

Chapter 82

Femicide as a qualifying circumstance of the crime of murder: legal and social aspects in the Brazilian order

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ABSTRACT

In 2015, Law No. 13,104 was enacted, which introduced a qualifier to punish, more severely, when the murder is committed against women due to the condition of the female sex, characterizing itself as femicide. The problem question that led this research is based on the following question: What motivated the creation of Law No. 13,140/15 outside of political, social or both reasons? The general objective of this article was to analyze this Law, under the social and political aspects that led to its edition, in order to deepen the critical study on its controversial creation, the target of numerous practical and

theoretical critiques. Regarding technical procedures, this research is classified as hypothetical deductive, seeking to bring answers to the research problem raised along with the bibliography available in the area. With the research developed by essay study it can be concluded that the creation of Law No. 13,140/15 had both political and social motivation, but that it is not yet being effective to reduce the number of femicides in Brazil, and that, like the Maria da Penha Law, it needs investments in personnel training and improvement of records to increase the visibility of the motivations of homicides of women, identifying more specifically those who are femicides. In addition, it is essential that there is greater attention in prevention actions, which should be associated with social and educational policies aimed at reducing gender disparities, which are the root of problems. Otherwise, you can never end this violence.

Keywords: Crime of Murder, Femicides, Maria da Penha Law.

1 INTRODUCTION

Article 121 of the Penal Code, which typifies the crime of murder, was amended by Law No. 13,104 of March 9, 2015, which reworded § 2 and added § 7 to introduce a qualifier to punish, more severely, when the murder is practiced against women because of the condition of the female sex. This is a measure that seeks to reduce the number of homicides committed against women.

Nevertheless, the legislative change in the matter has been the subject of doctrinal divergences since its advent, mainly because violence against women is a complex problem that has plagued humanity for a long time, especially that perpetrated in the domestic and family environment. Therefore, to investigate whether criminal law actually has the means to face the problem is of paramount importance.

This time, it seeks to assess whether the creation of a qualifier for the crime of homicide, under § 2, of art. 121 of the Penal Code (when the crime is committed with domestic and family violence, or with contempt or discrimination to the condition of a woman), as well as the addition of § 7 to the same legal provision (establishing causes of increased penalty when femicide is practiced during pregnancy or in the first three months after delivery; against under fourteen years of age, or over sixty years of age, or with a disability; or, in the presence of the victim's ascendant or descendant), contribute to the effective reduction of homicides committed against women in Brazil or if it is only a symbolic response to the numerous crimes committed against women for gender reasons.

The problem question that led this research is based on the following question: What motivated the creation of Law No. 13,140/15 were political, social or both reasons?

As a hypothesis to be tested by this study, the question is that femicide is not a new criminal type, but rather a qualifier that applies when the crime is committed on grounds of female status. In other words, it is the murder qualified by domestic or family violence or, in contempt or discrimination to the condition of a woman, a crime that is heinous. Despite the importance of seeking means to curb domestic and family violence against women on grounds of gender and violation of human rights, which had already gained evidence with the advent of the Maria da Penha Law, which is not restricted, as seen, to domestic and family violence, the so-called femicide is the target of several criticisms, the example of the affront to the principle of equality, because it would not be possible to insert a specific criminal type, not least because gender issues are a foolish reason to justify a homicide. Thus, this study believes that this advent was carried out more for political than social reasons.

The importance of researching the theme is justified, because violence against women is a problem that has plagued humanity for a long time, and the sad reality is that it is practiced for gender issues. In this scenario, Law No. 13,104/2015, which amended Article 121 of the Penal Code to include, among the qualifiers of the crime of homicide, femicide, gains prominence, because it is an offense that is committed with domestic and family violence, or with contempt or discrimination to condition of woman. Therefore, it seeks to pluck, more severely the offense when committed against women by virtue of gender.

Thus, this study is relevant, since the high rates of violence against women, mainly committed with domestic and family violence or by gender groups, show that it is a serious social problem, which, in addition to Brazil's commitment to the protection of women victimized, justifies its analysis.

However, there is much criticism of the insertion of a qualifier to the crime of femicide, mainly because such a practice goes against the principle of equality. Nevertheless, what is perceived, even with the measures adopted by the State, is that women are still the target of violence and the data presented by specific studies show that the problem persists, being necessary, therefore, to enter into the analysis of the effectiveness of the Femicide Law.

The general objective of the study was to analyze Law No. 13,104/2015, which instituted Femicide as a qualifier for the crime of homicide, and consequently made it a heinous crime, under the social and political aspects that led to its edition, in order to deepen the critical study on its creation, the target of numerous practical and theoretical criticisms.

As specific objectives, the study sought to identify the emergence, evolution and how femicide is conceptualized today; to perform an analysis of the motivations that generated the emergence of law no. 13.104/15; to make an assessment of the changes brought by it; to discuss the motivations that led the legislator to such a change; bring statistical data on femicide in Brazil before and after the law of femicide together with the doctrinal arguments favorable and contrary to the insertion of the law.

2 MATERIAL AND METHODS

As for technical procedures, this research is classified as hypothetical-deductive, which, according to Marconi and Lakatos (2003), based on Karl R's theory, explains. Popper, is a method that is part of a problem, to which the ferece is a kind of provisional solution, that is, an attempt theory, then starting to criticize the solution, with a view to eliminating the error, and this process is renewed to itself, giving rise to new problems.

It is also an afico bibliogrmethod, which Cervo and Bervian (1996) explain concerning the set of human knowledge gathered in the works. Its fundamental basis is to lead the reader to a given subject and the production, collection, storage, reproduction, use and communication of the information collected for the performance of the research.

For Gil (2007), a bibliographic research is the analysis of several positions about a problem. Thus, it can be inferred that bibliographic research seeks to lead the researcher to the production, reproduction and use and information collected for the performance of the research. Thus, we sought to bring answers to the research problem raised along with the bibliography available in the area.

