


THE PHENOMENON OF FEMICIDE IN BRAZIL AND THE LEGAL PROVISION FOR PROTECTION AGAINST VIOLENCE AGAINST WOMEN

 <https://doi.org/10.56238/sevened2025.018-044>

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ABSTRACT

This article analyzes femicide in Brazil in the light of criminal legislation and international treaties for the protection of women. From the enactment of Law No. 13,104/2015 and Law No. 14,994/2024, we seek to understand the normative advances and the practical obstacles in their implementation. The research is qualitative, bibliographic and documentary, based on contemporary doctrine, jurisprudence and official bibliographic data. The socio-cultural and institutional impacts and the need for conventionality control to ensure the effectiveness of women's rights are also discussed. The study includes analysis of jurisprudence, case study and methodological framework. The objective is to offer a critical and purposeful overview of the criminal protection of women in Brazil against femicide.

Keywords: Femicide. Gender violence. Law No. 13,104/2015 and Law 14,994/2024. Human rights. Conventionality control.

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INTRODUCTION

Gender violence, especially femicide, establishes one of the most serious human rights violations in Brazil. Despite the normative advances of recent decades, the social reality shows that the female condition continues to be marked by structures of patriarchal domination, historical inequalities and the institutionalization of violence. Colling (2020), describes femicide, as the maximum expression of this violence, characterized by the murder of women motivated by gender reasons. It is an event that transcends the criminal sphere, involving sociocultural, historical and structural dimensions.

The enactment of Law No. 13,104/2015 represented a milestone by including femicide as a qualifying circumstance for homicide in the Brazilian Penal Code. However, official data reveal that, even with the validity of this rule, the rates of femicide remain significant. According to the Brazilian Forum on Public Security (2023), in 2022 1,437 cases were registered in the country, exposing the prevalence of the problem and the lack of public policies aimed at protecting women.

The article seeks to delve into how effective Brazilian legislation has been in protecting women and in assigning penalties considering the legal, cultural and institutional obstacles to its full implementation. It is based on the hypothesis that, although legislative advances characterize important achievements, their application still faces significant obstacles, such as the lack of adequate structures for the application of protective measures, the revictimization of women in criminal proceedings and the lack of integrated public policies for prevention and reception.

The general objective of this article is to analyze the effectiveness of Brazilian criminal legislation in combating femicide, seeking to:

- a) To examine the normative evolution on femicide in Brazil, with a focus on Laws No. 13,104/2015 and 14,994/2024;
- b) Analyze the jurisprudence of the higher courts (STF and STJ) on the subject;
- c) Identify the main challenges faced in the implementation of legislation to combat femicide.

The justification for this research consists of the urgency of expanding the debate on the effectiveness of the rules for the protection of women, especially in view of the increase in cases of femicide in the country. A critical approach to the theme is indispensable in order to subsidize academic production and the formulation of effective public policies.

The methodology adopted is qualitative, based on bibliographic and documentary research. The theoretical framework consists of essential works in the areas of gender,

critical criminology, human rights and criminal law. The analysis will be based on data from official sources, such as the Brazilian Forum on Public Security, DataSUS, Atlas of Violence and jurisprudence of the higher courts. The approach will be descriptive, analytical and critical, articulating legal theory and practice.

FEMICIDE IN BRAZIL

The recognition of femicide as a specific category of homicide in Brazil, through Law No. 13,104/2015, represents a significant advance in the fight against gender violence (BRASIL, 2015). This legislation amended the Penal Code to include femicide as a qualifier for the crime of homicide, treating it as a heinous crime and providing for more severe penalties.

Femicide is understood as the murder of women motivated by their gender condition, in contexts of domestic or family violence or in situations marked by contempt and discrimination against women. Colling (2020) highlights that femicide represents the most extreme and brutal form of gender violence, revealing a society still deeply marked by patriarchal and sexist structures, which even influence the judicial system and hinder the realization of women's rights, including in the institutional and legal spheres.

