

# Domestic Violence and the Public Policy Need in Pandemic Time

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**Abstract**— The present work aims to analyze the need and usefulness of public policies during the Covid-19 pandemic. To this end, the present work deals with an analysis of domestic and family violence based on Law No. 11.340 / 06 - known as the Maria da Penha Law, as well as concepts and foundations pointed out in the best doctrine and jurisprudence.

## I. INTRODUCTION

Over the years, the discussion about the condition of women in society and the guarantee of rights has been a construction that is based on a set of actions by organized civil society, social movements, government agencies and individual stories of people who have passed for different situations due to her condition of existence due to the fact of being a woman.

Various behaviors labeled as criminal offenses are constantly announced in the media, in which domestic and family violence figure as the most recurrent, because men and women are not affected in the same way by violence, because:

[...] They are affected by violence in a different way. While men tend to be victims of violence predominantly practiced in the public space, women daily suffer from a phenomenon that manifests within their own homes, most of the time practiced by their (ex) partners (BRASIL, 2019, s /for).

However, since the creation of Law 11.340 entitled “Lei Maria da Penha”, there is a greater possibility for women to communicate to the competent authorities the various aggressions of which they are victims.

To this end, the State has created mechanisms and tools so that the aggressor does not fail to suffer the necessary reprimand. Allied to all this, the victims have been encouraged not only by official entities, but also by civil society organizations, non-governmental organizations and mainly by people who have some kind of close relationship.

Notably in the current context, due to the Covid-19 pandemic, women started to stay longer in their homes, where cases of aggression are more common. It should be noted that aggression is not only perpetrated in the marital relationship, but in any relationship in which there is an intimate relationship of affection. The family relationship that includes the partner, brother, parent, descendant also, in the event of any type of aggression on the part of these people, is subject to the provisions of Law No. 11.340.

The violence that affects women in the domestic and family environment often occurs through action or omission: through action, when it demands an active behavior from the aggressor, which can be: physical violence any act of aggression, with or without a weapon, that victimizes the person who is in a vulnerable state.

Sexual violence, in turn, occurs when the victim is forced to have sexual intercourse or any libidinous act is practiced without their consent through physical or psychological coercion.

Patrimonial violence, on the other hand, can occur when the victim's assets are subtracted or decreased; psychological violence that consists of emotional violence that causes psychological damage, which is often irreversible and with countless consequences for the rest of life. Such modality of violence occurs through serious threat, contempt, persecution, extortion and other means that cause dependence on the victim or low self-esteem; the moral violence that attributes facts that are untrue to taint your honor and reputation through slander, defamation and injury, and such offenses are currently very frequent when using social networks and communication channels.

The improper omission in this sense, occurs when someone, who could and should stop taking the action that the law determines, thus generating damage of equal gravity as if the fact had been practiced. Commonly, the omission is also related to a non-involvement of someone who is not obliged by law to do something, but for reasons of an intimate nature does not want to support or remedy the respective aggression, which can generate equal or even greater damage in relation to the possible action.

## II. METHODOLOGICAL ASSUMPTIONS

This article demanded to use methodological procedures considered adequate to obtain answers to the questions and objectives presented, based on scientific articles and bibliographic survey of the specific literature related to the theme of domestic and family violence.

The research is qualitative and descriptive as pointed out by Gil (2010), as it seeks to conceptualize the main positions of the theme, as well as bibliographic, as it uses legislation, jurisprudence, doctrine as sources of research.

The present theme also requires a principled and humanitarian approach, considering that violence manifests itself in broad aspects and the protection for proper protection comes precisely from the Federal Constitution of Brazil, as well as from treaties and guidelines of international organizations.

## III. LAW No. 11.340 AS A LEGAL INSTRUMENT INTENDED TO COMBAT DOMESTIC AND FAMILY VIOLENCE

Maria da Penha Maia Fernandes, Brazilian, from Ceará, born in the city of Fortaleza, daughter of a dentist father and mother teacher, entered the pharmacy course shortly before the age of eighteen. While at university, he married a journalist for the first time.

The marriage lasted a little less than four years because of his machismo and when he finished his higher education he went to the city of São Paulo to take his master's degree, and there he met the Colombian Marco Antônio Herédia Viveros where he married for the second time.

In the early years of his marriage, he was an extremely attentive and caring husband. Upon returning to his home city, Fortaleza, after completing his master's degree with his partner and his first daughter, he had two more daughters. At that moment he started showing signs of violence when he got his visa to stay here in Brazil. Then, psychological aggressions began and she could not stand that, she wanted the separation, but her partner did not accept the end of the relationship.

On the fateful dawn of the twenty-ninth of May, 1983, she woke up with a crash in her room and realized that she had been hit by something and thought that it was her companion from whom she did not take the shot, claiming it was thieves who entered her residence and victimized, stayed for a long time in hospital, underwent rehabilitation at the Sarah Kubitschek hospital from which he resumed the movements of his upper limbs and realized that he would stay for the rest of his days in a wheelchair, did his rehabilitation, returned to his hometown to her home where her husband put her with his three daughters in prison and once again victimized her with an electric shock in the bath; he altered the shower to give electric shocks and victimized her once more by being saved by his employees.

