its true effectiveness in reducing violence rates, as well as the obstacles that arise to its effective implementation (Ribas, 2017). Although we have observed significant progress, the implementation of protective measures and accessibility to protection mechanisms still face challenges of a structural and institutional nature.

The implementation of the aforementioned law brought significant innovations, such as the possibility of removing the domestic aggressor and the strengthening of emergency protective measures. However, the implementation of these guarantees encounters obstacles related to the agility of judicial procedures and the actions of the authorities responsible for monitoring the measures, which often culminates in the recurrence of violence and the revictimization of women (Santos; Alvarenga, 2024).

The obstacles to the implementation of the Maria da Penha Law are related to the shortage of infrastructure and resources available to the responsible institutions, such as the Police Stations Specialized in Women's Assistance (DEAMs) and the courts that handle domestic violence cases. It is important to highlight that a significant number of victims, especially those located in peripheral regions and rural areas, face obstacles regarding access to these services. This phenomenon can compromise the effectiveness of the protection offered by the State (William, 2021).

An important aspect to be considered concerns the monitoring of victims after the implementation of protective measures. The lack of robust public policies that provide support psychological, financial and legal support to women has a significant influence on the effectiveness of laws. In the absence of the necessary support, many victims may end up choosing not to formalize their complaints and, thus, return to the cycle of violence (De Oliveira; Maia, 2024).

Improving public policies aimed at protecting women also requires ongoing training for professionals involved in assisting victims. It is clear that countless public safety and justice system professionals still perpetuate stereotypes of gender, which can compromise the proper application of the law. This, in turn, tends to delegitimize complaints and discourage victims from seeking state support (Da Silva et al., 2024).

The impunity of the aggressors represents a considerable obstacle to the full effectiveness of the Law



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Maria da Penha. The slowness of the trial process and the related complexities

to the proof of psychological violence can represent significant obstacles to the

accountability of offenders. This situation, in turn, can discourage victims from

seek to report such acts (Pasinato, 2015). Strengthening the application of legislation

undoubtedly requires the improvement of penalties and the adoption of monitoring mechanisms

most effective protective measures.

From a sociopolitical perspective, the Maria da Penha Law faces obstacles that emerge

of the deeply ingrained machista culture in Brazilian society. The normalization of violence

domestic and the hesitation of certain segments of society in admitting the urgency of protection

more targeted at women represent significant challenges for the implementation of legislation

as an effective mechanism in confronting violence (Pougy, 2010).

Implementing awareness campaigns about gender-based violence is essential to promote changes in social perceptions and encourage reporting.

It is essential to emphasize that the involvement of civil society, together with the strengthening of support networks, has the potential to play a significant role in promoting a culture

aimed at combating domestic violence (Santos, 2024).

The application of the Maria da Penha Law also faces challenges related to system overload judiciary, which can hinder the agile processing of cases. The implementation of technologies and computerized systems have the potential to improve victim care and speed up analysis protective measures, thus promoting more effective security and protection (Vargas et al., 2023).

Thus, this research aims to examine the effectiveness of the Maria da Penha Law, with the intention of identify the main obstacles that arise in its implementation, in addition to suggesting alternatives that can contribute to the improvement of public policies aimed at protection of women who find themselves in situations of violence. Based on this analysis, we intend understand the influence of legislation in reducing domestic violence rates, as well as evaluate the effectiveness of the established protective measures.

Furthermore, we seek to address the relevance of continuous training for security professionals, as well as the importance of thorough monitoring to ensure the effectiveness of laws in force. Therefore, the construction of a collaborative effort between the public spheres, civil society and the competent institutions is essential to strengthen the support network for victims and ensure that the Maria da Penha Law effectively fulfills its role in eliminating violence of gender in our country.

2. THEORETICAL FRAMEWORK

2.1 Evolution of the Maria da Penha Law (Law No. 11,340/2006)

The Maria da Penha Law (Law No. 11,340/2006) stands out as an important advance in the system Brazilian legal system, by establishing mechanisms aimed at preventing and repressing violence domestic violence against women. The creation of this institution was motivated by the deliberation of Inter-American Commission on Human Rights, which attributed to the Brazilian State the responsibility for the lack of action in protecting Maria da Penha Maia Fernandes, who suffered domestic violence recurrent form (Caetano et al., 2024). Since then, legislation has proven to be a resource fundamental in promoting gender equality and safeguarding the human rights of women.