3 FEMINIDIMY AND GENDER VIOLENCE: HISTORICAL EVOLUTION OF ITS CONCEPT

Before entering feminicide, it is necessary to talk about gender violence and conceptualise it. According to Gregori (1993, p. 128), gender violence is the result of a macho ideology, because the world is accepted to go from the view of men, while, for women, "[...] the idea that they are complacent is conveyed, not because they agree or believe in it, but because every action or acceptance on the part of the dominated is the result of a powerful concealment."

Grossi (1991, p. 167) advocates that the concept of gender is related to the importance of the social and cultural in the differences between man and woman and, consequently, in the relations between the sexes, which reflect antagonistic hierarchical positions.

To understand gender violence, it is important, first of all, to understand that most societies have implemented a social system where women have been left with the primary responsibility of taking care of domestic work and of the children, while men were given the responsibility to support the family. This created a preponderant division of labor between the sexes, which led men and women to assume unequal positions in terms of power, prestige and wealth before society. This unequal is, therefore, the result of a social construction that determined, through this sexual division of roles, the fields in which women must act and others in which it is men who must act. With this, a social organization of gender, hierarchical quized and containing in itself gender violence (CAVALCANTI; OLIVEIRA, 2017).

Therefore, gender violence is a historical phenomenon that occurs when there are, in society, asymmetric power relations that build hierarchies between genders, whether visible or not. Through the feminist movement, in its second wave, especially in the 1970s, came the visibility of violence against women, in the field of gender violence, considering that, until then, it was considered as a private

subject. The feminist movement has managed to show that this violence is generated by a structure of male domination, which is an interpretation that was not found in the legal and judicial practices of facing violence committed against women (MENEGHEL et al. , 2013).

It is important to clarify that, not infrequently, the expressions "gender violence" and "violence against women" are used as synonyms, which compromises and trivializes the importance of the first situation, because although all gender violence is necessarily violence against women, not all violence perpetrated against women it will be a gender violence, since it necessarily presupposes the existence of the relationship of power, domination of man and the submission of women, which will not always be present in an aggression committed against female victims (BIANCHINI, 2014).

Bianchini (2014, p. 33) emphasizes that "[...] submission stems from concrete conditions [...] to which the woman is subjected/ensnated, exactly because of the role assigned to her socially".

As Araújo (2008) explains, since 1990, through the emergence of gender studies, some authors began to use the expression "gender violence" as a broader concept than "violence against women". It was understood that the concept of gender violence encompasses not only women, but also children and adolescents, as an object of male violência, which in Brazil is constitutive of gender relations. Also according to the author, it is also a concept widely used as a synonym for marital violence, because it encompasses different forms of violence that involve gender and power relations, such as violence perpetrated by men against women. In this sense, it can be said that violence against women is one of the main forms of gender violence.

Gender violence has significant particularities, being a phenomenon that is on the rise, hurting human dignity, in addition to countering equality between peoples, with fatal outcomes occurring in all social classes, but especially in the domestic sphere, in violence against women. It is a crime of odithat originates from culturally and socially constructed values, where the male population exercises domination by physical and psychological force over women (BRILHANTE et al. , 2016).

It presents itself as a worldwide phenomenon, which justifies the attitude of several countries that are applying prevention and control measures in order to reduce these actions. As a matter of time, violence against women began to be faced as a public health problem. After all, this is one of the most extreme and perverse manifestations of gender inequality, resulting from differences in power, representing an important social phenomenon and violation of human rights, and this significantly impacts the health-disease process and the women's life expectancy (BARUFALDI et al. , 2017).

According to a report released by the World Health Organization (WHO) in 2013, violence against women is not a new phenomenon, nor is its consequences for women's physical, mental and reproductive health. What is new is the growing recognition that acts of violence against women are not isolated events, but form a pattern of behavior that violates the rights of women and girls, limits their participation in society and harms their health and well-being. This phenomenon, when systematically studied, made it

clear that violence against women is a global public health problem that affects approximately one third of women worldwide (WHO, 2013).

Another important fact is that women who have suffered physical or sexual abuse by their partners report higher rates of various important health problems. For example, they are 16% more likely to have a low birth weight baby; are twice as likely to have an abortion; almost twice as likely to suffer depression; and, in some regions, 1.5 times more likely to acquire the human immunodeficiency virus (HIV), compared to women who have not suffered violence per partner. It was also believed that women who suffered this form of violence are 2.3 times more likely to have alcohol use disorders and 2.6 times more likely to experience depression or anxiety. Therefore, there is a clear need to intensify efforts in various sectors, both to prevent violence from happening and to provide necessary services for women who suffer violence (WHO, 2013).

Thus, one of the main objectives of the feminist movement was to be able to characterize gender violence as a violation of human rights and to develop a law capable of ensuring protection and humanized procedures for victims of this violence. However, a much greater step would be to include this gender hierarchy in the understanding of the genesis of violence, because it is something that still encounters great resistance, both in practice and in the knowledge that make up the field of application and effectiveness of laws, but this has been achieved, first, with law no. 11,340/2006, known as The Maria da Penha Law (MENEZES et al., 2013).

4 BRAZILIAN LEGISLATIVE EVOLUTION IN COMBATING GENDER VIOLENCE

The Inter-American Convention to Prevent, Punish and Eradicate Violence Against Women, held in Belém do Pará on June 9, 1994, is considered as a historical landmark in the fight against gender violence in Brazil, organized by the Inter-American Commission on Human Rights (IACHR, 1994).

