



## THE LOSS OF THE AGGRESSOR'S ASSETS AS A FORM OF PATRIMONIAL PROTECTION FOR THE WOMAN VICTIM OF DOMESTIC VIOLENCE



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### ABSTRACT

This article analyzes the legal implications of the application of the total or majority patrimonial loss of the aggressor as a form of protection for women who are victims of domestic and family violence. Based on the analysis of Bills No. 5,498/2023 and No. 5,958/2023, it is proposed to examine the constitutionality, proportionality, and effectiveness of this measure, which seeks to revert the assets acquired during the union to the victimized spouse, regardless of the property regime adopted. The research adopts the deductive method, with a qualitative approach and bibliographic and documentary foundation. The study is based on the recognition of property violence as a form of domestic violence, whose impact goes beyond material damage, generating dependence and economic vulnerability. The legislative proposal aims not only to penalize the aggressor, but also to repair the damage caused and guarantee means of survival and autonomy to the victim. We conclude that the loss of assets can be considered a legitimate measure, provided that the constitutional principles of due process, full defense and presumption of innocence are observed. By linking the penalty to the final and unappealable judgment of the criminal conviction, the proposed rule preserves legal certainty and promotes restorative justice. Finally, the importance of structural public policies that ensure the effective application of protective measures is highlighted, with special attention to the patrimonial reality of women victims.

**Keywords:** Domestic violence. Asset protection. Civil law. Bill.

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## INTRODUCTION

This article analyzes the legal implications of the destination of all the assets of the aggressor spouse to the woman who is a victim of domestic and family violence, under the terms of Bill No. 5,498/2023. The legislative proposal represents a significant break in the traditional paradigm of Brazilian Civil Law by suggesting that, even in cases of separation under the regime of total separation of property, the victim of violence can have full access to the assets constituted during the union. It is an attempt to associate patrimonial sanction with accountability for gender violence, expanding the scope of state protection for women in vulnerable situations.

Despite the institutional advances promoted by the Maria da Penha Law (Law No. 11,340/2006), data on domestic violence in Brazil are still alarming, revealing the persistence of an insufficient system to guarantee effective security for women. According to IPEA (2022), a woman is murdered every two hours in the country, and in most cases, the aggressors are her partners. Such data justify the analysis of more severe legislative proposals, such as the loss of assets, from the constitutional and fundamental rights perspective.

In this context, the research problem that guides this study is: what are the legal and constitutional effects of applying the total loss of the aggressor's assets to the victim of domestic violence? To this end, the general objective of the article is to analyze the compatibility of the proposal with the constitutional and civil principles in force. The specific objectives include: (i) verifying the legal and constitutional foundations of the victim's property protection; (ii) examine the proportionality of the proposed patrimonial sanction; and (iii) assess the legal consequences of the measure in different property regimes.

The methodology adopted is deductive, with a qualitative approach, based on bibliographic and documentary research. The study is based on legal doctrine, national jurisprudence, and legislative analysis, especially Bills No. 5,498/2023 and No. 5,958/2023, as well as the Federal Constitution, the Civil Code, and the Maria da Penha Law.

Structurally, the work is divided into three main sections, in addition to this introduction and conclusion, it will be structured in three main sections: the first addresses the normative context of domestic violence in Brazil, with an emphasis on women's protection legislation and the protective function of Civil Law: in the second, the content and legal foundations of Bill 5,498/2023 are examined, with a critical analysis of its compatibility with the Federal Constitution. In the third section, the possible legal consequences of the application of the measure of confiscation of assets are discussed, especially with regard to the property regime and the patrimonial balance of family relations.