To effectively illustrate the content and purposes of the legislation, it is important to highlight the following excerpt, which summarizes its basic principles:

Art. 1 – This legislation aims to prevent, punish and eradicate violence. domestic and family against women, in their various manifestations, guaranteeing the protection of human rights and the dignity of the human person. In this sense, measures are established comprehensive protection for victims, in addition to support and reception mechanisms, as well as holding perpetrators accountable. These actions aim to promote the effectiveness of human rights fundamental and the promotion of a cultural transformation aimed at preventing violence (Brazil, 2006).

The evolution of the Maria da Penha Law is an indication of the progress of targeted public policies to the protection of women. Initially, the legislation proposed considerable advances, including the introduction of urgent protective measures and the creation of specialized courts (Pagliuso et al., 2024). However, we still face challenges in the effectiveness of these measures, such as slowness of legal proceedings and the complexity of supervising compliance with legal standards.

The aforementioned legislation also brought significant changes to the social and cultural context, promoting greater awareness about gender-based violence and reinforcing the importance of public and private institutions in the implementation of preventive actions (Silva, 2024). In attention to the growing need for victim protection, monitoring was implemented electronic devices of the attackers as an additional strategy, aiming to ensure the effectiveness of the protective measures established.

The application of the Maria da Penha Law in family dynamics has generated intense debate and reflection among experts and society. Research indicates that the judicialization of cases of domestic violence has brought implications that can be interpreted as both beneficial and

harmful to family dynamics, especially in relation to the victims' minor children.

Another significant point to be considered is the legal interpretation of certain legal provisions.

Article 24-A, in turn, establishes the penalty for non-compliance with protective measures.

However, its application has generated discussions, especially regarding the possibility

that the victim's consent is considered an exclusion of illegality (Dos Santos Oliveira;

Schreiner, 2021). Case law has presented different interpretations regarding the importance

to prevent women from giving up as a way of combating the continuation of violence.

The implementation of the Maria da Penha Law in the context of women's human rights has been

shown to be a significant factor in advancing more effective policies. Brazil has formalized its

adherence to international agreements that highlight the importance of establishing effective mechanisms for

protection and specialized care for victims (Da Luz; Jacob, 2024). However, the

challenge of promoting integration between the different spheres of government, in addition to the need for a

continuous improvement of professionals working to implement the law (Silva, 2024).

The evolution of legislation is an indication of the strengthening of specialized police stations in

care for women. However, it is important to mention that the lack of structure and resources

still represents a challenge that can compromise the effectiveness of these services (Dos Santos Sousa;

Guida, 2024). Expanding access to justice, as well as the creation of new units of

care, is often referred to as an essential approach to mitigating these

challenges.

Regarding the legal impact, there has been a significant increase in the number of lawsuits.

based on the Maria da Penha Law, reflecting a growing confidence of victims in the system

of justice (Araújo, 2017). However, the revictimization of women during the course of

judicial process continues to be a reality that requires our combat actions (Caetano et al.,

2024).

In conclusion, the Maria da Penha Law represents an important step forward in protecting the rights of women.

women, however, for their success to be truly complete, a continuous

improvement process. Cooperation between the Executive, Legislative and Judicial branches,

combined with the mobilization of society, is essential to ensure its effectiveness and to

promote the strengthening of protective measures for victims, as well as the prevention of

gender violence.

2.2 WOMEN'S HUMAN RIGHTS AND LEGAL EFFECTIVENESS

The enactment of Law No. 11,340/2006, known as the Maria da Penha Law, represented a milestone legal and social recognition of domestic violence as a serious violation of human rights women's human beings. This law arose in response to international recommendations, especially the Belém do Pará Convention (1994), which urged States to adopt measures effective measures to prevent, punish, and eradicate gender-based violence. As highlighted by Da Luz and Jacob (2024), the norm was the result of a historical mobilization of the feminist movement and human rights organizations, seeking to break with the naturalization of violence and ensure the effective protection of women in their dignity and physical, psychological and moral integrity (Of Light; Jacob, 2024).