It is worth noting that, even then, domestic violence cases were generally judged, such as Bodily Injury and Threat. The following year came law No. 9.099/1995, which provides for the Special Civil and Criminal Courts, which came to institutionalize in the Brazilian criminal justice system the so-called consensual or restorative justice. This current of legal thought was intended to promote reconciliation between the parties through less bureaucratic procedures for the resolution of conflicts that were considered to have less offensive potential, to, thus, exonerate the judiciary, avoiding the increase in criminal proceedings. That is, in other words, this means that these occurrences brought to the police station did not always become a police and judicial investigation, since a resolution was sought through direct agreements between the parties (LINS, 2013).

In fact, this law favored impunity for aggressors, because about 70% of cases that reached special justices had as perpetrators women victims of domestic violence, and 90% of these cases ended up filed in conciliation hearings without these victims finding an effective response of the public authorities to the violence they have suffered. In the few cases in which the aggressor was punished, the conviction was to

deliver a basic basket to some philanthropic institution (CALAZANS; CORTES, 2011). It is worth noting that most of the cases of bodily injury and threat attended in the Special Criminal Courts came from the women's police stations, which were created in 1985 (SANTOS, 2010).

With regard specifically to domestic or gender violence, Barsted (2011) explains that even though an explicit reference has not been included in the constitutional text, the feminist movement was overcoming barriers and, after the Convention of Belém do Pará, the infraconstitutional legislation was undergoing changes, showing concern about gender violence. The author cites Law 9,520 of 1997, which revoked Article 35, and its sole paragraph, of the Code of Criminal Procedure of 1941, which prevented the married woman from exercising the right to file a criminal complaint without her husband's consent.

The author also cites Law No. 9,455, of the same year, which defined crimes of tortura, typifying psychological violence, considering as torture, among other forms of action, "[...] subject someone, under their custody, power or authority, with the use of violence or serious threat, to intense physical or mental suffering, as a way of applying personal punishment or preventive measures." There is also the aggravating factor of the penalty if the crime is committed against child, pregnant, disabled and adolescent; by public servant; or by kidnapping (BARSTED, 2011, p. 24).

Also according to Barsted (2011), another important law was no. 10,778, 2003, which determined compulsory notification for cases of violence against women, when these victims were treated in health services, whether public or private sector throughout the national territory.

Also with regard to the Penal Code, Law No. 11,106, of 2005, changed several of its articles, one of particular relevance to the theme of this study, which was art. 226, referring to situations that increase the penalty, which began to include the spouse or partner, which did not anticipate until then. With this new writing, the situation of marital rape or committed by a partner began to be characterized (BARSTED, 2011).

Therefore, there may be a greater concern of legislators, in this period between the 1990s and early 2000s, with gender violence, which was due to the feminist movement, which had been denouncing this violence through organizations and the media. However, even with these legislative advances, there was a conflict of interpretation between the Convention of Belém do Pará and Law 9.099/1995, with regard to violence against women, especially in those that occurred in domestic and family relations. (BARSTED, 2011).

But even with the legislative advances made by the feminist movement in Brazil, these incorporations did not have the necessary strength to minimize violence in the lives of women threatened or raped by their partners. It was as if these domestic crimes were always treated as family secrets, without any interference from the state or society. In fact, these acts of violence were often regarded as natural. It is observed that there is in some cases a culture issue, while in others there is a need to have a provider for themselves and their family, which leads many women to remain in violence (CALAZANS; CORTES, 2011).

All this was the result of the way Law No. 9,099/95 dealt with these crimes, since these judges removed them from women's police stations the role of investigation and mediation of conflicts that make up the vast majority of complaints processed there, giving new meaning to their criminalization, which is considered a setback (SANTOS, 2010).

It was then that, as a result of the tireless struggle of the feminist movement, and the growing global concern about the issue, a favorable legislative climate was created to get the approval of the Maria da Penha Law in 2006, which came with the promise of changing this whole panorama of impunity. This law created specific mechanisms for preventing and combating domestic and family violence against women, resulting in the fight against impunity and the legal-political invisibility of domestic violence, and was considered by the United Nations Development Fund for Women one of the most advanced legislation in the world on the subject (CALAZANS; CORTES, 2011).

According to Campos e Carvalho (2011, p. 43), it was in the Maria da Penha Law that the legislator normatively conceived gender violence, in arts. 5° to 7° of Law No. 11,340/2006, as a violation of women's human rights, breaking with "[...] legal tradition of generic incorporation of gender violence into traditional criminal types"; and, and moreover has not created any incriminating criminal type, established situations that characterize violence and the condition of being practiced in the domestic sphere aggravates or qualifies the penalty.

This Law has grounds in norms and guidelines already enshrined in the Federal Constitution of 1988, creating mechanisms to curb domestic and family violence against women, pursuant to §8 of Article 226, which says that: "The State shall ensure assistance to the family in the person of each one of those who integrate it, creating mechanisms to curb violence within the framework of their relations" (BRASIL, 1988, online).

It is also based on the aforementioned Convention of Belém do Pará and the Convention of the United Nations Organizations on the Elimination of All Forms of Discrimination against Women CEDAW, (MENEGHEL et al. , 2013).

In the case of CEDAW, signatory countries undertake to adopt various measures, including: 1) incorporating the principle of equality between men and women into their legal system, abolishing all discriminatory laws and adopting appropriate ones prohibiting discrimination against women; 2) establish courts and other public institutions to ensure effective protection of women against discrimination; and 3) ensure the elimination of all acts of discrimination against women committed by persons, organisations companies (UNITED NATIONS, 1979).

But even with the advent of the Maria da Penha Law in 2006, the murders of women for gender-based violence did not diminish, which led to the feminist movement and demand even stricter measures, which culminated in the Femicide Law.