And she soon realized that things had been changed, she was in jail where she tried to escape from when her husband went on a trip and he did so. She managed with the support of her family from which she was struggling to get her divorce out, she soon realized that she had been hit by her husband, she fought made a complaint when the crime was almost prescribed and this was taken to a jury from which she was released, she left his conviction was mostly released after eight years. She fought for five more years and managed to get him to a jury from which he was released once again, was only put in prison after the third trial of which he was sentenced to eight years and spent only two years in prison. Marco Antônio, mocked the Brazilian criminal laws, implying that the acts of violence practiced would go unpunished.

Prior to this law, crimes against women were recognized as crimes of less offensive potential and were the responsibility of the Special Criminal Courts - Jecrim, if the maximum sentence imposed was up to two years, according to Art. 61. Of Law 9099/95, in verbis:

Criminal offenses with less offensive potential are considered, for the purposes of this Law, criminal offenses and crimes to which the law imposes a maximum penalty of not more than 2 (two) years, cumulated or not with a fine.

The aggressor could be benefited by the decriminalizing institutes foreseen in the law 9099/95, such as criminal transaction and civil composition of the damages, even if it was labeled as domestic and family infraction.

After so much struggle Maria da Penha Maia Fernandes managed to get the OAS (Organization of American States) to condemn Brazil to recognize crimes against women, which had great worldwide repercussions as Maria da Penha herself mentions in her book.

Thus, a law was created that took the name of this woman, which also accompanied several measures and changes in legislation, such as: shelter, amendment to the Penal Code, domestic and family violence court - for the trial of criminal offenses involving victim of domestic violence, and so on. As a result of all her struggle, she also wrote in 1994 a book telling her story with the title "I survived and I can tell".

The Maria da penha law was published on August 8, 2006 and had a 45-day vacancy period and entered into force on September 22, 2006. According to art. 226 par. 8 of the Federal Constitution, the State has the duty to create mechanisms that will curb and prevent violence within the scope of family relationships. This constitutional provision is one of the foundations for the creation of the aforementioned law.

#### **IV. LAW 11.340 / 06 AND ITS CHANGES IN VARIOUS NORMATIVE DIPLOMAS FOR THE BEST PROTECTION OF VICTIM WOMEN**

Among the most important objects, law 11.340 / 06 seeks to curb and prevent domestic violence against women, considering that women have always been treated for many years as an object of patriarchal domination.

In addition, the law provided for the creation of courts for domestic and family violence, as well as defined assistance and protection measures for victims of domestic violence in a vulnerable state.

Despite so much struggle for more severe punishments for aggressors who commit domestic violence, the Maria da Penha law brought few changes to the penal code, among which added a general aggravating factor to art. 61 of the Penal Code in item II, item "f", transcribed below:

Art. 61 - Circumstances that always aggravate the penalty, when they do not constitute or qualify the crime:

II - the agent has committed the crime:

f) with abuse of authority or taking advantage of domestic relations, cohabitation or hospitality, or with violence against women in the form of the specific law (Wording given by Law nº 11.340, of 2006).

Another important change was the modification of the penalty in art. 129 § 9 ° that although the maximum penalty has increased, the minimum penalty has also decreased, as shown below:

§ 9 If the injury is committed against the ascendant, descendant, brother, spouse or partner, or with whom he lives or has lived, or even if the agent of domestic relations, cohabitation or hospitality prevails: (Wording given by Law nº 11.340, of 2006).

Penalty - imprisonment, from 3 (three) months to 3 (three) years.

Finally, the Maria da Penha law also included in the penal code a cause of increased penalty, which was § 11 to art. 129; this paragraph foresees an increase of 1/3 if the crime is committed against the ascendant, descendant, spouse or partner, or with those who live or have lived together, or even if the agent of domestic relations, cohabitation or hospitality prevails in the hypothesis that the victim is a person with a disability:

§ 11. In the case of § 9 of this article, the penalty will be increased by one third if the crime is committed against a person with a disability. (Included by Law 11.340, of 2006).

Despite the fact that lei brings this cause of increased penalty when the victim is a person with a disability, there is a loophole in the law, because in this case the cause of an increase in the "very serious injury" occurring in concomitance with the cause increase of the victim with a disability, the offending agent will focus on only one cause of increase when the victim is a person with a disability and the violence is practiced in the domestic sphere.

It is important to highlight that the crimes of bodily injury, light or culpable, in the Penal Code are public criminal action conditioned to the representation of the victim or his legal representative, however, if the injury is committed in the context of domestic and family violence,

the criminal action The public policy is unconditional, in accordance with the provisions of the Maria da Penha law.

Despite having been relevant changes made by the Maria da Penha law in the Penal Code, crimes in the domestic sphere have not decreased so that the result desired by the law has not been obtained, as each year the statistics indicate that such crimes only increase.

