Translated from Portuguese to English - www.onlinedoctranslator.com

RCMOS – Multidisciplinary Scientific Journal O Saber.
ISSN: 2675-9128. São Paulo-SP, year II, v.2, n. 2, Jul./Dec. 2022.

The ineffectiveness of the Maria da Penha Law following the adoption of the crime of feminicide: The withdrawal of Brazilian law on gender violence[1]

The ineffectiveness of the Maria da Penha Law from the adoption of the crime of feminicide: the withdrawal of Brazilian law on gender violence[two]

Rafaela Barros Cardoso de Souza[1]

Submitted on: 11/17/2022
Approved on: 11/17/2022
Published on: 11/18/2022 DOI:
10.51473/rcmos.v2i2.418

SUMMARY

The study analyzes the contributions of the Maria da Penha Law and the Feminicide Law to combating violence against women, evaluating whether in recent years there has been an eradication or reduction in domestic violence against cis and trans women within the family. It understands violence against women as a serious social problem that has devastating repercussions on the lives of the victim, their ancestors and descendants, despite the aggressor's feeling of impunity. It seeks to analyze the importance of the Maria da Penha Law in terms of mitigating feminicide. It uses a qualitative study as a methodology, carrying out a bibliographical review of the articles available in full, in Portuguese, from 2012 to 2021, in the Scielo and Scholar virtual libraries, in addition to the doctrine and jurisprudence that deal with this topic. It is concluded that the recurrence of attacks, as well as the feeling of impunity, is mainly due to the underreporting of complaints and the imbalance and disharmonization of the aggressor's repressive and punitive actions. Quantitative and qualitative studies are recommended that illustrate the situation of feminicide in Brazil, pointing out possible solutions for tackling the problem in the civil and criminal spheres.

Key words: Maria da Penha Law. Femicide. Domestic violence.

ABSTRACT

The study analyzes the contributions of the Maria da Penha Law and the Femicide Law to combating violence against women, assessing whether in recent years there has been the eradication or reduction of domestic violence against cis and trans women within the family. It understands violence against women as a serious social problem that has devastating repercussions on the lives of the victim, their ancestors, and descendants, despite the aggressor's sense of impunity. It seeks to analyze the importance of the Maria da Penha Law in terms of mitigating femicide. It uses as a methodology, the qualitative study, carrying out a bibliographic review of the articles available in full, in Portuguese, from 2012 to 2021, in the virtual libraries of Scielo and Scholar, in addition to the doctrine and jurisprudence that deals with this topic. It concludes that the recurrence of aggression, as well as the feeling of impunity, is mainly due to the underreporting of complaints and the imbalance and disharmonization of the repressive and punitive actions of the aggressor. Quantitative and qualitative studies are recommended to illustrate the situation of femicide in Brazil, pointing out possible solutions for dealing with the problem in the civil and criminal spheres.

Keywords: Maria da Penha Law. Femicide. Domestic violence.

1. INTRODUCTION

Violence against women is one of the most recurrent social problems in the world, and occupies the 12th position as one of the priority areas defined in the Beijing Platform (IPEA, 2020) with a view to overcoming gender inequalities and gender-based violence against women . In this turn, it is analyzed that the highest index of violence is concentrated within the family, and it is important to create legal mechanisms, programs and campaigns that mitigate the problem, which leads to the death of these victims, in many cases.

In this context, discussions regarding violence against women within the family are frequent. tes, so that Law no. 11,340/2006, known as the Maria da Penha Law, which creates mechanisms to restrain the domestic and family violence against women, whose objective is to prevent, punish, and eradicate this

1 This article was a Course Completion Work presented to Faculdade Santo Agostinho de Vitória da Conquista, with a partial requirement for obtaining a Bachelor of Laws degree. Santo Agostinho College of Vitória da Conquista.

two This article was a Course Completion Paper presented to the Faculdade Santo Agostinho de Vitória da Conquista, with a partial requirement to obtain a Bachelor of Law degree. St. Augustine's College of Conquest Victory.