5 THE EMERGENCE OF THE TERM FEMINICIDE

According to Camila Brandalise (2018), word femicide comes from the term femicide, which was created by South African sociologist Diana Russell in 1976 at a symposium called the International Tribunal for Crimes against Women in Brussels, Belgium. The term originated from the idea that the word homicide has a general concept, making a specific definition for women necessary. So murder against women turned into femicide.

Russell, in 1992, published the book "Femicide: the Politics of Killing Women", and this work inspired the anthropologist and former Mexican congresswoman Marcela Lagarde to develop a mobilization against murders of women in her country (BRANDALISE, 2018). However, he modified the term, because by translating it into Spanish the word lost strength, thus creating the term femicide, receiving the concept of being the "set of crimes of harm humanity that contains the crimes and disappearances of women" (PASINATO, 2011, p. 222). According to Brandalise (2018), Marcela Lagarde also pointed out the state's negligence in allowing these crimes to happen.

Brazil followed Lagarde and adopted this version of the term, which first appeared in the legislative sphere in the results of the 2012 Joint Parliamentary Committee of Inquiry (CPMI) on Violence against Women. The final report of this committee proposed the bill 292/2013, of the Federal Senate, which changed the penal code to insert femicide as a qualifying circumstance of the crime of homicide (BRANDALISE, 2018).

6 MOTIVATIONS FOR LAW No . 13,104/15

As seen so far, before the emergence of the law of femicide there was already a large worldwide movement emphasizing gender violence, focusing mainly on domestic violence, resulting in the generation of a series of changes in the Brazilian legislative area, culminating in the Maria da Penha Law. However, the murders of women have not decreased, as will be seen below, causing the feminist movement to continue to demand specific legislation for this crime.

It is worth noting in this topic that studies conducted in Brazil on gender violence, especially against women, since the 1980s, indicate two main characteristics regarding coping with gender problem: the first is the militant character, which gave greater visibility and the problem, enabling adequate tools of denunciation; the second concerns the position of women not only in the domestic and family spheres, but in society as a whole, because the "[...] situations of violence against women are the result of a general condition of subordination", relating, therefore, to the role that women assume in society and expectations about the role played by each gender (GREGORI, 1993, p. 67).

As seen, in the Brazilian legal system the legislator had already tried to the issues affected by gender violence, because in this being only one of the modalities of violence practiced against women, the advent of the Maria da Penha Law, edited in line with international normative guidelines, already aimed prevent, punish and eradicate all forms of domestic and family violence against women (BRASIL, 2006).

However, as carmen hein de campos (2015, p. 529-530):

As has been stated before, for feminism, violence against women is a public problem (of security, citizenship and fundamental rights) and for traditional jurists, a mere legal problem. The Maria da Penha law gave a voice to women and feminism, said what should be considered domestic and family violence and what should be the legal treatment given to women. Legal traditionalism resists, insisting on applying institutes prohibited by law (conditional suspension of the process) and undermining the implementation of specialized courts and courts.

It was then that on February 8, 2012, in Brazil, a Joint Parliamentary Committee of Inquiry (CPMI) was held to account for the numbers of violent deaths of women, which became known as CPMI of Violence Against women. The report was finalized on March 28, 2013 and showed a frightening reality in Brazil regarding gender violence, with alarming numbers, revealing the inexperience of some states in combating this violence. Several complaints of omission by the public authorities regarding the application of instruments established in law to protect women in situations of violence were investigated, as well as the actions of the Courts, which were analyzed in depth by this committee (BRASIL, 2013a).

This CPMI was formed because, even after the Maria da Penha Law, the government realized, through statistics, that there had not been any diminishing cases of violence against women, but only the data and news of this violence became public. This was due to the fact that after the Maria da Penha Law women were educated to seek the public power in cases of violence (SILVA; ALBERTON, 2019).

According to Campos (2015), after a year and a half of work, the CPMI report pointed out the fragility of public policies in coping with gender violence and a series of obstacles in the implementation of the Maria da Penha Law, among which the following stand out:

[...] the precariousness of the service network and the small number of judges specialized in the care of women in situations of domestic and family violence; the non-compliance with the decision of the Supreme Court that prohibits the application of conditional suspension of the process; the resistance of operators of the right to understand the proposal of the new law and break with the family logic and the insufficient budget for the development and maintenance of public policies to cope with these situations of violence (CAMPOS, 2015, p. 519).

With this analysis of the CPMI report, it was possible to conclude that Brazilian states invest very little in specific public policies and that in order to make a full implementation of the Maria da Penha Law, a new legal understanding is needed, in addition to the articulation between public authorities and a gender budget policy (CAMPOS, 2015).

Moreover, there was a huge number of murders of women, and that these occurred, mostly, by cruel death by their own partners, and the figures revealed by the CPMI were exorbitant, proving that every two hours a woman dies in Brazil, in a situation of domestic violence or belittling the condition of woman. Given these facts, and with the aim of developing a more effective criminal policy to combat violence against women, the legislative movement that culminated in the In Law No. 13.104/2015 (SILVA; ALBERTON, 2019).

Therefore, in addition to the Maria da Penha Law, the country elaborated Law No. 13,104/2015, which amended the Brazilian Penal Code with the inclusion of the femicide qualifier in the crime of homicide, with this in item VI of art. 121, of said legal diploma (BRASIL, 2015). And, as elsewhere said, the Heinous Crimes Act has also been amended. Therefore, femicide is not only a qualifier for homicide, but is also coated with heinousness.

The motivation for the typification of this type of homicide is clearly in the justification of Bill No. 292/2013, presented by the Federal Senat:

The importance of typify femicide is to recognize, in the form of the law, that women are being killed for the reason of being women, exposing the fracture of gender inequality that persists in our society, and it is social, by combating impunity, preventing feminites from being benefited by anachronistic legal interpretations and morally unacceptable, such as having committed a "crime of passion". (BRAZIL, 2013b, online).