According to Silva and Alves (2024), the legal classification of femicide goes beyond the act of only rigorously punishing the aggressors, but also ensuring visibility to the complexity and severity of this violence, collaborating in the development of effective public policies aimed at protecting women. However, the application of the law still faces several barriers, since the recognition of femicide is subject to contextual analysis of the crime, which can lead to the mischaracterization of the crime even if the gender motivation is present. Therefore, it is necessary for women to be able to understand the characteristics of this type of violence and to be guided to adopt preventive and reporting measures.

Violence against women, according to the Maria da Penha Law (Law No. 11,340/2006), manifests itself in a multifaceted way: physical, psychological, patrimonial, moral and sexual. Each of these forms represents a serious violation of women's integrity and, together, can constitute a cycle of persistent violence (BRASIL, 2006).

Physical violence refers to bodily aggression that is commonly associated with psychological abuse, which intensely affects the victim's self-esteem and mental health. Patrimonial violence compromises women's financial autonomy through the destruction or retention of their assets, while moral violence hurts their dignity with slander and defamation. Sexual violence comprises any forced act, without consent, and is typified by both the Maria da Penha Law and the Penal Code (COLLING, 2020).

According to Silva and Alves (2024), it is necessary to demystify the idea that femicides are crimes of passion or impulsive is essential to recognize their structural and historical roots. The effective fight against this reality establishes, therefore, the strengthening of public policies, the sensitization of society and the firm action of the justice system, based on protective legislation and the recognition of gender inequality as a central factor in this problem.

LEGISLATIVE EVOLUTION OF WOMEN'S PROTECTION IN BRAZIL

Violence against women, as an expression of gender inequality, has historically been neglected by the Brazilian legal system. It was only with the enactment of Law No. 11,340/2006, the so-called Maria da Penha Law, that there was formal recognition of the need for a specific and more rigorous legal treatment in the face of the multiple forms of violence experienced by women, especially in the domestic and family sphere (BRASIL, 2006).

This legislation arose after the international condemnation of the Brazilian State in the case of Maria da Penha Maia Fernandes v. Brazil, judged by the Inter-American Commission on Human Rights of the OAS, for omission and negligence in the protection of the victim. This rule established a milestone in the protection of women's rights, providing for emergency protective measures, expeditious procedures, and mechanisms for holding aggressors accountable.

Despite this advance, the high rates of murders of women continued to grow, motivating the creation of Law No. 13,104/2015, which introduced in the Penal Code article 121, paragraph 2, VI, which configures femicide, as a qualifier for the crime of homicide (BRASIL, 2015). This legislation recognizes femicide as homicide committed "against women for reasons of the condition of the female sex", being considered a heinous crime, under the terms of Law No. 8,072/1990, which reinforces its seriousness and the need for more severe repression (BRASIL, 1990).

With the enactment of Law No. 14,994/2024, femicide is no longer treated only as a qualifier of homicide and starts to establish an autonomous crime, through the inclusion of article 121-A in the Penal Code (BRASIL, 2024). The new legislation establishes the figure of qualified femicide, providing for specific aggravating factors when the crime is charged with extreme cruelty. Although it represents an advance, this legislative innovation lacks critical analysis as to its practical effectiveness and application in the courts.



CONCEPT OF FEMICIDE AND ITS LEGAL DISTINCTION

The term femicide originates from the English *femicide*, coined by researchers Radford, Russell (1992), to designate the murder of women motivated solely by the fact that they are women. In the Brazilian context, femicide is more than the death of a woman: it is an extreme manifestation of gender violence, which occurs due to affective or domestic relationships or situations of contempt for the female condition.

According to Bianchini (2022, p. 33), "femicide is a category that should be understood as a political-criminal construction to confront gender inequality, and not just as a qualifier of homicide". Such an understanding is fundamental to recognize that femicide is not only a criminal problem, but a social and political issue, rooted in patriarchal structures and macho culture. Along these lines, Mendes (2020) emphasizes the importance of interpreting femicide within the structural context of gender violence, which permeates institutions and the very organization of society.

