



## **Women's physical and psychological vulnerability in Brazil**

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**Abstract**— This article aims to address domestic violence against women, in its various aspects - physical and psychological and the event of Law 11.340 / 2006, Law Maria da Penha, contemplating its effectiveness and fragility, making the victim of this type of aggression vulnerable. It aims to demonstrate the fragility to which the legislation in the protection of women against domestic and family violence in Brazil is exposed. Admittedly, a social problem that needs to be removed, considering the irreparable damage that affects women, causing physical and emotional health problems, which can culminate in ending their own lives as a mechanism to eliminate suffering. First with a conceptualization of physical violence and psychology and later with the legislative evolution with a view to protecting women, their penalties and finally, the analysis of their effectiveness within the Brazilian context.

**Keywords**—Violence; Physical violence; Psychological violence; Woman; Law Maria da Penha.

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### **I. INTRODUCTION**

The main objective of this article is to demonstrate the fragility of the legislation in the protection of women against physical and psychological violence in Brazil. So contemporary and at the same time so ancestral, the theme of violence against women goes beyond the temporal sense and invades the domestic environment for centuries. The news about domestic violence and its victims has become very common, despite the event of the Maria da Penha Law. The legislation has created a framework of protective measures in its various articles, with a view to stagnating or minimizing the effects of violence against women - domestic and family - in the desire to contain the aggressor's activity. However, in spite of all the resources sought, the violence is perpetuated and dynamizes more overwhelming and destructive mechanisms, such as the veiled and difficult to prove violence that is configured in psychological violence. A subtle and continuous form that attacks, denigrates, takes away any capacity to maintain self-love and sometimes causes the victim to commit suicide in this base form of aggression.

More than identifying and analyzing the forms of violence against women in the domestic sphere, and the legal provisions that integrate Law n° 11.340 / 2006, like the other apparatuses (Federal Constitution and Codes), the study aims to demonstrate what has been causing ineffectiveness of legislation in effectively protecting women against physical and psychological violence.

Therefore, using a bibliographic and descriptive research, when it proposes to characterize the phenomenon under study and exploratory, when it intends to familiarize itself with the problem and reflect with a view to pointing out ways for its modification. Through a thorough literary review and analysis of the phenomenon, the work proposed the effectiveness of legislation in favor of the protection of women in the contemporary world, where it modified its supporting participation in the historical process and became the protagonist of its trajectory, no longer being acceptable its physical and psychological degradation, still less the institutional weakness of defending their rights.

The work is divided into four chapters where it is possible to unveil the meaning of physical and psychological violence; enunciate the legal provisions that guarantee the protection of women

against these attacks. As well as the punishments inherent to the infringer; and to identify the gaps that make it vulnerable and ineffective in terms of the desired effects on law enforcement.

Thus, it is hoped to contribute to the advancement of studies and the enactment of decrees and laws that effectively protect women against domestic violence and that, as far as possible, manage to rescue her from this devastating situation.

## **II. THEORETICAL REFERENCE**

Talking about domestic violence and against women is a historical reflection, where in a typically patriarchal society; their subjugation has always been treated as a normal standard. However, the phenomenon of violence has never been observed, especially against women, in such an exacerbated way, starting to deserve extra attention by researchers, lawyers, and all segments of society, in the search for respect for each one's life from them.

In order to understand the constitutional intricacies that should guarantee the physical and psychological integrity of women, the object of this study is essential to conceptualize and differentiate what constitutes physical and psychological violence. Despite being a delicate matter and surrounded by difficulty in defining where psychological pain begins, which can cause greater harm than physical aggression, it is important to understand the legal provisions surrounding such situations and their fragility in becoming effective in protecting women.

