

Domestic violence under the Maria da Penha Law: civil protection, criminal liability, and family conciliation in Brazil

Violência doméstica sob a Lei Maria da Penha: proteção civil, responsabilização criminal e conciliação familiar no Brasil

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Abstract

Domestic and family violence against women in Brazil cannot be adequately addressed through criminal law alone. Law No. 11,340/2006, known as the Maria da Penha Law, established a multidimensional legal framework that combines urgent protective measures, civil and family-law remedies, patrimonial safeguards, and criminal accountability. This article provides a normative and bibliographic analysis of the interaction between these legal dimensions, with particular attention to removal of the aggressor from the household, provisional child support, custody and visitation arrangements, property protection, bodily injury, threats, noncompliance with protective orders, and the role of Judicial Centers for Conflict Resolution and Citizenship, known as CEJUSCs. The central argument is that Brazilian law permits civil and family settlements, including divorce, custody, visitation, support, and property-related agreements, to proceed alongside criminal cases, provided that consensual mechanisms do not neutralize criminal accountability or expose the victim and children to renewed risk. The effectiveness of this model depends on institutional coordination, gender-sensitive interpretation, careful assessment of power asymmetries, and clear separation between negotiable family consequences and non-negotiable public interests involved in domestic violence prosecution.

Keywords: domestic violence; Maria da Penha Law; protective measures; criminal accountability; CEJUSC.

Resumo

A violência doméstica e familiar contra a mulher no Brasil não pode ser enfrentada adequadamente apenas por meio do direito penal. A Lei nº 11.340/2006, conhecida como Lei Maria da Penha, estabeleceu uma estrutura jurídica multidimensional que combina medidas protetivas de urgência, providências de natureza civil e familiar, salvaguardas patrimoniais e responsabilização criminal. Este artigo apresenta uma análise normativa e bibliográfica da interação entre essas diferentes dimensões jurídicas, com atenção especial ao afastamento do agressor do lar, aos alimentos provisórios, às disposições sobre guarda e convivência, à proteção patrimonial, às lesões corporais, às ameaças, ao descumprimento de medidas protetivas e à atuação dos Centros Judiciários de Solução de Conflitos e Cidadania, conhecidos como CEJUSCs. O argumento central é que o direito brasileiro permite que acordos de natureza civil e familiar, incluindo divórcio, guarda, convivência, alimentos e questões patrimoniais, tramitem paralelamente aos processos criminais, desde que os mecanismos consensuais não neutralizem a responsabilização penal nem exponham a vítima e os filhos a novos riscos. A efetividade desse modelo depende da articulação institucional, de uma interpretação sensível às questões de gênero, da avaliação cuidadosa das assimetrias de poder e da clara separação entre as consequências familiares passíveis de negociação e os interesses públicos indisponíveis envolvidos na persecução da violência doméstica.

Palavras-chave: violência doméstica; Lei Maria da Penha; medidas protetivas; responsabilização criminal; CEJUSC.

Introduction

Law No. 11,340/2006, widely known as the Maria da Penha Law, constituted a major normative shift in the Brazilian legal response to domestic and family violence against women. The statute moved domestic violence away from the notion of a merely private family dispute and framed it as a violation of dignity, bodily integrity, autonomy, and human rights requiring coordinated state intervention [1]. Academic literature has emphasized that the law introduced

important advances, but also exposed persistent institutional challenges concerning access to justice, implementation of protective measures, and the treatment of gender-based violence by legal institutions [2]. From a human rights perspective, domestic violence requires responses that go beyond punishment, since the harm often affects housing, economic autonomy, parental arrangements, psychological security, and the victim's ability to reorganize family life [3]. Earlier studies on women's police stations and conflict mediation in Brazil also indicate that domestic violence operates within complex social and institutional dynamics, in which formal legal recognition does not automatically eliminate unequal power relations [4]. Recent scholarship on judicial resistance further shows that legal protection may be weakened when courts interpret gender-based violence through frames that minimize its structural dimension [5]. Therefore, the Maria da Penha Law should be read not only as criminal legislation, but as an integrated legal regime with civil, family, patrimonial, procedural, and penal consequences [6].

This article adopts a normative and bibliographic approach. It examines Brazilian legislation and selected academic references to discuss how civil protective measures, criminal accountability, and consensual family procedures may coexist in domestic violence cases. The objective is not to present empirical findings or measure the effectiveness of courts, but to clarify the legal architecture through which protection, prosecution, and family reorganization interact.