THE FORMS OF GENDER VIOLENCE AND THE CYCLE OF VIOLENCE

The Maria da Penha Law, in its article 7, defines five main types of violence against women: physical, psychological, sexual, patrimonial and moral (BRASIL, 2006). Such forms of violence do not act in isolation; on the contrary, they constitute a continuous cycle of aggression, which tends to intensify over time. Femicide, therefore, is not an isolated or impulsive event, but often the tragic outcome of a prolonged process of multiple violence.

For Eluf (2021), femicide crimes hardly occur without antecedents. Most cases are preceded by verbal aggression, threats, psychological control, patrimonial and, later, physical violence, often tolerated by an omission institutional system. Physical violence, for example, although more visible, is usually associated with psychological violence, characterized by humiliation, isolation, and emotional manipulation. Property violence, in turn, interferes with women's economic autonomy, while moral violence compromises their dignity and honor. Sexual violence, on the other hand, imposes non-consensual relationships, in a context of coercion and domination. Understanding this cycle is essential to prevent femicide and demystify the idea that these crimes are the result of "sudden passions".

INTERSECTIONALITY: GENDER, RACE, AND CLASS

In Brazil, the analysis of femicide requires an intersectional approach that considers the interactions between gender, race, and social class. The phenomenon disproportionately affects black, poor, peripheral and indigenous women, who are in a

situation of greater vulnerability. Data from the Atlas of Violence (2023) reveal that 61% of femicide victims are black women, which highlights the need for public policies sensitive to structural inequalities.

In this sense, Dias (2020) argues that strategies to combat femicide must recognize that the neutrality of public policies can perpetuate exclusion. It is essential to formulate specific actions for historically marginalized groups. Mendes (2023) reinforces this position by stating that "it is impossible to talk about femicide without considering the racial and social crossings that structure inequality in Brazil". Therefore, the fight against femicide must go beyond criminal application and involve articulated actions of prevention, welcoming, education and social justice, in order to combat the root of violence: inequality.

JURISPRUDENCE AND CONTROL OF CONVENTIONALITY

Castro et al. (2022) state that the performance of the higher courts is essential for the materialization of the effectiveness of laws to combat gender violence, especially with regard to femicide and the protective measures of the Maria da Penha Law. The Superior Court of Justice (STJ) has collaborated for a better understanding of femicide, recognizing its application in contexts that go beyond domestic violence, as long as the elements of gender motivation are present.

STJ – REsp 1.675.874/MT (2018):

In this case, the STJ established an understanding that femicide can be recognized even without an affective bond between aggressor and victim, as long as the crime is motivated by gender discrimination, expanding the application of the qualifier provided for in article 121, paragraph 2, VI, of the Penal Code (BRASIL, 2018). This decision highlights the progressive commitment of the higher courts to the protection of women and to the incorporation of human rights principles into criminal law (BRASIL, 2018).

STF-HC 251204 AgR / SP (2025):

The Federal Supreme Court upheld the preventive detention of the accused by recognizing the concrete gravity of the crime, mainly due to the *modus operandi* employed in the execution of the crime, as well as the social dangerousness of the defendant (BRASIL, 2025).

It was understood that the alternative precautionary measures provided for in article 319 of the Code of Criminal Procedure would be insufficient in the circumstances of the case. Therefore, the STF assessed that the requirements established in article 312 of the CPP for the maintenance of precautionary custody were present, notably with the objective of ensuring public order (BRASIL, 2025).

TJPA - HC 0815668-74.2024.8.14.0000/ PA (2024):

The court's decision was to deny the habeas corpus filed in favor of Marcelo Chagas de Paula, sustaining preventive detention. The rapporteur, Judge Vânia Lúcia Carvalho da Silveira, based the decision on the seriousness of the crime of attempted femicide, the use of a bladed weapon, the risk of criminal repetition, and the need to ensure public order, highlighting that the patient's favorable personal conditions were not enough Costa and Pereira (2022), to revoke preventive detention (TJPA, 2024).