### **2.1. Physical and psychological violence**

Firstly, it is necessary to understand what presents itself as violence in the context of women's daily life. Reference [1] violence, quoting Hanna Arendt, understands that violence is an instrument when the exercise of authority and power is lacking. The author corroborates the concept of violence when she says that: "As a tool, violence is planned and used for the purpose of multiplying natural vigor until ... in its last stage of development, they can replace it. Thus, violence expressed in the absence of vigor, strength, energy that, if present, would not require violence. In this way, violence is found at the pole of fragility / weakness and not at the pole of strength. In fact, when an individual feels unable to exercise power and authority through respect and cohesion, violence takes on expression" [1].

According to research released by the Ministry of Health, domestic violence, which is commonly related to women, is subdivided into physical, sexual, neglect and psychological. Thus, studies show that:

- a) **Physical violence** - resulting from the action of someone who causes or tries to cause damage, through physical force, or through an instrument (weapon or blunt object) that can cause internal and / or external injuries;
- b) **Sexual violence** - any and all acts that a person produces, in circumstances of use of power, subjecting another person to sexual practice against their will, using physical force, psychological influence (intimidation, enticement, seduction), or the use of weapons or drugs;
- c) **Negligence** - results from the omission of responsibility, on the part of one or more family members, in relation to another, especially if it is characterized by permanent or temporary weakness;
- d) **Psychological violence** - an act or omission that causes or intends to cause damage to the person's self-esteem, identity or development. It can be through threats, humiliation, blackmail, demands for behavior, discrimination, exploitation, criticism for sexual performance, deprivation of the right to come and go, causing the isolation of friends and family, or preventing her from using her financial assets. As described by the Ministry of Health, it is the type of violence, which is more complex to identify. According to the frequency and vigor, the abused person loses self-esteem, suffering, anxiety and repeated illness, in more severe cases, suicide [8].

Of all the grotesque forms of domestic violence and against women, the psychological one translates into the most brutal, complex and difficult to diagnose and prove with the magistrates, since it is reversed from subjectivity and individuality. The psychological aggression that devastates one victim may not cause the same damage to another, since the aggressor uses mechanisms of fragility of the person to whom he wants to subjugate and attack.

According to the renowned jurist and founder of the Brazilian Institute of Family Law - IBDFAM, Dr. Maria Berenice Dias, the Maria da Penha Law in its article 5 says that domestic violence against women is any action or omission that based on gender causes it death, injury, physical, sexual or psychological suffering and moral or property damage. Therefore, it is implied that any type of violence - physical, sexual, negligence or psychological - must be subject to legal effects in its treatment and punishment, aiming at the protection and guarantee of life. Under this bias, it is essential to identify the legal instruments that would allow women to be safeguarded from the devastating effects of domestic violence [9].

## **2.2. Legislation to protect women against physical and psychological violence**

Despite being supported by the Federal Constitution with respect to the rights of every citizen to life, when coming and going, physical protection and so many other articles that, if properly used, should effectively protect men, women and children, have not really been effective throughout of the time, where domestic violence and against women has become an uncontrolled social evil.

The various episodes of trials and convictions that do not result in effective punishment or that do not reverse the growth of violence against women peaked in the 1983 episode, against the pharmacist Maria da Penha Maia Fernandes. In view of the ineffective enforcement of the law against his aggressor, in his nonconformity for all the damage suffered (physical and psychological), his struggle crossed the limits of Brazilian territory and culminated in Law No. 11.340 / 06, or Law Maria da Penha as it stood known. In compliance with the recommendation by the Inter-American Commission on Human Rights of the Organization of American States, evoked by the pharmaceutical company in its fight for justice and legal redress, the Maria da Penha Law, including the statement by the Convention on the ban on all forms of discrimination against women, as well as the Convention to Prevent, Punish and Eradicate Violence against Women, the Maria da Penha Law brings advances in judicial procedures and reveals the harshest face of domestic violence in Brazil.