This is an article published in Open Access under the CreativeCommons Attribution license, which permits unrestricted use, distribution and reproduction in any medium, as long as the original work is correctly cited.

typology of violence. In addition to the Maria da Penha Law, the Law n. 13,104/2015, which provides for feminicide as a qualifying circumstance for the crime of homicide.

Femicide, therefore, is qualified homicide when carried out for misogynistic reasons, and does not consider transgender women, as it focuses especially on women and not on gender issues. However, the United Nations discusses aspects related to the inclusion and characterization of these trans women as fundamental, as this crime is increasingly common in Brazil against people in these conditions.

Despite all the efforts to combat and eradicate violence against women, justice rests on the will and courage of the woman to carry out the complaint against her aggressor, which in this case, it is still possible to mitigate the problems through what is exposed in the Maria da Penha Law, when a complaint is not made by the Public Prosecutor's Office and legal measures are not taken against the aggressor, leading him to imprisonment.

The countless legal attempts set a precedent for the existence of interdisciplinary work, involving society, health professionals (nurses, psychologists, doctors, etc.), technicians, public security agents, jurists, ascendants and descendants. In this context, the present study seeks to answer the following guiding question: What is the impact of the creation of the crime of feminicide in relation to the measures of the Maria da Penha Law?

The primary objective is to analyze the importance of the Maria da Penha Law in terms of mitigating feminicide. The secondary objectives are: a) discuss the aspects that led to the creation of the Maria da Penha Law; b) analyze the implications of the change in art. 122 of the Penal Code in combating violence against women; c) assess whether legal attempts aimed at protecting women are sufficient to mitigate problems related to gender-based violence.

For the present study, the following hypotheses were considered: The Maria da Penha law was created to ensure the lives of women against domestic violence, while the creation of the crime of feminicide brought the aggravating factor to the attempt on their lives, with the aim of reducing the statistics of violence and death, however, it is considered necessary that protection also extends to trans women who are in the same condition, correcting a failure of the legislator and meeting this demand; It is believed that the Brazilian legal system has become eroded due to the countless reports of violence that are frustrated due to the victim's regret, damaging the technical-legal framework and the strength of ministerial bodies, in addition to underutilizing the State's public security service. .

To this end, Chapter I begins by dealing with the history of the Maria da Penha Law, unraveling its origin. In Chapter II, the history of femicide and its importance is discussed. In Chapter III, mitigating measures regarding gender-based violence in Brazil. Therefore, it is essential to read articles related to the topic, as well as to analyze the Maria da Penha and Feminicide laws in full, highlighting the individual and collective principles and guarantees of the Brazilian legal system.

2 MATERIALS AND METHODS

An integrative review study was carried out, of a qualitative and exploratory nature, using the keywords: “parental alienation”, “moral damage and shared custody, through the search for scientific articles in the database, Scielo and Scholar, as well as reading books, jurisprudence, the Federal Constitution and the Penal Code.

As inclusion criteria, scientific articles published in the last 10 years will be considered, and in a database available on the internet, free of charge, whose materials will be made available in full. Studies that propose a theoretical review based on bibliographical research and reading of legal diplomas concerning the topic in question will also be included. Materials that are not in the databases will be excluded of data from digital libraries, in English, or not eligible for this study, and also, those who do not meet the inclusion criteria.

two

3 MARIA DA PENHA LAW

The Maria da Penha Law was created with the aim of establishing mechanisms to combat domestic and family violence against women, which is set out in section VIII of art. 226 of the Constitution

This is an article published in Open Access under the CreativeCommons Attribution license, which permits unrestricted use, distribution and reproduction in any medium, as long as the original work is correctly cited.