The civil dimension of the Maria da Penha Law is central because the immediate risks of domestic violence are frequently connected to the household, children, financial dependence, and property. Article 22 of Law No. 11,340/2006 authorizes urgent protective measures against the aggressor, including removal from the home, prohibition of contact, restriction of proximity, suspension or restriction of visitation to minor dependents, and the provision of provisional or temporary support [1]. These measures seek to interrupt risk before the final judgment of any criminal or family case. Law No. 14,550/2023 reinforced the protective logic of the statute by clarifying that urgent protective measures should be granted whenever the woman's physical, psychological, sexual, patrimonial, or moral integrity is at risk, regardless of the classification of

the criminal offense or the existence of a criminal proceeding [7]. This legislative reinforcement is relevant because protective orders are preventive instruments, not merely accessory consequences of criminal prosecution [8].

Removal of the aggressor from the household is one of the most significant civil measures because it prevents the victim from bearing the practical cost of protection. Without this measure, the woman and her children may be forced to leave their home, interrupt their routine, or lose access to social and family support networks. Provisional child support is similarly important, especially when economic dependence functions as a mechanism of coercion. In domestic violence contexts, support orders do not merely regulate financial obligations; they may create the minimum material conditions for separation, childcare, and safety [1].

The statute also recognizes patrimonial violence and allows measures aimed at preserving property. These include restitution of goods improperly taken by the aggressor, prohibition of transactions involving common property, suspension of powers of attorney granted to the aggressor, and provisional security for losses caused by domestic violence [1]. These measures should be distinguished from the final division of marital property. Property partition may be resolved judicially or through consensual family settlement when legally admissible, but patrimonial protective measures have an urgent and preventive function: they preserve assets and reduce the possibility that the aggressor will use economic control to pressure the victim during separation.

Custody and visitation also require careful legal treatment. In ordinary family law, shared custody may be encouraged as a mechanism of parental cooperation. However, domestic violence changes the legal and factual context. Law No. 14,713/2023 strengthened the restriction of shared custody when there is risk of domestic or family violence [14]. Academic discussions on custody in violent contexts emphasize that the best interests of the child cannot be separated from the safety of the non-aggressor caregiver and the broader family environment [15]. Recent analysis of unilateral custody after Law No. 14,713/2023 reinforces that parental arrangements must consider risk,

coercion, and the possibility that visitation may be used to perpetuate control or intimidation [16].

The criminal dimension remains indispensable. Domestic violence may involve bodily injury, threats, psychological violence, coercion, and other offenses under the Brazilian Penal Code [10]. In cases of bodily injury committed against women in domestic and family contexts, the Brazilian Supreme Federal Court consolidated the understanding that prosecution is unconditional, meaning that it does not depend on the victim's representation after the incident [11]. This position is legally significant because domestic violence frequently involves fear, dependency, emotional manipulation, and pressure to withdraw complaints. Treating prosecution as a public responsibility reduces the risk that coercion will prevent accountability.

Recent legislative developments have also increased the criminal relevance of gender-based violence. Law No. 14,994/2024 amended criminal legislation concerning crimes against women and reflects the broader trend of reinforcing criminal responses to violence motivated by gender inequality [12]. At the same time, socio-legal studies on the judicialization of domestic violence show that criminalization alone is insufficient when institutional practices reproduce delays, fragmented services, or inadequate interpretation of risk [13].

One of the most important enforcement mechanisms is the criminalization of noncompliance with urgent protective measures. Law No. 13,641/2018 introduced Article 24-A into the Maria da Penha Law, making the breach of protective orders an autonomous crime [9]. This provision strengthens the practical authority of judicial protection. A protective measure loses preventive force if its violation produces no immediate legal consequence. By criminalizing noncompliance, Brazilian law affirms that protective orders are binding commands directed at preventing escalation, not symbolic recommendations.

The role of CEJUSC must be interpreted with precision. Resolution No. 125/2010 of the National Council of Justice established the national judicial policy for adequate conflict treatment and structured CEJUSCs as institutional spaces for conciliation, mediation, citizenship services, and consensual dispute

resolution [17]. In family matters, CEJUSCs may support agreements concerning divorce, custody, visitation, child support, and property arrangements. This function remains relevant even when a criminal case related to domestic violence is pending, because the family consequences of separation often require urgent organization before the criminal process reaches a final decision [17].

However, conciliation in this context must not be confused with negotiation of the violence itself. The criminal case, particularly when it involves unconditional public prosecution or public interests, is not extinguished by an agreement on divorce, custody, support, visitation, or property. The legitimate scope of CEJUSC is the consensual organization of civil and family matters that are legally available and compatible with safety. Studies on CEJUSC interventions in domestic violence contexts highlight both the potential of institutional support and the need for caution when parties are not in symmetrical positions [18]. The participation of legal counsel in pre-procedural conciliation and mediation has also been discussed as a relevant safeguard for informed decision-making, especially where rights, vulnerability, and procedural consequences are involved [19].