It is undeniable that Law No. 11.340 / 2006 added value to what was already had with the Federal Constitution / 88, also because it is a more recent provision that contemplates contemporary situations that go beyond the scope of the Constitution. The new Law creates Courts of Domestic and Family Violence Against Women - JVDVFs, with scope and the restoration of police authority to investigate and initiate an investigation when appropriate. It also prohibits the use of a pecuniary penalty, a fine or the donation of a basic food basket, but admits the preventive detention of the aggressor, who may be required to appear in court as determined by the magistrate or referred to a recovery and re-education program. Not only should these punitive measures be adopted, as prescribed by the Maria da Penha Law, but also the home apartment and the guarantee of the victim's approach limit, which obstruct the violence and protect the life of the victim of domestic violence. It is important to highlight that with all the debate produced by the creation of the Maria da Penha Law, the conception of gender violence was born, since everything that had been produced on the subject (physical, sexual, ...) could happen to any individual, differently from that occurs in the face of "being a woman".

Reference [11] gender is configured in a sociological concept that emerged in the 1960s, taking a new perspective in legal science. Therefore, it analyzes that there are differences between men and women, socially erected and established by power, tracing different social roles for men and women, where there is a preponderance of males. In this way, gender, as opposed to the issues involved by the male or female sex, is a social conception, which is perpetuated from generation to generation. The Convention for the Elimination of All Forms of Discrimination against Women,

when addressing violence against women, draws a parallel with gender-based violence, which in this case specifically addresses women because of the unique fact of being a woman or reaching them disproportionately, either by any of the mechanisms already exposed - physical, sexual or psychological pain - in the case against women. This also includes intimidation, the use of physical or psychological force, or the freedom that comes with it.

The Maria da Penha Law, in its article 5, well defines domestic violence and its intrinsic relationship with gender “for the purposes of this Law, domestic and family violence against women constitutes any action or omission based on gender that causes death, injury, physical, sexual or psychological suffering and moral or patrimonial damage: I - within the scope of the domestic unit, understood as the permanent living space for people, with or without family ties, including those sporadically aggregated; II - within the family, understood as the community formed by individuals who are or consider themselves related, united by natural ties, by affinity or by express will; III - in any intimate relationship of affection, in which the aggressor lives or has lived with the victim, regardless of cohabitation. Single paragraph. The personal relationships listed in this article are independent of sexual orientation”.

On March 9, 2015, Law 13.104 / 15, which amends the Brazilian Penal Code in its article 121, joins the legislative instruments, adding femicide as a qualifier, including in the list of heinous crimes implying the increase of the sentence as well as the law Maria da Penha created to eradicate domestic and family violence.

All provisions provide for sanctions and punishments in order to restrain such acts and facts, in order to safeguard the lives of women, inhibiting domestic violence and against women.

### **2.3 Precepts for punishing offenders**

Among the devices available to contain the spread of violence against women, supported by the Federal Constitution, Penal Code, Laws and Decrees, there is the Maria da Penha Law, due to its nature and conception.

Among the measures, firstly, the protective ones are listed, which have the nature of protecting the victim of violence and curbing the aggressor. Those considered as urgent are duly described in Law n° 11.340 / 2006 - Maria da Penha, in its 22nd article: “Having verified the practice of domestic and family violence against women, under the terms of this Law, the judge may immediately apply to the aggressor, jointly or separately, the following emergency protective measures, among others: I - suspension of possession or restriction of the carrying of weapons, with communication to the competent body, pursuant to Law No. 10,826, of December 22, 2003; II - removal from home, domicile or place of contact with the victim; III - prohibition of certain conducts, among which: a) approaching the victim, her family members and witnesses, establishing the minimum distance between them and the aggressor; b) contact with the victim, her family and witnesses by any means of communication; c) attending certain places in order to preserve the victim's physical and psychological integrity; IV - restriction or suspension of visits to minor dependents, after hearing the multidisciplinary service team or similar service; V - provision of provisional or provisional maintenance. § 1 The measures referred to in this article do not prevent the application of others provided for in the legislation in force, whenever the safety of the victim or the circumstances so require, and the measure must be communicated to the Public Ministry. § 2 In the event of application of item I, the aggressor being in the conditions mentioned in the caput and items of art. 6 of Law No. 10,826, of December 22, 2003, the judge will communicate to the respective body, corporation or institution the emergency protective measures granted and will determine the restriction of the possession of weapons, leaving the immediate superior of the aggressor responsible for complying with the judicial determination, under penalty of incurring crimes of malfeasance or disobedience, as the case may be. § 3 To guarantee the effectiveness of emergency protective measures, the judge may request assistance from the police force at any time. § 4 The provisions of

the caput and in paragraphs 5 and 6 of art. Apply to the cases provided for in this article, where applicable. 461 of Law No. 5,869, of January 11, 1973 (Code of Civil Procedure)”.