Federal. The Maria da Penha law represents, in the view of Calazans and Cortes (2011), one of the most exciting and interesting examples of democratic maturity, with the active participation of feminist non-governmental organizations, the Secretariat for Women's Policy, academia, legal operators and the National Congress. From these, the main impacts that violence against women can cause are considered.

The name of the law was given in honor of a woman, nurse, Maria da Penha Maia Fernandes, she suffered domestic violence from her husband for a period of six years, including attempted murder, the first attempt being with a firearm, resulting in consequences in Maria, leaving her paraplegic and, in the second attempt, there was electrocution and drowning. Only after 19 years was there punishment, with trials and sentencing taking place, totaling the length of the sentence at 25 years, however, the accused only served two years in a closed regime.

Pressure from women and feminists across the country, especially after the approval of PL 4559/2004, were intense, resulting in the sanction of the law on August 7, 2006 and representing an important victory for society. For Meneghel (2013), feminist movements stood out as being fundamental for the elaboration and approval of the Maria da Penha Law, so that the movement established itself as a patron of the fight against gender-based violence in the country.

The creation of the Maria da Penha Law was, therefore, a historic milestone that gave greater visibility to the issue of domestic violence in Brazil, however, the unequal application in Brazilian territory and the social ills to which many women are subject, contributes to acceptance of violence at the risk of having their subsistence jeopardized, therefore, many of them allow aggression in order to continue maintaining the nutrition, education and health of their children, revealing a deplorable nature of the country's social structure (IPEA, 2015).

In the conception of Cerqueira et al (2015):

> Domestic violence is the mother of all violence. The victims are not just women and children who suffer repeatedly, are beaten, raped and eventually killed. The victim ends up being the whole of society. In addition to everyday suffering, domestic violence reproduces and feeds learning that is generally not restricted to the walls of the home. Children and young people who grow up in this environment often respond to daily conflicts and the need for self-affirmation, so typical of youth, using the learned language of violence. When such incidents cause a death, a spiral of aggression and reciprocal revenge involving groups of young people generates countless other fatal victims, and the trace of the origin of all problems has long been erased by a sequence of events, making them invisible to society the consequences of learning about intrafamily violence.

The aforementioned authors thus summarize a map of the entire structure of violence in Brazilian society. A battle that begins in the home and extends to the streets, in an eternal cyclical revenge, the result of the ineffectiveness of laws in containing the physical and psychological abuse and aggression to which women are subjected in a toxic and unhealthy relationship.

IPEA (2020) analyzes the phenomenon of violence against women, considering the perception of Brazilian society regarding the victim and the aggressor. The research by the aforementioned institute concludes that the majority of the population does not agree that women are beaten because they provoke it, but 17% of the interviewed population still believe in this hypothesis, with the male perception being the main one, in this case. Most people know a man who assaulted his partner (56%), revealing that there is a prevalence of men responsible for the crime of aggression in relation to women who have sexual partners. Furthermore, the research also showed that ignorance of the Maria da Penha Law and impunity are important factors that contribute to the practice of aggression.

Pasinato (1998 apud Meneghel, 2013, p. 693) classifies the Maria da Penha Law into three axes:

> The first deals with criminal measures to punish violence, including the resumption of the police investigation, arrest in the act, the restriction of criminal representation for certain crimes and the veto for the application of Law 9099/95. The second axis includes measures to protect physical integrity and women's rights, and the third axis includes prevention and education measures, aiming to prevent the occurrence of violence and discrimination based on gender.

Based on this classification by the aforementioned author,**It is possible to infer that the concern of the legal device was concerned with**treat the punishment of the aggressor more severely, protect the victim from possible retaliation and prevent the recurrence of crime and gender discrimination. However, the application of the law is conditioned on reporting, a taboo in Brazilian society and, above all, for women who are victims of domestic violence. It is observed in Judgment no. 1283726/2017 that the victim's word has relevant value with regard to cases of aggression against women in her home, as follows:

This is an article published in Open Access under the CreativeCommons Attribution license, which permits unrestricted use, distribution and reproduction in any medium, as long as the original work is correctly cited.