The approach to women's human rights brought by the Maria da Penha Law reinforces the principle of material equality, provided for in the Federal Constitution of 1988, by recognizing that the protection of women demand differentiated treatment in view of the historical inequality between genders. According to with Da Silva (sd), the norm was conceived from a humanist perspective, placing women as a subject of rights and the State as guarantor of its protection. However, the author notes that the legal effectiveness of the law is still limited by institutional, bureaucratic and cultural flaws, which result in underreporting of cases and in victims' disbelief regarding state support (Da Silva, sd).

The recognition of domestic violence as a violation of human rights implies understand that this is not just a matter of public safety, but of social justice and citizenship. In this context, Da Luz and Jacob (2024) highlight that the effectiveness of the Maria da Penha depends on the State's capacity to integrate intersectoral public policies, which articulate the justice system, health, social assistance, and education. The lack of this integration compromises the achievement of the objectives of the law, which goes beyond punishing the aggressor, seeking to transformation of structures of inequality and the promotion of gender equity (Da Luz; Jacob, 2024).

The legal effectiveness of the Maria da Penha Law is also related to the understanding of rights female humans from the perspective of human dignity. This constitutional principle, provided for in article 1, paragraph III, of the Federal Constitution, guides the application of protective standards, in order to ensure women have living conditions free from violence and discrimination. Da Silva (sd) argues that, although the legal text is advanced, its application still lacks sensitivity on the part of legal professionals, who often reproduce stigmas and deep-rooted prejudices, compromising the achievement of the ideal of justice and gender equality (Da Silva, sd).



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Furthermore, it is necessary to consider that the effectiveness of the law does not depend solely on its content normative, but also on the State's capacity to implement appropriate public policies.

According to Da Luz and Jacob (2024), there is a time lag between legislative progress and the implementation of protective measures, which creates a gap between legal discourse and social reality. This discrepancy highlights the need for investments in infrastructure, training of professionals and expansion of service networks, so that women's human rights do not remain only on a formal level (Da Luz; Jacob, 2024).

Another relevant factor is the role of specialized police stations and domestic violence courts, created to guarantee humane and rapid care for victims. However, as Da Silva (sd), the lack of physical structure and trained professionals limits the reach of these institutions, causing many women to give up on pursuing complaints. This failure structural weakens the legal effectiveness of the Maria da Penha Law, which depends directly on functionality of these bodies and the victim's trust in the justice system (Da Silva, nd).

The realization of women's human rights is also associated with the educational dimension of law, which seeks to promote long-term cultural and social change. Da Luz and Jacob (2024) point out that gender violence is perpetuated by historical constructions of domination male, and that criminal repression alone is not enough to eradicate the problem. Thus, legal effectiveness needs to be accompanied by awareness policies, educational campaigns and prevention programs aimed at creating a culture of respect and equality (Da Luz; Jacob, 2024).

In the legal field, the effectiveness of the Maria da Penha Law also depends on interpretation constitutional of the higher courts, which have consolidated understandings favorable to the expansion of the protection of women. The jurisprudence of the Federal Supreme Court and the Superior Court of Justice has reaffirmed the law's character as a public order norm, preventing, for example, the victim's waiver of criminal action and reinforcing the obligation of state prosecution in cases of domestic violence. These precedents strengthen law enforcement and consolidate rights female humans as an essential part of the Democratic Rule of Law (Da Luz; Jacob, 2024).

According to Meneghel, et al. (2013),

Gender violence is a historically produced phenomenon and occurs when there are asymmetrical power relations, constituting hierarchies, visible or not. However, including the gender hierarchies in understanding the genesis of violence encounters immense resistance in practices and knowledge that make up the field of application and effectiveness of laws (Meneghel, et al., 2013).



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On the other hand, Da Silva (sd) warns that legal effectiveness should not be confused with the merely increasing convictions, but with the ability to prevent violence and ensure reparations integral part of the victim. The punitive approach, although necessary, does not resolve the structural causes of problem and can reinforce criminalization without promoting significant changes in the reality of women. Thus, the focus on policies to reeducate the aggressor and strengthen female autonomy becomes essential for the legal system to fulfill its role of protection and social transformation (Da Silva, nd).