## THE PROTECTION OF WOMEN'S PROPERTY IN THE CONTEXT OF DOMESTIC VIOLENCE: LEGAL AND CONSTITUTIONAL FOUNDATIONS

The Maria da Penha Law, as pointed out by Alves (2019), recognizes property violence as one of the forms of domestic and family violence against women and considers this practice as a violation of human rights. In this sense, article 7 of the aforementioned law lists the main forms of violence against women in the domestic context, highlighting, among them, psychological, physical, moral, sexual and patrimonial violence. The characterization of patrimonial violence involves acts such as retention, subtraction, partial or total destruction of objects, personal documents, goods, values, and economic resources of women, constituting a serious injury to their dignity and autonomy (Alves, 2019).

Domestic violence in Brazil, especially patrimonial violence, cannot be analyzed only from the criminal aspect, but rather as a serious attack on women's fundamental rights. As Almeida (2022) points out, the impact of this violence goes beyond material damage and promotes a situation of dependence, insecurity, and powerlessness that traps the victim in a cycle of vulnerability. This finding reinforces the urgency of effective public policies and state action to guarantee human rights and the dignity of women in their entirety.

It is painful, but routine, to read news and cases that report domestic violence and femicide suffered by women. In view of this, the Maria da Penha Law brought mechanisms to curb this violence that affects so many victims. The purpose of the Emergency Protective Measure (MPU) is to ensure the fundamental rights inherent to the human person, seeking to protect and preserve the physical and mental health of people who are victims of domestic violence (Costa, 2022, p. 12).

When the State does not take the necessary measures to curb domestic violence, it ends up becoming an accomplice to the violence and negligent in terms of the psychological, patrimonial and physical protection of the victim. It is the duty of the State to punish the aggressor so that he learns from his mistakes, pays for them and, thus, provides greater security to the victim (Costa, 2022, p. 29).

The Civil Code, in its book on "Family Law", establishes that in marriage there is partial community of property as a legal regime (Pereira, 2022). This means that the assets acquired during the marriage are considered to be common to the spouses, and both have the rights and obligations over these assets. Therefore, any act of property violence such as the retention, subtraction, destruction or dilapidation of common property by the spouse can be considered a violation of the woman's rights. In these cases, the woman can resort to the protection of the courts to obtain the protection of her property rights (Pereira, 2022).

It is worth mentioning that the Civil Code also provides for the possibility for the woman to request de facto separation, legal separation or litigious divorce in order to ensure her patrimonial protection. In addition, the Maria da Penha Law reinforces this protection by providing for specific protective measures to ensure the integrity of the woman's property, including the restitution of stolen assets, suspension of powers of attorney granted to the aggressor, and prohibition of acts of property disposal without judicial authorization (Law No. 11,340/2006).

The separation of bodies is a protective measure that prepares and precedes divorce in cases of domestic violence. [...] The reality of the protective measure of separation of bodies is pleaded in extreme situations that generate or may generate risk to the physical and psychological integrity of the offended party. For this measure to become effective, it is necessary for the offended party to seek judicial authorization to move away from the spouse while the process of separation, annulment of the marriage and even the dissolution of the stable union takes place (Costa, 2022, p. 23).

The Maria da Penha Law presents aspects of various areas of Law. In this case, it refers us to the Civil Code (art. 1.694). [...] It is essential to set alimony, as it is noted that economic dependence is what most keeps the victim of domestic violence imprisoned and emotionally dependent on her aggressor, for this reason, if the woman does not have the conditions for her own survival, this measure will be extremely necessary (Costa, 2022, p. 20).

The Maria da Penha Law refers to some of the types of alimony, namely, only provisional and provisional alimony. With the silence of the rule, part of the doctrine understands that such benefits can be in favor of the victim woman or dependents, according to each specific case. In this way, the legal system seeks to guarantee the existential minimum of the victim, in accordance with the constitutional principles of human dignity and family protection (Costa, 2022, p. 20).