Thus, emergency protective measures initially aim at disarming the aggressor in expectation, as stated as in [9]: “Being the possession and use of the firearm by the aggressor legal, denouncing the victim to the police authority the violence and justifying the need to disarm him, for fear of his own life, a file will be installed to be sent to the court. Once the request is granted and the offender's right to maintain possession of the weapon is excluded, or if its use is limited, the person who registered and granted the license must be notified: the National Weapons System (SINARM) and the Federal Police. If the aggressor has the right to use a firearm, according to the legal list, the judge will communicate to the respective agency, corporation or institution that he imposed. The aggressor's immediate superior is responsible for complying with the judicial order under penalty of incurring crimes of malfeasance or disobedience. The restriction is valid to avoid a major tragedy. If the husband attacks his wife, in order to cause bodily injury, if he has a firearm, it is possible that, in the future, he will progress to murder”.

The second measure aims at the aggressor being physically removed from the victim, taking him or her out of the environment that is, from the environment previously enjoyed by both - house, apartment, or wherever violence has occurred. Their transgression is subject to the application of the provisions of art. 359 of the Penal Code: “Disobedience to the judicial decision on loss or suspension of right Art. 359 - Exercise function, activity, right, authority or office, which was suspended or deprived by judicial decision: Penalty - detention, from three months to two years, or fine”.

Disobedience in cases of violence against women imposes imprisonment in flagrante wrongdoing and can be reversed in home invasion (art. 150, Penal Code), having already ceased the family bond that existed in the past.

The third would be the limitation of conduct, which as an example imposes a minimum distance from the victim. It is a measure that is difficult to monitor, but which is also intended to protect the victim from the aggressor.

The restriction or suspension of visits is directed at victims of domestic violence, in these case minors.

The Fixation of Provisional or Provisional Foods may be fixed by a Criminal Judge or Court of Domestic and Family Violence, aiming at the maintenance or support of the family until the process is concluded.

These are the urgent protective measures that subject the aggressor, with urgent protective actions aimed at ensuring the well-being and protection of the victim of domestic violence, prescribed in articles 23 and 24 of Law 11.340 / 2006. All non-compliance by the aggressor is subject to the penalties provided for in the Penal Code. In the case of femicide - as a qualifier for violence - object of the amendment to article 121 of this code, by Law 13.104 / 15 it provides for penalties ranging from three months to three years of imprisonment and an increase of 1/3 of the penalty in the case of people with needs special.

What can be seen is a vast shield of legal provisions and respective punishments, but the reality still demonstrates the fragility with which the subject is covered. The numbers of femicide and physical, as well as psychological, aggressions are increasing at an alarming rate. According to a report published in G1 on March 5, 2020 (Clara Velasco, Gabriela Caesar and Thiago Reis): “Brazil had a 7.3% increase in cases of femicide in 2019 compared to 2018, points out a survey carried out by G1 with based on official data from 26 states and the Federal District. There are 1,314 women killed because they are women - one every 7 hours, on average”.

This demonstrates how urgent it is to analyze the vulnerability of legislative support and the adoption of actions that effectively impact this reality.

#### **2.4 Vulnerability that persists under legislation**

Violence against women grows day by day, on the margins of all existing devices and the punishments foreseen in them. Women who are victims of domestic violence are often silent, either because of fear of financial helplessness or the threats that are part of the violence itself. In the aspect of psychological violence, this silencing effect is even more exacerbated, since it is part of the aggression strategy: it feels incapable, inferior, trivialized, disbelieving itself and the world.