Another aspect that influences legal effectiveness is the interdisciplinarity of the approach, which must involve not only lawyers, but also psychologists, social workers and educators. From Luz and Jacob (2024) emphasizes that confronting domestic violence requires a support network integrated, capable of embracing the victim in their multiple dimensions. This multidisciplinary perspective is essential to ensure the full exercise of women's human rights, since violence has repercussions on women's physical, emotional, social and economic health (Da Luz; Jacob, 2024).

Despite the progress made, challenges still persist in the implementation of human rights women, especially with regard to access to justice and the protection of women in situations of socioeconomic vulnerability. Da Silva (undated) highlights that regional inequalities and the lack policies for the internalization of services compromise the universalization of care. In many locations, victims remain unassisted and exposed to new situations of violence, which demonstrates that the law, by itself, is not enough to guarantee the transformation of reality (Da Silva, sd).

Thus, it is understood that the Maria da Penha Law constitutes an essential instrument for the promotion of women's human rights, but its effectiveness depends on the combination of norm, institutional structure and political will. As Da Luz and Jacob (2024) point out, the strengthening public policies, training professionals and raising social awareness are determining factors for the law to fulfill its emancipatory function. Only with integration from these dimensions it will be possible to transform the legal text into everyday practice of protection, equality and justice for Brazilian women (Da Luz; Jacob, 2024).

2.3 PROTECTIVE MEASURES AND PSYCHOSOCIAL SUPPORT FOR VICTIMS

Law No. 11,340/2006, when establishing the Maria da Penha Law, introduced a set of measures urgent protective measures with the purpose of ensuring the physical, psychological, moral and assets of women in situations of domestic and family violence. These measures represent fundamental legal instruments for the preservation of the lives and dignity of victims,



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allowing the immediate removal of the aggressor, the prohibition of contact and the placement in shelters insurance. As Dos Santos Sousa and Guida (2024) observe, the effectiveness of these measures is intrinsically linked to the agility of public power and the sensitivity of responsible agents for its application, as any delay may result in re-victimization and worsening of the risk to woman (Dos Santos Sousa; Guida, 2024).

Pasinato (2015) highlights in his work that:

A milestone in this process was the 1988 Constitution with the formal recognition of several citizenship rights for women. Advances in the situation of Brazilian women, their political, social and economic participation are quite visible in society and are expressed in national indicators. However, there still remains a large gap between formal rights and de facto rights, excluding large sections of the female population from citizenship (Pasinato, 2015).

Thus, the effectiveness of protective measures depends on a service system capable of welcome victims in a humane manner, considering their emotional and social complexities involved. According to Godoi (2024), many women face resistance to reporting their aggressors, motivated by fear, financial dependence and fear of social judgment.

Thus, the role of multidisciplinary teams — composed of social workers, psychologists, public defenders and security professionals — it is crucial to offer support that goes beyond from the legal dimension, promoting the reconstruction of self-esteem and the recovery of autonomy feminine (Godoi, 2024).

The psychosocial support provided for in the Maria da Penha Law is an essential component of the policy of combating domestic violence, since it recognizes the victim as a subject of rights that requires full monitoring. Dos Santos Sousa and Guida (2024) emphasize that the reception must include not only immediate protection, but also strategies for social and professional reintegration, so that women do not return to the cycle of violence due to lack of alternatives. In this sense, the strengthening of the Women's Care Reference Centers and of Shelters is a determining factor for the success of protective measures (Of Santos Sousa; Guida, 2024).

The experience of several Brazilian municipalities demonstrates that the lack of coordination between bodies responsible for implementing the measures compromise the protection of victims. According to pointed out by Godoi (2024), many women who obtain favorable court decisions end up exposed again to aggressors due to lack of effective monitoring or inefficiency in compliance with stay-away orders. This highlights the need for a solid safety net and integrated, which ensures communication between the Judiciary, security forces and security services

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social assistance (Godoi, 2024).