In addition, Article 5 of the Maria da Penha Law establishes the principles that govern the application of the rule, such as the guarantee of human rights, gender equality, and the eradication of all forms of violence against women. Such principles are in harmony with the constitutional foundations, especially that of the dignity of the human person, provided for in article 1, item III, of the Federal Constitution, which provides a legal basis for the full protection of women against any type of violence, including patrimonial violence. These principles must be observed not only in the interpretation of infra-constitutional norms, but also in the concrete application of judicial measures and public policies aimed at women in vulnerable situations.

The Maria da Penha Law, although inserted in the criminal and criminal procedural spheres, dialogues with constitutional and civil provisions by ensuring measures involving child custody, alimony, property and housing. The judge's role in granting emergency protective measures is not limited to the criminal field, and may adopt measures typical of Civil Law to preserve the fundamental rights of the victim, as provided for in article 226 of the Federal Constitution, which recognizes the family as the basis of society and ensures special protection by the State to women in situations of violence (Costa, 2022, p. 22).

From a constitutional perspective, the principle of social solidarity imposes on the State and the community the duty to act to mitigate gender inequalities, promoting inclusion and social justice. The principle of proportionality, on the other hand, is manifested in the balanced application of sanctions and protective measures, ensuring that they are sufficient to protect the rights of the victim, without disrespecting legal and constitutional limits. In this way, fundamental rights are reaffirmed as central elements in the fight against domestic violence, with the Law being a transformative instrument in the promotion of equality and respect for the integrity of women.

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To set the bail, the judge must take into account the principles of reasonableness and proportionality, which means that the financial condition of the aggressor, the act of violence committed and the value of the asset that was embezzled, destroyed or removed from the possession of the offended party must be analyzed. Violence committed against women in the context of a family or intimate domestic relationship of affection may constitute, in addition to a criminal offense, a civil offense capable of generating effects such as the obligation to repair the damage caused to the woman (Costa, 2022, p. 26).

## **THE PROPOSAL TO AMEND THE CIVIL CODE BY BILL NO. 5,498/2023: CRITICAL ANALYSIS OF THE FULL DESTINATION OF ASSETS**

Bill No. 5,498/2023, authored by Deputy Fred Linhares (Republicanos-DF), proposes a significant change in the Civil Code by providing that, in cases of divorce resulting from domestic and family violence against the woman, all assets acquired during the marriage or

taken to the union must revert to the battered spouse, regardless of the sharing regime adopted. The proposal aims to sanction the aggressor with the loss of property, functioning as a way to curb violent behavior and as an instrument of justice and reparation for the victim (BRASIL, 2024).

According to the rapporteur, Deputy Professor Goreth, the initiative represents a transformative measure, as it directly affects the aggressor in a sensitive point in capitalist societies: patrimony. The proposal not only promotes a frontal attack on structural machismo, but also encourages behavior change, warning male aggressors that domestic violence will have severe legal consequences. The approved substitute establishes that this asset reversal will only occur after the final and unappealable criminal conviction, ensuring legal certainty and respect for due process of law (BRASIL, 2024).

Bill No. 5,958/2023, authored by Deputy Márcio Marinho (Republicanos-BA), proposes the inclusion of a single paragraph to article 1,581 of the Civil Code, determining that, in cases of divorce motivated by domestic and family violence against the woman, the victim will be entitled to 70% of the assets acquired by the couple, regardless of the property regime adopted. The proposal seeks to offer greater patrimonial protection to battered women, correcting the economic disadvantage often faced by victims of violence when leaving abusive relationships (BRASIL, 2023).

In the justification of the project, the author argues that many women remain in violent relationships due to financial dependence and that, to change this reality, it is necessary to apply punishments that directly affect the aggressor, especially in the economic field. The measure also aims to provide victims with minimum conditions of stability to rebuild their lives with dignity and safety. The bill argues that the loss of the aggressor's assets works as an effective penalty and a mechanism of justice for women who are victims of violence (Brasil, 2023).