Considering that the greatest act of violence against women is femicide, since there is nothing more violent than causing her death simply by being a woman, Garcia et al. (2013) conducted a survey to evaluate the impact of the Maria da Penha Law on the mortality of women from aggression. The temporal space was used from 2001 to 2011, where more than 50,000 femicides occurred, which about 5,000 deaths per year. According to the authors, most of these murders were due to domestic and family violence against women, considering that approximately one third of them occurred at home. Through the study, it was found that there was no reduction in annual mortality rates, comparing the periods before and after the validity of the Law, and regional differences were found, which seem to be related to the cultural acceptance of violence against women and its occurrence. Therefore, only the Maria da Penha Law had not been effective in combating femicide, which motivated the creation of a specific instrument to combat such crime

7 LAW ANALYSIS No . 13,104/15

Femicide gained greater visibility in Brazil from the enactment of Law No . 13,104/2015, whose description says:

Amends Article 121 of Decree-Law No. 2,848 of December 7, 1940 - Penal Code, to provide for femicide as a qualifying circumstance for the crime of murder, and Article 1 of Law No. 8,072 of July 25, 1990, to include femicide in the list of heinous crimes (BRASIL, 2015, online).

Thus, the Law came to qualify the murder against women for reasons of their sex condition, creating the legal figure of femicide, the most brutal dimension of gender violence (ROICHMAN, 2020). Since then, the political discussion about the fact has been imposed both in the media and in academic spaces (MARQUES, 2020).

Thus, it is observed that there have never been so many laws protecting women's rights, associated with a large amount of published literature, specific qualifications, awards and recognition strecognitions

for achievements in the field of women's rights. Still, women continue to be murdered and their bodies have never been more vulnerable to domestic violence (ROICHMAN, 2020).

As Silva and Alberton explain (2019, p. 6), what deals with the 2nd paragraph of the norm clarifies that this type of crime occurs "on grounds of female status", and is then a qualified homicide, and is practiced in the following hypotheses: a) domestic and family violence; (b) discrimination to the condition of mulher.

Art. 1 of Law 8.072/90 (Law of heinous crimes) was also changed to include femicide in the list of heinous crimes. The law also added § 7 to Article 121 of the Penal Code, establishing causes of increased penalty for the crime of femicide:

§ 7 - The penalty of femicide is increased from 1/3 (one third) to half if the crime is committed:
I - during pregnancy or in the three (3) months after delivery;
II - against persons under 14 (fourteen) years, over 60 (sixty) years or disabled ;
III - in the presence of the victim's descendant or ascendant. (BRAZIL, 2015 online).

Almost half of the homicides of women are intentional and committed as a result of domestic or family violence, which means that they are carried out by the victims' own partners or family members. More than 50% of these crimes are committed by means of firearms, 34% are by sharp puncture instruments (knives, maline weapon) and 7% by asphyxiation resulting from strangulation, these being the most common means in this type of occurrence (SILVA; ALBERTON, 2019).

Roichman (2020) developed a research with the objective of analyzing the effects of Law No. 13,104/2015 on the rates of violence against women, especially in the number of femicides. To this end, it raised the number of deaths of women in Brazil between 1996 and 2017, to evaluate quantitatively the effects of the new legislation on the numbers of gender violence, through a comparison in the temporal evolution of these indices. Data were collected from the Mortality Information System (SIM) of the Ministry of Health, which is the primary source of violence maps developed in Brazil. However, data were only available until 2017.

However, the author points out a problem, which is the fact that the SIM does not contain data on the motivation of crimes or criminals, which are necessary elements for the classification of deaths as femicides. To circumvent this issue, the author analyzed the impact of the Femicide Law on the rates of deaths resulting from violence against women as a whole, not only on the number of murders that could be classified as femicides. Thus, she adopted the broader definition of femicide, including any woman's morte resulting from violence. The total number of deaths of women by aggression was then considered indicator of the number of femicides. The results showed an immediate decrease in the number of femicides, but with a subsequent resumption of discharge, indicating that there was no significant impact on these indices (ROICHMAN, 2020).

But the fact is that so far this law, as well as the Maria da Penha Law, is still not being effective to impact neither on the reduction of crimes nor with regard to the compilation of data. There is still a certain invisibility at the time of death records, without determining whether the woman's death was a

femicide. This is because there is still a lack of information on the motivations of women's deaths, which remains an invisibility factor in the mapping of femicide cases, which may generate underreporting (MARQUES, 2020).

It is also important to emphasize that the importance of typifying the crime of femicide goes beyond its effects on the number of deaths of women, that the absence of reduction in the rates of violence in these first years after the law should not serve as an argument for those who argue that one should not establish a criminal type of law for femicide. This typification means, in fact, the recognition, albeit late, of the existence of such a practice and the state opposition to this criminalized conduct. Of course, the fight against femicide cannot and should not be limited to the notion of a law. It permeates, especially, the confrontation with gender inequality. However, the publication of the norm, by nominating crime in the legal system, means the direct confrontation of this violence (ROICHMAN, 2020).

8 FEMICIDE STATISTICS IN BRAZIL AND DOCTRINARY OPINIONS

The rate of femicides in Brazil is the fifth highest in the world (BRASIL, 2019). According to Cerqueira et al. (2019), through the publication called "Atlas of Violence 2019", funded by the Institute of Applied Economic Research (IPEA) and the Brazilian Security Forum, in which the result of female homicides is responsible, in a ranking of eighty-three countries, Brazil is the fifth most killed women, being among the most violent in the world in this aspect and in worse position than its neighbors in South America (with the exception only of Colombia), that European countries (with the exception of Russia), which all African countries and including all Arabs.