MENU
CRIMINAL. BODILY INJURY AND DOMICILE VIOLATION. DOMESTIC AND FAMILY VIOLENCE AGAINST WOMEN. AUTHORITY. BASE PENALTY. INCREASE FRACTION. Crimes of domestic violence and bodily harm, committed in the context of domestic and family violence against women, proven by the testimony of the victims, by the corpus delicti examination report, by photography and by the confession, even if partial, of the defendant. In crimes committed in the domestic sphere, the victim's word assumes special relevance, maximum when coherent and harmonious with the other elements of conviction.
The Penal Code does not define a mathematical criterion for setting the base penalty, prevailing in jurisprudence, in the first phase of dosimetry, by establishing reasonable and proportional parameters, which applies, for each negative judicial circumstance, the fraction of 1/8 on the difference between the maximum and minimum penalties assigned in abstract to the crime. This criterion, as determined by article 59, item II, of the Penal Code, establishes the amount of the penalty "within the established limits", which are the minimum and maximum penalties agreed in the abstract, considering the eight judicial circumstances. That's why it's the most suitable. Appeal dismissed (Judgment 1283726, 00065208120178070010, Rapporteur: MARIO MA-CHADO, 1st Criminal Panel, trial date: 10/9/2020, published in PJe: 22/9/2020. Page: No Registered Page.)

It is worth noting that jurisprudence is in favor of the word of women who are victims of domestic violence, who constantly suffer threats from their partner, and often have silence as their only recourse during family life, but, protected by the law and under an oath of perjury, reveals the content of the unpleasantness experienced with your spouse, a fact that must be considered in the judgment concerning the issue.

4 ORIGIN OF FEMICIDE

The word "feminicide" was used for the first time by feminist researcher Diana EH Russel, in the first Court of crimes against Women, in Brussels, Belgium, in defending a case regarding the deaths of women in the United States and Lebanon. Diana studied cases of sexual violence against women, defining a new expression "the intentional murder of women or girls because they are women". The word feminicide began to be used frequently in Latin America after a series of murders of women in Mexico, and in Brazil the term gained space after the creation of the Maria da Penha Law.

The deaths of women resulting from gender conflicts, that is, because they are women, are called feminicides or femicides. In Romero's (2014 apud OLIVEIRA; COSTA; SOU-ZA, 2015, p. 22) conception, feminicide is any act of aggression derived from gender domination, committed against a female individual, causing her death. Therefore, the murder of women can be carried out by people close to the victims, such as boyfriends, husbands and/or partners, other family members or by strangers, in this context, there is already jurisprudence in favor of the victim, even if it is not the same sex. female, under the following conditions, in Decision no. 1152502:

MENU
APPEAL IN THE STRICT SENSE. APPLICATION OF LAW 11.340/06 (MARIA DA PENHA). TRANSEXUAL VICTIM. INDEPENDENT APPLICATION OF CIVIL REGISTRATION AMENDMENT. JURISDICTION OF THE COURT FOR DOMESTIC AND FAMILY VIOLENCE AGAINST WOMEN.

RESOURCE PROVIDED.
1. In the face of sexual alteration, with the respondent behaving as a woman and thus assuming her role in society, thus being admitted and recognized, the alteration of her civil registration represents just another mechanism of expression and full exercise of the feminine gender by which chose, and cannot represent an obstacle to the exercise of rights that are legally provided for.

3. Appeal granted. (Judgment 1152502, 20181610013827RSE, Rapporteur: SILVANIO BARBOSA DOS SANTOS, 2nd CRIMINAL CLASS, trial date: 2/14/2019, published in DJE: 2/20/2019. p.: 179/197)

Jurisprudence favors the cases of trans women who assume the role of women in society and are also victims of abuse and aggression from their partners, including in cases where there is homicide. Therefore, we see an attempt to protect women, in all aspects, whether cis or trans, and the adaptation of Brazilian legislation to the needs of its citizens, although much still needs to be done.