The work of the professionals who make up the service teams requires technical preparation and sensitivity to deal with the specificities of gender-based violence. Dos Santos Sousa and Guida (2024) highlight that the continued qualification of these agents is essential to ensure that protective measures are applied effectively, respectfully and in line with the principles of human rights humans. When professionals do not have adequate training, there is a risk of revictimization institutional, that is, the woman being exposed again to suffering by those who should welcome it (Dos Santos Sousa; Guida, 2024).

Another relevant aspect is the psychological support of victims after the measures are granted. protective measures. Godoi (2024) notes that the trauma resulting from domestic violence leaves scars profound effects on women's mental health, who often remain in a state of alert constant fear and distrust. The lack of adequate psychological support can make it difficult to overcoming these experiences and increasing emotional vulnerability, reinforcing the need for public policies that prioritize free and accessible psychological care (Godoi, 2024).

The effectiveness of protective measures also depends on strengthening the family support network and community. Dos Santos Sousa and Guida (2024) argue that the isolation of the victim is one of the main factors that perpetuate the cycle of violence, making the involvement of family members, neighbors, and local institutions to protect women. This social mobilization must be stimulated through educational campaigns and awareness programs, which promote culture of non-violence and solidarity (Dos Santos Sousa; Guida, 2024).

Furthermore, monitoring of protective measures must include inspection and technological mechanisms that guarantee greater security for victims. Godoi (2024) mentions the adoption of innovative measures, such as the use of electronic ankle bracelets to monitor aggressors, which have been shown to be effective in preventing reoffending. However, the application of these technologies is still uneven across the country, especially in regions with poor infrastructure, which reveals the need for more comprehensive public policies and inclusive (Godoi, 2024).

The effectiveness of psychosocial support and protective measures also depends on cooperation between public authorities and civil society organizations. Dos Santos Sousa and Guida (2024) emphasize that non-governmental organizations and feminist movements play a role fundamental in welcoming women, providing legal guidance and demanding more effective policies effective. This partnership strengthens institutional confrontation and ensures a greater plurality of actions aimed at the emancipation and protection of victims (Dos Santos Sousa; Guida, 2024).

A sensitive point for the success of the measures is the monitoring of the aggressor, which must be inserted into re-education and accountability programs. According to Godoi (2024), punishment

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alone does not solve the problem of gender violence; it is necessary to work on aspects behavioral and psychosocial aspects of the offender to prevent recidivism. Reeducation programs men have shown good results when linked to public policies and monitored by multidisciplinary technical teams, reinforcing the preventive and pedagogical nature of the Maria Law da Penha (Godoi, 2024).

Despite the advances, the literature shows that the implementation of protective measures still faces serious obstacles, especially in regions further away from large urban centers.

Dos Santos Sousa and Guida (2024) point out that the lack of resources, specialized teams and insufficient shelters prevents rapid and effective care. This territorial inequality aggravates the vulnerability of women and demonstrates that the effectiveness of the law depends on decentralization of public policies and continued investment in local protection structures (Dos Santos Sousa; Guida, 2024).

3. CONCLUSION

The analysis developed throughout this theoretical framework shows that the Maria da Penha Law constitutes one of the most relevant instruments in Brazilian legal history in confronting domestic violence and the promotion of women's human rights. Since its enactment, the standard consolidated significant advances by recognizing gender violence as a violation of fundamental rights and by structuring legal mechanisms for the protection and accountability of aggressors. However, the effectiveness of the law still depends on structural and cultural factors, which go beyond the normative field and require a continuous commitment from the State and society civil in its practical application.

It appears that, although the protective measures and psychosocial support provided for in the legislation are essential to guarantee the integrity and dignity of the victims, their execution still faces challenges related to the lack of infrastructure, judicial delays and the shortage of professionals capable. The literature analyzed demonstrates that the success of the Maria da Penha Law depends on a integrated action between public institutions, civil society organizations and policies prevention that promote gender equality and social transformation.

It is therefore concluded that the legal effectiveness of the Maria da Penha Law is directly linked to realization of women's human rights, the expansion of public policies of reception and re-education and strengthening the culture of respect and equity. Only with a network of solid protection, investment in professional training and gender education will be possible ensure that the legal text translates into real protection, autonomy and justice for all women Brazilians, fully fulfilling the emancipatory and humanist role that inspired its creation.



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