The number of female victims between 2007 and 2017 increased by 30.7%. In 2017, only 13 women were murdered and the number of women killed in 2007 was the highest in the last decade, totaling 4,936 victims. Also in this period between 2007 and 2017 there was an increase of 20.7% in the national rate of homicides of women, when it went from 3.9 to 4.7 women murdered by a group of 100,000 women (CERQUEIRA et al., 2019).

Of the member states, Rio Grande do Norte had the highest growth, with a frightening rate of variation, which is close to 215%. This State is followed by Ceará, Sergipe, Roraima, Acre, Goiás, Pará and Espírito Santo, which have the highest rates of violence against women (CERQUEIRA et al., 2019).

However, the study coordinated by Cerqueira et al. (2019) cannot specify whether the aforementioned records are in fact femicides, since the police agencies do not always specify this issue. Therefore, what is perceived is the increase in violence practiced by women that result in homicide, not necessarily that such data reflect the practice of femicide. This finding also highlights the need to deepen studies on this issue.

However, data from 2019, released by the Monitor d A Violência (a partnership between the G1 news portal and the Brazilian Public Security Forum), reveal that violence against women remains the cruelest and most evident manifestation of gender inequality in Brazil. According to the data, although

there was a 6.7% reduction in the number of female homicides between 2017 and 2018 (falling from 4,558 to 4,254 victims), this percentage was much lower than reported for the reduction of violent deaths nationwide, which was 13%. Then, the question: "Why was the reduction in female mortality so much smaller than homicides in general"? In addition, it is important to point out that the country remains one of the most violent in the world for women (BUENO; LIMA, 2019).

However, despite the relevance of the theme, much is questioned about the effectiveness of criminal law when it comes to confronting gender-based violence against women. One of the great debates about the typification of femicide is due to its effectiveness and need for legal provision, with arguments that criminal law typified conduct that already embarking on sanctions against this type of murder. This is due to the questioning about the use of criminal law as a way to achieve objectives or to resolve social conflicts, such as gender violence (BIANCHINI; MARINELA; MEDEIROS, 2015).

The authors, Bianchini, Marinela and Medeiros (2015), list some arguments pros and cons of criminalization, being the favorable: (a) Instrument for reporting and visualizing the murders of women on gender grounds; (b) Criminological utility: concrete data and numbers, making reality surface and allowing better prevention; (c) Symbolic power of criminal law to make society aware of the unique seriousness of these crimes; (d) New criminal figures may contribute to the State responding more adequately to these crimes;

(e) commits public authorities to preventing and sanctioning the murders of women; (f) It is not a question of giving a win-win treatment to women at the expense of men, but of granting enhanced protection to a group of the population whose life, physical and moral integrity, dignity, property and freedom are exposed to a specific and especially intense threat.

As for the contrary arguments: (a) Discrimination to the detriment of men, giving greater value to the lives of women; (b) Political power is used by this category, including it in its legislation and, therefore, exempts itself from investing sufficient human and economic resources to effectively contain violence; (c) In many countries, typification has been so confusing that it can hardly be applied;

(g) The emphasis should be on preventive policies and not on criminal policies; (d) The use of criminal law has become an instrument available to any political group and has low cost, compared with the implementation of public policies, and high popularity, especially in situations of high violence and crime, among others (BIANCHINI; MARINELA; MEDEIROS, 2015).

Cabette (2015, p. 26) stands in the sense of the absence of this qualifier's need in the Brazilian legal system. It demonstrates that feminicide presents a penalty of the other qualifiers already typified in the Penal Code (seclusion, twelve to thirty years). It argues that the use of the criminal area "is not and will never be the solution to any social problem or conflict".

Flores (2012) warns that it is easy to resort to the criminal route as a means of solving gender-based violence. It also sees that there is already in the legal system the figure of homicide in the qualified form, and can be framed the murder of women on grounds of sex (however it was not), these will hardly

be framed in the figure of femicide. It notes that a better contribution to combating gender-based violence would be to adopt extra-criminal measures, improving a state response to this type of violence.

9 FINAL CONSIDERATIONS

Given the fact that there is still a predominantly sexist and misogynistic culture in Brazil, it was possible to verify, with this study, that those who advocate the criminalization of femicide by Brazilian legislation generate so because of this correctly naming the delictive practice against women on the grounds of gender, that is, giving visibility to gender violence perpetuated today. It conquers this from women's rights, especially from feminist movements.

It is also observed that with legislative advances regarding the protection of women, they began to feel safer and motivated to denounce their aggressors, which may justify the increase in the number of cases of gender-based violence reported in the country.

With the research developed here it can be concluded that the creation of Law No. 13,140/15 had both political and social motivation, because even though the feminist movement has a lot of political strength, it is also a fact that the Maria da Penha Law has not been able to curb femicide, and that its numbers continue to grow, which has made it important to create this qualifier criminal, to be applied when the crime is committed on grounds of female condition, making it heinous.

Thus, the hypothesis defended at first, that such normative advent was carried out both for political and social reasons, considering that the numbers of these crimes are sufficient social motive to also justify this qualifier, aiming at the intimidation of aggressors and the reduction of deaths.

However, further study is needed to investigate the legal and social aspects related to this law and also the consequences of the typification of femicide in the fight against gender violence against women, which still requires more time to act on the norm, considered recent.

Still, even with the short time of action of the rules, and complying with the proposed objective of analyzing Law No. 13,104/2015, it was possible to verify that, despite having brought greater visibility to the crime, it is still not being effective to reduce the number of femicides in Brazil, and that, like the Maria da Penha Law, it needs investments in training and personnel and improvement of records to increase understanding of the motivations of homicides of women, identifying more specifically those who are femicides.

In addition, it is essential that there is greater attention in prevention actions, which should be associated with social and educational policies aimed at reducing gender disparities, which are the root of problems. These educational actions should also be aimed at a cultural change of society, in the sense that it is understood that domestic violence is not something that should be raised, or think that it is the problem of the other, that one should not denounce or ask for help. It is essential that everyone mobilizes against these acts of violence and acts as prevention agents.