This is an article published in Open Access under the CreativeCommons Attribution license, which permits unrestricted use, distribution and reproduction in any medium, as long as the original work is correctly cited.

be discussed in this regard.

IPEA (2015) concluded that intimate partners are mainly responsible for the deaths of women in Brazil, noting the need to evaluate prevention against the occurrence of these crimes within the family, based on public policies and the implementation of the Law Maria da penha. It turns out that the law alone cannot inhibit acts of aggression, with popular participation, the mobilization of non-governmental organizations, the creation of public policies, among other elements that aim to mitigate femicide in the country, being important.

According to Oliveira, Costa and Souza (2015), feminicide can be classified into: a) intimate feminicide, when the aggressor had or maintained an intimate or family relationship with the victim; b) sexual femicide, when the aggressor, despite having no relationship with the victim, commits the crime after sexual intercourse with the victim; c) corporate femicide, when the aggressor commits the crime for reasons of discipline or revenge, organized crime, etc.; d) child femicide, when abuse occurs by family members who have a legal duty to protect them.

In this sense, it is important to understand that the causes of feminicide are diverse, and it is essential to create public policies that contribute to combating violence against women, thus avoiding extreme cases.

5 INEFFECTIVENESS OF THE LAW

The Maria da Penha Law established a parameter never seen before in Brazilian society, making women visible in the face of the oppression suffered in their homes by their partners. However, the objective of eradicating violence against women, described in art. 1st, of the aforementioned law, was not achieved, mainly because there is underreporting of this violence, in addition, it is observed that women are subjected to these conditions of aggression for different reasons and lack a multidisciplinary team to monitor case by case.

The increase in cases of aggression against women in Brazil can be considered based on the Violence Map. lência (2015) which presented 50.3% of cases of feminicide, with 33.2% of women killed by their partners and ex-partners. Furthermore, the growth of violence against women during the period of the SARS CoV-2 pandemic increased, due to social isolation, cases of aggression were increasingly frequent.

In this conjecture, it is believed that marital relationships are the biggest causes of domestic violence, however, there is difficulty in applying the law given the emotional issues that prevent the arrest of partners or, when the justice system deems it necessary only security measures. In this way, the feminist movement believes that mediation instead of equity and equality produces revictimization and reprivatization of gender violence, a situation that can happen when violent behaviors are pathologized or only alternative measures are proposed.

For Meneghel et al. (2013, p. 694):

> The Maria da Penha Law advocates the creation of Special Courts for Domestic Violence and the Ministry of Justice has been a major driver for the creation of these Courts throughout the country, in addition to monitoring complaints against judges who refuse to apply it or apply it with distortions.

These impasses are frequent, since the sexist culture understands that women must submit to their spouses or that they provoke violence. Therefore, the discussion regarding the legal mechanism used to repress violence is essential, however, it is important that the competent bodies and the Brazilian justice system are more severe with the reported cases that involved the Maria da Penha Law so that it is not necessary to apply of the Feminicide Law.

It is clarified that victims of domestic violence are afraid of retaliation after reporting, as in fact often happens in Brazil, the Maria da Penha Law ended up playing a reinforcing role against the aggressor, granting power to the police to lead the accused away from the victim and ensuring their protection. The conduct of the investigation, however, the slowness of Justice and the difficulty in standardizing actions aimed at combating domestic violence, are relevant factors in making the tightening of the law, such as the Feminicide Law, possible and necessary.

This is an article published in Open Access under the CreativeCommons Attribution license, which permits unrestricted use, distribution and reproduction in any medium, as long as the original work is correctly cited.