The main risk is treating domestic violence as an ordinary interpersonal disagreement. Domestic violence may involve intimidation, economic dependence, psychological domination, and fear. Therefore, any consensual procedure must include screening for coercion, respect for protective orders, and attention to the safety of the woman and children. CEJUSC can promote access to justice and facilitate community-oriented consensual solutions, but its use in domestic violence-related family matters must remain technically delimited [20]. It may help formalize divorce, regulate support, define custody, organize visitation, and address property issues, but it must not pressure the victim to reconcile, renounce protection, or weaken criminal accountability.

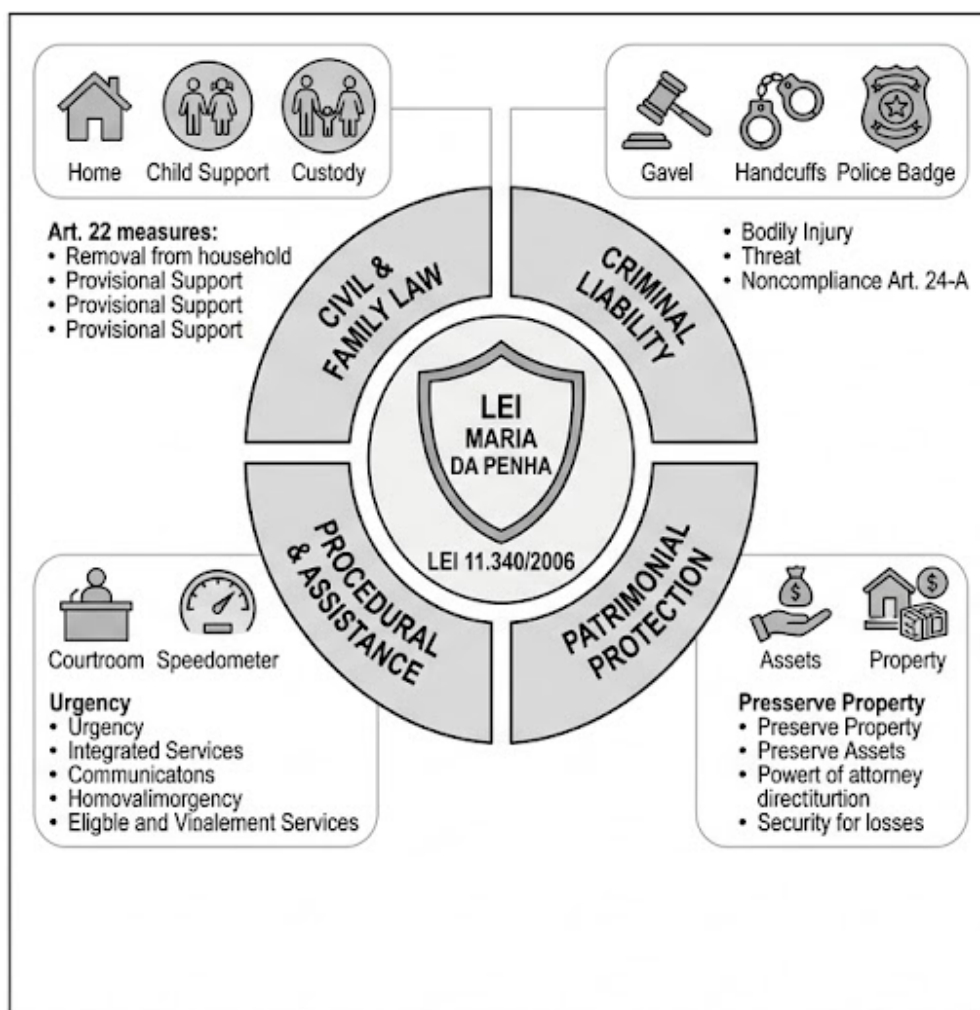


Figure 1. Multidimensional Legal Framework of the Maria da Penha Law

Source: Created by author.

In conclusion, the Maria da Penha Law operates as an integrated legal framework in which civil protection, criminal liability, and family-law reorganization coexist. Its civil measures allow removal of the aggressor from the home, provisional support, custody and visitation restrictions, and patrimonial protection. Its criminal dimension addresses bodily injury, threats, gender-based violence, and the autonomous crime of noncompliance with protective measures. CEJUSC may contribute to access to justice by enabling consensual settlements on divorce, custody, visitation, child support, and property matters even while a criminal case continues. Nevertheless, such conciliation must be limited to legally available civil and family issues and must preserve the victim's safety, autonomy, and procedural guarantees. The

strength of the Brazilian model lies not in choosing between punishment and consensual settlement, but in coordinating protection, accountability, and family stabilization without treating domestic violence as a negotiable private conflict.

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