For fim, it is necessary to invest in educational public policies for the general population, aimed at combating gender differences, because only with an education focused on equality and respect for women will be truly possible combat this type of violence in Brazil. Otherwise, this violence will never be able to end, nor with the advent of stricter laws, such as the one evaluated here, even if they are necessary.

REFERENCES

- ARAUJO, Maria de Fátima. Gênero e violência contra a mulher: o perigoso jogo de poder e dominação. *Psicologia para América Latina, México*, n.14, out. 2008.
- BARSTED, Leila Linhares. Lei Maria da Penha: uma experiência bem-sucedida de advocacy feminista. In: CAMPOS, Carmen Hein de. (Org). *Brasil. Lei Maria da Penha comentada em uma perspectiva jurídico-feminista*. Rio de Janeiro: Lumen Yuris, 2011. p.13-37.
- BARUFALDI, Laura Augusta; SOUTO, Rayone Moreira Costa Veloso; CORREIA, Renata Sakai de Barros; MONTENEGRO, Marli de Mesquita Silva; PINTO, Isabella Vitral; SILVA, Marta Maria Alves da; LIMA, Cheila Marina de. Violência de gênero: comparação da mortalidade por agressão em mulheres com e sem notificação prévia de violência. *Ciência & Saúde Coletiva*, v.22, n.9, p.2929-2938, 2017.
- BIANCHINI, Alice. *Lei Maria da Penha: Lei 11.340/2006: aspectos assistências, protetivos e criminais da violência de gênero*. 2.ed. São Paulo: Saraiva, 2014.
- BIANCHINI, Alice; MARINELA, Fernanda; MEDEIROS, Pedro Paulo de. O feminicídio. JusBrasil, 2015. Disponível em:
<<http://professoraalice.jusbrasil.com.br/artigos/171335551/o-femicidio>>. Acesso em: 7 abr. 2020.
- BRANDALISE, Camila. O que é feminicídio? Entenda a definição do crime que mata mulheres. *Universa*, 21 ago. 2018. Disponível em:
<<https://www.uol.com.br/universa/noticias/redacao/2018/08/21/o-que-e-femicidio-entenda-a-definicao-do-crime-que-mata-mulheres.htm>>. Acesso em: 7 out. 2020.
- BRASIL. Presidência da República. Casa Civil. Subchefia para Assuntos Jurídicos. Decreto-Lei nº 2.848, de 7 de dezembro de 1940. Código Penal. Brasil: 1940. Disponível em:
<http://www.planalto.gov.br/ccivil_03/decreto-lei/del2848compilado.htm>. Acesso em: 11 nov. 2020.
- BRASIL. Presidência da República. Casa Civil. Subchefia para Assuntos Jurídicos. Constituição da República Federativa do Brasil de 1988. Brasília: Casa Civil, 1988. Disponível em:
<http://www.planalto.gov.br/ccivil_03/constituicao/constituicaocompilado.htm>. Acesso em: 11 nov. 2020.
- BRASIL. Presidência da República. Secretaria-Geral. Subchefia para Assuntos Jurídicos. Lei 11.340, de 7 de agosto de 2006. Lei Maria da Penha. Disponível em:
<http://www.planalto.gov.br/ccivil_03/_ato2004-2006/2006/lei/111340.htm>. Acesso em: 21 ago. 2020.
- BRASIL. Senado Federal. Comissão Parlamentar Mista de Inquérito. Com a finalidade de investigar a situação da violência contra a mulher no Brasil e apurar denúncias de omissão por parte do poder público com relação à aplicação de instrumentos instituídos em lei para proteger as mulheres em situação de violência.
- Relatório final. Brasília: Senado Federal, 2013a. Disponível em:
<<https://www2.senado.leg.br/bdsf/item/id/496481>>. Acesso em: 13 nov. 2020.
- BRASIL. Senado. Projeto de Lei nº 292, de 2013: Com a finalidade de alterar o Código Penal para inserir o feminicídio como circunstância qualificadora do homicídio. Brasília: Senado Federal, 2013b. Disponível em:
<<http://www.senado.gov.br/atividade/materia/getPDF.asp?t=133307&tp=1>>. Acesso em: 7 abr. 2020.

BRASIL. Presidência da República. Secretaria-Geral. Subchefia para Assuntos Jurídicos. Lei 13.104, de 9 de março de 2015. Lei do feminicídio. Disponível em:

<http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2015/lei/113104.htm>. Acesso em: 21 ago. 2020.

BRASIL. Câmara dos Deputados. Especialistas apontam necessidade de mudança cultural para redução de casos de feminicídio. Agência Câmara de Notícias, 2 out. 2019. Disponível em:

<<https://www.camara.leg.br/noticias/593867-especialistas-apontam-necessidade-de-mudanca-cultural-para-reducao-de-casos-de-feminicidio/>>. Acesso em: 14 nov. 2020.

BRILHANTE, Aline Veras Moraes; MOREIRA, Gracyelle Alves Remigio; VIEIRA, Luiza Jane Eyre de Souza; CATRIB, Ana Maria Fontenelle. Um estudo bibliométrico sobre a violência de gênero. Saúde e Sociedade, v.25, n.3, p.703-715, 2016.

BUENO, Samira; LIMA, Renato Sérgio de. Dados de violência contra a mulher são a evidência da desigualdade de gênero no Brasil. Monitor da Violência, 8 mar. 2019. Disponível em:

<<https://g1.globo.com/monitor-da-violencia/noticia/2019/03/08/dados-de-violencia-contr-a-mulher-sao-a-evidencia-da-desigualdade-de-genero-no-brasil.ghtml>>. Acesso em: 28 out. 2020.