The most important change for the protection of the life of women victims was that which occurred with the figure of the so-called feminicide. Given the importance of the theme, it is necessary to conceptualize the term feminicide that was inserted through law No. 13.104 / 15 and contained in art. 121, VI, § 2ºA: “feminicide occurs when the agent acts with contempt or discrimination to the condition of woman, regardless of whether the author of the fact is a male or female person. The term feminicide is related to the death of a woman without the aforementioned conditions.

However, the law brought important measures to combat violence at home, including urgent protective measures aimed at protecting the victim of violence at the family, emotional and domestic levels.

In view of the increase in the number of victims, the public authorities created measures to prevent and combat this type of violence, among them, several Brazilian states formed specialized troops of the military police, known as the Maria da Penha round, aimed at preventing and combating violence against women. . It is an action of great importance, because when it is verified that the victim is no longer physically or emotionally able to remain in his affective context, he is sent to a shelter that constitutes shelters for women victims of domestic violence.

In addition, Specialized Police Departments for the Assistance of Women (DEAMs) were created by the states, which are specialized units of the Civil Police, aimed at the prevention, protection and investigation of crimes of domestic and sexual violence against women.

The media has also helped with the spread of prevention campaigns; schools have been promoting debates and educational prevention campaigns that aim to make the community aware of this problem; in addition, the topic has also started to be widely discussed in the academic sphere, with lectures, the production of opinion articles, conclusion papers in order to bring this discussion into the agenda for greater awareness on the topic. It is clear that all these measures and discussions seek greater effectiveness in laws to combat violence in this area.

## V. IMPORTANCE OF PUBLIC POLICIES TO COMBAT VIOLENCE IN THE NATIONAL PANDEMIC SCENARIO

Domestic violence in Brazil was already alarming, data prior to the pandemic indicate that every 2 minutes a new police report was registered with notification of violence against women at home. This situation was further aggravated by the need for isolation due to the covid-19 pandemic.

According to data from the Brazilian Public Security Forum (FBSP) in a study entitled “Domestic violence during the Covid-19 pandemic”, cases of femicide grew by 22.2%, at the beginning of the pandemic decreed by WHO, specifically in the months of March and compared to the number of cases in 2019.

Faced with the covid-19 pandemic, people needing to remain in social isolation and staying in their homes caused something that has been recurring in our society for several decades to come to the fore, which is domestic violence, in which women are the group most likely to suffer from this modality. In other words, the pandemic was an unpredictable event that changed behaviors and the way people relate.

The existence of a structural paradox is perceived, since women, when they are in their homes in isolation due to the pandemic, should be feeling safe, but in reality it is not what happens in fact with many women, because for being in confinement with their possible aggressor, end up becoming more vulnerable to acts of violence.

With the covid-19 membership, the search for moments of leisure can make a potential aggressor come to the fore, with the excessive consumption of alcoholic drinks, a situation that society has been fighting for years has formed. This excessive consumption of alcohol is one of the factors that may be triggering violence against women in the period of the pandemic, and alcohol in line with the predisposition causes the loss of control over their acts, however, according to our penal code voluntary or culpable intoxication, does not exclude criminal imputability, and therefore aggressors must be held responsible for their actions.

Public policies developed to combat domestic violence during the pandemic are necessary for full assistance, even if remotely, to be provided to victims who suffer or are predisposed to suffer some type of violence.

Public policies are important for each and every society, especially with regard to public policies aimed at combating gender violence, since it is rooted in our sexist, patriarchal society.

The public authorities had already developed measures to combat domestic violence, but these measures needed to be expanded, rethought and others developed in the face of the pandemic scenario. These new policies are important, as they enable women who are victims of violence or a likely victim, so that they can ask for help and make the complaint safely to Organs competent bodies, since with social isolation women have had a harder time getting to the police stations. face-to-face and these policies emerge as a well-developed and comprehensive alternative.

It should be noted that not all women in our country are able to seek protection remotely, as many of them do not have access to the internet or are unaware of the policies aimed at protecting them.

In spite of everything, these policies are extremely important, as they demonstrate the government's view of the situation of this vulnerable group, especially during the covid-19 pandemic, seeking to combat this increase in the number of cases as well as to prevent the occurrence of crimes. fatalities practiced in this context.

## VI. FINAL CONSIDERATIONS

The aim of this study was to discuss domestic violence and the need for public policies at the time of the Covid-19 pandemic.

At first, it was necessary to talk a little about the whole history of law No. 11.340 / 06, mainly in the person of Maria da Penha, who gives the name to the law that combats domestic violence.

The various legislative changes that have occurred over the years since the enactment of Law No. 11.340 / 06 demonstrate that there is much to be done in relation to combating domestic violence.

Actions to combat domestic violence in relation to Covid-19 are important so that the victimized woman can use the various existing tools to denounce the possible aggressions suffered at all levels. It also helps the competent authorities to become aware of the acts of violence and thus be able to take the necessary legal measures.

All the experiences brought up to now, make it possible to affirm that the measures to combat are necessary and effective, even with the end of the pandemic situation. Any and all combat instruments can and should be used. The use of technology, through applications, for example, enables rapid interaction between authorities and the victim.

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