Notwithstanding the fact that all violence against women does not reach the courts, the State is not able to afford its share: to inspect, to deal with the necessary timeliness, in short, all sorts of bureaucratic, material and human obstacles. An example can be seen in article 152, sole paragraph of the Maria da Penha law, which says that the judge can determine the defendant's attendance at the recovery and re-education programs, except that in this sense the State is not prepared to assist the defendants, as there are not enough professionals in the psychosocial areas [10].

Both the protective measures presented and the precept in the Maria da Penha Law aim at protecting the victim and repressing the abuser, however the reality is far from desirable, as the numbers of feminicides can attest, with most of the women being raped. mercy of your attacker. It is certain that if the effective application of Law 11.340 / 2006 occurred, the victim would be protected from his aggressor; however the execution by the bodies that have the competence to implement it fails due to the lack of structure and does not cooperate so that each woman raped does not become another number in the statistics.

### **III FINAL CONSIDERATIONS**

It is a fact that domestic and family violence has constituted an unacceptable reality of transgression of women's rights, extirpating the right to life, freedom, respect and coexistence in a broad and necessary way for all, regardless of gender.

The growing increase in cases of aggression by women by their partners, and today also by partners, is inconceivable, since it is accompanied by physical and psychological deaths, the latter often leading to the inability to survive. Violence against women in the domestic and family environment comes in a line of constant growth not considering the new times and the acquired and equal rights. It is still frequent to verify the sexist behavior of treating women as an object, whether sexual or domestic chores, making childish and eroding relationships, where respect loses space and violence emerges.

Despite the most common form of domestic and family violence manifesting itself is physical aggression, which is sometimes fatal, psychological violence is no less pernicious, due to the permanent damage that induces literal or perspective suicide.

Patriarchal conduct still seems to be rooted in the core of man, influencing him in behavior out of sync with the contemporary world and its relations, causing a problem that transcends the social and cultural. Discrimination and submission of women persist as if they were the property of men.

Despite Law 11.340 / 06 - Maria da Penha Law, emerging from the cry for justice and severe measures against offenders, which came to provide mechanisms for preventing and restricting domestic and family violence against women, the scenario has not been auspicious. On the contrary, the number of cases of aggression and feminicide increases day by day. The law should provide through strict punishment and inhibition of the application of Law 9,099 / 95, which trivialized violence against women, giving it less aggressive potential, however it is not what is seen in the practice of many families. Protective measures, precautionary detention, among other mechanisms to curb violence against women listed in the Maria da Penha Law and other similar legal attributes, have not produced the necessary effects to reduce crimes against women. The number of protective measures increases daily and violence accompanies this growth in a contradictory way. The State is not able to effectively implement the protective measures determined, nor the attributes necessary to

contain the growing violence. Nor, in the case of psychological violence, does he demonstrate to be equipped, acculturated and prepared to carry out the appropriate treatment of subjective questions.

The questioning about the fragility of the legislation in the protection of women against violence arises when the application of the law in cases of domestic occurrences shows impunity. Despite the fact that women are being more aware of their rights and the prerogative of denouncing, overcoming their fears and embarrassment, going to the police stations - today of women existing in different locations - however, the wrong application or non-application of what the Law prescribes is verified. As observed by several jurists researched in this study, the Maria da Penha Law provides protection referrals to victims and appropriate punishment of the offender, thus being effective if there were no mistakes in its application, resulting from the absence of the creation of a protective structure next to the homes of shelter and the training of professionals that would allow them to return to social life, overcoming the damage resulting from violence. What is verified is a public power incapable of acting effectively in the face of the application of the law by the Judiciary. A police action that is inept or unprepared to deal with the occurrences, of act and right protecting women against domestic violence, whether physical or psychological.

Thus, it is possible to conclude that the Maria da Penha Law, Law 11.340 / 06 brought considerable advances and demonstrates its power of effectiveness and scope to remedy domestic violence against women, as long as its applicability is not compromised by the executive branch.

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