CABETTE, Eduardo Luiz Santos. Feminicídio: Aprovada a Lei nº 13.104/15 e Consagrada a Demagogia Legislativa e o Direito Penal Simbólico Mesclado com o Politicamente Correto no Solo Brasileiro.

Revista Jurídica, ano 63, nº 450, abr. 2015.

CALAZANS, Myllena; CORTES, Iáris. O processo de criação, aprovação e implementação da Lei Maria da Penha. In: CAMPOS, Carmen Hein de. (Org). Brasil. Lei Maria da Penha comentada em uma perspectiva jurídico-feminista. Rio de Janeiro: Lumen Yuris, 2011.

CAMPOS, Carmen Hein de. A CPMI da Violência contra a Mulher e a implementação da Lei Maria da Penha. Revista Estudos Feministas, Florianópolis, v.23, n.2, p.519- 531, 2015.

CAMPOS, Carmen Hein de; CARVALHO, Salo de. Tensões atuais entre a criminologia feminista e a criminologia crítica: a experiência brasileira. In: Lei Maria da Penha: comentada em uma perspectiva jurídico-feminista. Rio de Janeiro: Lumen Juris, 2011.

CAVALCANTI, Eliane Cristina Tenório; OLIVEIRA, Rosane Cristina de. Políticas públicas de combate à violência de gênero a rede de enfrentamento à violência

contra as mulheres. Revista de Pesquisa Interdisciplinar, Cajazeiras, v.2, n.2, p.192-206, 2017.

CERQUEIRA, Daniel et al. (Coord.). Atlas da Violência 2019. Brasília: Rio de Janeiro: São Paulo: Instituto de Pesquisa Econômica Aplicada; Fórum Brasileiro de Segurança Pública, 2019.

CERVO, Amado L.; BERVIAN, Pedro A. Metodologia científica. 4. ed. São Paulo: Makron Books, 1996.

CHIZZOTTI, Antônio. Pesquisa em ciências humanas e sociais. 4.ed. São Paulo: Cortez, 2000.

CIDH - Comissão Interamericana de Direito Humanos. Convenção Interamericana Para Prevenir, Punir e Erradicar a Violência Contra a Mulher. Belém do Pará: CIDH, 1994. Disponível em:

<<http://www.cidh.org/Basicos/Portugues/m.Belem.do.Para.htm>>. Acesso em: 11 nov. 2020.

FLORES, Rocío Villanueva. Tipificar o feminicídio: a “fuga” simplista ao direito penal? In: Contribuições ao Debate Sobre a Tipificação Penal do Feminicídio/Femicídio.

CLADEM, jun. 2012, Disponível em: <http://www.compromissoeatitude.org.br/wp-content/uploads/2013/10/CLADEM_TipificacaoFeminicidio2012.pdf>. Acesso em: 7 abr. 2020.

GARCIA, Leila Posenato; FREITAS, Lúcia Rolim Santana de; SILVA, Gabriela Drummond Marques da; HÖFELMANN, Doroteia Aparecida. Violência contra a mulher: feminicídios no Brasil. Brasília: Ipea, 2013.

GIL, Antônio Carlos. Como elaborar projetos de pesquisa. 4. ed. São Paulo: Atlas, 2007.

GREGORI, Paula F. Gênero e violência. Porto Alegre: Mercado Aberto, 1993.

GROSSI, Miriam P. Movimentos sociais, educação e sexualidade. Florianópolis: EDUFSC, 1991.

LINS, Beatriz Accioly. A lei nas entrelinhas: a Lei Maria da Penha e o trabalho policial nas delegacias de defesa da mulher na cidade de São Paulo. In: FAZENDO GÊNERO 10 - DESAFIOS ATUAIS DOS FEMINISMOS, 1., 2013, Florianópolis. Anais [...]. Florianópolis: UFSC, 2013.

MARCONI, Marina de Andrade; LAKATOS, Eva Maria. Fundamentos de metodologia científica. 5. ed. São Paulo: Atlas, 2003.

MARQUES, Clarice Gonçalves Pires. Colonialidade e feminicídio: superação do “ego conquiro” como desafio ao Direito. *Opinião Jurídica*, v.19, n.38, p.201-226, 2020.

MENEGHEL, Stela Nazareth; MUELLER, Betânia; COLLAZIOL, Marcell Emer; QUADROS, Maíra Meneghel de. Repercussões da Lei Maria da Penha no enfrentamento da violência de gênero. *Ciência & Saúde Coletiva*, v.18, n.3, p.691- 700, 2013.

PASINATO, Wânia. “Femicídios” e as mortes de mulheres no Brasil. *Cadernos Pagu*, n.37, p.219-246, Campinas, 2011.

ROICHMAN, Carlos Barreto Campello. Faca, peixeira, canivete: uma análise da lei do feminicídio no Brasil. *Revista Katálysis*, Florianópolis, v.23, n.2, p.357-365, 2020.

SANTOS, Cecília MacDowell. Da delegacia da mulher à Lei Maria da Penha: Absorção/tradução de demandas feministas pelo Estado. *Revista Crítica de Ciências Sociais*, n.89, p.153-170, 2010.

SILVA, Maria Isabele da; ALBERTON, Mario Henrique. A lei do feminicídio 13.104/2015 e seus impactos no estado do Paraná. *Actio Revista de Estudos Jurídicos*, v.2, n.29, p.5-25, 2019.

UNITED NATIONS. Convention on the Elimination of all Forms of Discrimination Against Women. United Nations, 1979. Disponível em: <<https://www.un.org/womenwatch/daw/cedaw/cedaw.htm>>. Acesso em: 14 nov. 2020.

WHO - World Health Organization. Global and regional estimates of violence against women prevalence and health effects of intimate partner violence and non-partner sexual violence. Geneva: WHO, 2013.