During the proceedings in the Committee for the Defense of Women's Rights, Bill No. 5,958/2023, authored by Deputy Márcio Marinho, was attached to Bill No. 5,498/2023, as they deal with similar topics: both propose changes to the Civil Code to protect women who are victims of domestic violence through the differentiated distribution of assets in the event of divorce. The rapporteur, Deputy Professor Goreth, was appointed in December 2023 and stressed that the matter is subject to ordinary processing and conclusive consideration by the competent committees, including the Constitution and Justice and Citizenship committees (BRASIL, 2024a).



In order to ensure legal certainty and respect for due process, the rapporteur presented a substitute for the original text. This new text provides that all the assets taken for the marriage or the share of the assets acquired during the marital partnership will revert to the battered spouse only after the final and unappealable criminal sentence of conviction of the aggressor. The proposal seeks to balance the principle of victim protection with the right of defense of the accused, modifying the initial version of the bills, which provided for the automatic division of assets based only on proof of violence (BRASIL, 2024a).

The proposals contained in PLs No. 5,498/2023 and 5,958/2023 seek to ensure that women who are victims of domestic violence have differentiated property protection in divorce, a measure that is in line with the constitutional principles of human dignity (article 1, III), substantial equality (article 5, I) and family protection (article 226, paragraph 8). By providing for the full or majority reversion of assets to the battered spouse, the proposals recognize the economic vulnerability of women in contexts of violence and aim to repair the effects of this inequality in the breakdown of the marital relationship.

However, from a legal-constitutional point of view, the substitute proposed in the opinion of the Commission for the Defense of Women's Rights was essential to reconcile the protection of the victim with the guarantees of the aggressor, especially the principles of due process of law (article 5, LIV) and the presumption of innocence (article 5, LVII). By conditioning the loss of assets to the final and unappealable judgment of the criminal conviction, the text respects legal certainty and avoids arbitrary decisions, promoting a proportional, fair and constitutionally adequate response to gender violence.

The application of the penalty of loss of assets to the aggressor, as proposed by PLs No. 5,498/2023 and 5,958/2023, raises important reflections as to its feasibility in the various property regimes provided for in the Civil Code. In regimes such as partial or universal communion, where there is common property, the reversion of assets to the victim is more easily operationalized. However, in regimes such as the total separation of assets, in which there is no asset communication, the measure encounters barriers, as it presupposes the existence of common assets. In these cases, the effectiveness of the rule would depend on an extensive interpretation or specific legislative modification that allows the allocation of the aggressor's private assets as a form of reparation (BRASIL, 2023; BRAZIL, 2024).

The solution adopted in the substitute for PL No. 5,498/2023, by providing for the reversion of assets to the victim regardless of the sharing regime adopted, seeks precisely to overcome these practical difficulties. However, its application must observe the constitutional limits of the right to property (article 5, XXII) and due process of law. The

imposed conditionality – the final and unappealable nature of the criminal conviction – works as a safeguard against legality and legal certainty, allowing the patrimonial sanction to be exceptional, proportional to the severity of domestic violence and effective in protecting the victim (BRASIL, 2024).

## **LEGAL IMPLICATIONS OF THE AGGRESSOR'S PATRIMONIAL LOSS: LIMITS, RISKS AND EFFECTIVENESS OF THE MEASURE**

Before the Maria da Penha Law, criminal legislation provided for alternative penalties such as community service or financial punishment. However, these sanctions were ineffective in the context of domestic violence, since "the alternative penalty of monetary payment does not resocialize much, insofar as it does not force the aggressor to reflect on the causes of violence" (ARAÚJO, 2003, p. 13). Thus, the application of these penalties does not discourage recidivism, which highlights the need for more severe and reparatory measures, such as the loss of assets proposed in the current Bills, which act directly on the aggressor's power base.