FINAL CONSIDERATIONS

Domestic violence is a recurring social problem in Brazil, with women as the main targets of the structural machismo that has led to women dying in the most diverse municipalities in the country. Impunity in cases of aggression against women results in the naturalization of violence, a continuous act, it is observed that it is necessary to adopt mitigating measures to contain the progression of cases.

It should be noted that the feeling of impunity favors the growth of the number of attacks against women, in addition, it is known that there is a limit for Justice to intervene in personal matters and, mainly, in the inviolability of the home, however, it considers It is clear that the Maria da Penha Law and the Feminicide Law contributed to the reduction in cases.

It is understood that the failure of the legal system in dealing with violence against women is mainly due to the lack of support for victims of domestic violence, in the psychological, social and economic sense, but also due to the sexist culture that permeates all the bodies responsible for protecting women's rights.

It is hoped that studies aimed at analyzing domestic violence against women will also reach trans women who suffer from the same problems, although the circumstances are different. It is recommended that campaigns be developed to support women victims of violence, create community centers and provide free justice for victims of aggression, their descendants and ascendants, through the implementation of programs and public policies that contribute to the fight against domestic violence.

REFERENCES

BRAZIL. Court of Justice of the Federal District. Judgment no. 1152502. Female transsexual as passive subject. Rapporteur: Silvanio Barbosa dos Santos – 2nd Panel.**Electronic Justice Diary**, Brasília, February 20, 2019. Available at: https://pesquisajuris.tjdft.jus.br/IndexadorAcordaos-web/sistj

BRAZIL. Court of Justice of the Federal District. Judgment no. 1283726. Does the victim's word in crimes committed in situations of domestic violence against women have special importance? Relevance of the victim's word. Rapporteur: Mario Machado – 1st Panel.**Electronic Justice Diary**, Brasília, Nov. 22, 2020. Available at: https://pesquisajuris.tjdft.jus.br/IndexadorAcordaos-web/sistj.

CALAZANS, Myllena; CORTES, Iáris. The process of creation, approval and implementation of the Maria da Penha Law. Maria da Penha Law commented from a legal-feminist perspective. Rio de Janeiro: Lumen Juris, v. 193, 2011.

CERQUEIRA, Daniel Ricardo de Castro et al. Evaluating the effectiveness of the Maria da Penha Law. 2015.

LA BOTZ, Dan. "MEXICO: Girl's Murder Sad Symbol of Corporate Power, Child Labor, Female Exploitation on the Border". In: Mexican Labor News and Analysis March 2nd, 1999.

MENEGHEL, Stela Nazareth et al. Repercussions of the Maria da Penha Law in combating gender violence. Science & Public Health, v. 18, p. 691-700, 2013.

OLIVEIRA, Ana Carolina Gondim de A.; COSTA, Mônica Josy Sousa; SOUSA, Eduardo Sérgio Soares. Femicide and gender-based violence: socio-legal aspects. TEMA-Electronic Science Journal (ISSN 2175-9553), v. 16, no. 24; 25, 2016.

PASINATO, Wânia. Eight years of Maria da Penha Law. Feminist Studies Magazine [online]. 2015, vol. 23, no. 2 [Accessed 10 November 2022], pp. 533-545. Available at: https://doi.org/10.1590/0104-026X-2015v23n2p533>. Epub May-Aug 2015. ISSN 0104-026X. https://doi.org/10.1590/0104-026X2015v23n2p533.

RUSSELL, Diana; De Vem, Nicole Van (ed.). Crimes Against Women: Proceedings of the International Tribunal. 3rd ed. California: Russell Publications, 1990.

SAFFIOTI, HELEIETH IB Gender violence in Brazil today.*Feminist Studies*, 1994, p. 443–61. *JSTOR*, http://www.jstor.org/stable/24327190. Accessed 10 Nov. 2022.

This is an article published in Open Access under the CreativeCommons Attribution license, which permits unrestricted use, distribution and reproduction in any medium, as long as the original work is correctly cited.