MARIANA COSTA CASE: A MILESTONE IN THE FIGHT AGAINST FEMICIDE

The murder of publicist Mariana Menezes de Araújo Costa Pinto, which took place on November 13, 2016, in São Luís/MA, represents one of the most emblematic cases of femicide in Brazil. The victim, 33 years old, was killed by asphyxiation and strangulation in his own apartment. The perpetrator, Lucas Porto, her ex-brother-in-law, confessed to the murder and claimed to have been motivated by an alleged "attraction" to the victim, which reinforces the character of gender violence (Fróes, Vieira, 2021).

Mariana Costa's case exposes the indigence of recognition and typification of femicide in the Brazilian legal system. Costa and Pereira (2022) highlight Law No. 13,104/15 as an important tool to fill this legislative gap, insofar as it characterized femicide as a qualifier for the crime of homicide, in a way that seeks to typify gender violence not only in the sphere of family relationships, but in any social context in which women are discriminated against or stereotyped.

According to Fróes and Vieira (2021), the Mariana Menezes case gained repercussion, not only because of the victim's family bond with former President José Sarney, but also because of the marked gender context identified. Investigations show that Mariana was also a victim of sexual violence, and Lucas Porto tried to extinguish evidence of the crime. The complaint filed by the Public Prosecutor's Office included the qualifiers of asphyxiation, femicide, impossibility of defense of the victim and concealment of rape.

The trial was marked by several postponements until, on July 5, 2021, Lucas Porto was sentenced to 39 years in prison, 30 years for aggravated homicide and 9 years for rape. According to Fróes and Vieira (2021) points out that the case was the basis for instituting the State Day to Combat Femicide in Maranhão (November 13), as a way to raise awareness and combat gender violence.

Costa and Pereira (2022) state that even though the legislation has been improved, there are still many challenges to be faced. It is necessary to remember that the changes already made do not solve the problem of gender violence as a whole, since thousands of

women are still inserted in a daily life of marginalization and violence, but its importance for a more severe punishment of homicides is undeniable.

FINAL CONSIDERATIONS

In view of the analyses carried out throughout this study, it is possible to affirm that, despite the legislative advances in the fight against femicide in Brazil, the practical effectiveness of these norms still faces significant challenges. Although Law No. 13,104/2015 and Law No. 14,994/2024 have been enacted, femicide crimes are still a constant reality for women. Data from the Brazilian Forum on Public Security (2023) indicate that, in 2022, 1,437 cases of femicide were registered.

The analysis of the jurisprudence of the STJ, STF and state courts showed that, although there are advances in the interpretation of the law — such as the recognition of femicide without affective bond (REsp 1.675.874/MT) — the difficulties in its application remain, especially in the courts of first instance. The mischaracterization of femicide due to lack of proof of "gender motive" is recurrent, which makes the protection of women even more fragile and minimizes the structural context of violence.

Castro et al. (2022), point out that although the decisions of the higher courts seek to apply legislation to protect women in a broad way, they still face resistance in lower courts, where sometimes the lack of gender sensitivity leads to revictimization.

The creation of the autonomous criminal type of femicide (Law No. 14,994/2024) symbolizes a significant response by the legislator to gender violence. However, its recent enactment still needs to be implemented in the courts and in relation to preventive public policies. The validation of femicide as a heinous crime, the provision of specific aggravating factors and the strengthening of penalties are measures that, alone, do not ensure the prevention of crimes.

Silva and Alves (2024) state that legislative measures are fundamental, but their efficiency requires articulation with the structures of prevention and reception, especially in scenarios of social and economic vulnerability.

The decisions of the higher courts point to a movement to strengthen the protection of women. The Habeas Corpus case denied by the TJPA (HC 0815668-74.2024.8.14.0000) and the analysis of the Mariana Costa Case are symbolic in this sense, corroborating the recognition of the seriousness of femicide as an extreme expression of gender violence.

Mendes (2023) states that facing femicide requires an intersectional and decolonial approach, which, in addition to the punitive response, considers social and historical factors that contribute to cases of violence against women.

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