The advances of the new law are very significant. One of the great novelties was the creation of the Courts of Domestic and Family Violence Against Women (JVDFMs), with civil and criminal jurisdiction. Another relevant point is the possibility for the judge to determine the mandatory attendance of the aggressor in re-education programs, in addition to applying measures that immediately stop the violence, such as removal from home and the prohibition of approaching the victim. In addition, the prohibition of financial penalties or the delivery of basic food baskets marks an important paradigm shift by recognizing the seriousness of domestic violence and removing merely symbolic punishments (Nascimento, 2023).

The Maria da Penha Law brought significant advances with the creation of emergency protective measures, such as the removal of the aggressor from the home, suspension of the carrying of weapons, prohibition of contact with the victim and provision of provisional alimony (BRASIL, 2006). These measures aim to safeguard the physical and psychological integrity of women, but do not always guarantee reparation for material damage caused by violence. The proposal for a patrimonial penalty in PLs No. 5,498/2023 and 5,958/2023 emerges as an important complement, by associating financial liability with violent conduct, reinforcing the pedagogical and punitive nature of the state's response.

Although there is protection for victims of domestic violence in the criminal sphere, the Maria da Penha Law demonstrates that the confrontation of this type of violence cannot be limited to traditional sanctions. Protective measures function as immediate instruments



of containment and prevention, while the proposals for patrimonial sanctions in the new bills contribute to a more effective and transformative reparatory perspective, which reinforces the role of the State in holding the aggressor accountable and fully protecting the victim (Nascimento, 2023).

The implementation of the protective measure is a debate that highlights the problem as a product of several elements, that is, its solution requires the mobilization of resources, agencies and training to deal with the prevention, reception and eradication of domestic violence. The structure that the State has to combat violence against women is small, centralized in large cities and there is a shortage of resources to execute the rules established by law. It should be noted that any and all types of violence can be reported in police stations, but in most municipalities in Brazil there are no specialized bodies, such as women's police stations or adequate health networks, which compromises the effectiveness and universality of the right to protection (Rodrigues; Andrade, 2023, p. 17).

Although the Maria da Penha Law represents a significant advance in the fight against domestic violence, its effectiveness is still compromised by structural failures of the State, such as the absence of continuous public policies and the precariousness in the functioning of the agencies that assist women. Often, protective measures are granted, but are not properly inspected, which puts the victim's life at risk and generates discredit as to the application of the law. Such difficulties reveal a mismatch between the legal text and its effective implementation, raising questions about the State's ability to guarantee the fundamental rights to life, security, and dignity (Nascimento, 2023).

Regarding the protective measures that oblige the aggressor, it is important to mention the text of paragraph 1 of article 22 of the Maria da Penha Law, since the law authorizes the application of other measures according to the need of the case. However, this raises the debate about the possibility of abuses in the judicial expansion of these measures, since the list presented is illustrative. Although this provision allows flexibility, it requires rigor in judicial reasoning and adequate oversight, at the risk of violating the aggressor's constitutional guarantees, such as due process of law (art. 5, LIV) and full defense (art. 5, LV), if disproportionate measures are applied without clear criteria (Rodrigues; Andrade, 2023, p. 12).

Another point that deserves attention is the possibility of abuses in the use of protective measures, especially those that involve the removal of the aggressor from the home or the suspension of visits to dependents. Although legally provided, these measures require a judicious application, under penalty of violating constitutional guarantees such as due process and full defense. When used indiscriminately, they can be instrumentalized by

interests other than the real objective of the law, compromising its legitimacy and the protection of real victims (Nascimento, 2023).

Property violence usually goes unnoticed in marital and socio-affective litigation. Often, the aggressor steals common or personal goods from the woman, such as furniture, money, documents and even pets, as a form of retaliation or domination, especially after separation. This demonstrates how financial control is used as a tool to keep women in a situation of vulnerability and dependence within the relationship, generating lasting effects on the victim's economic autonomy (Carvalho, 2021).

Property violence is understood as a conduct of subtraction, retention or destruction of a woman's belongings, whether of economic or sentimental value, such as documents, clothes, work instruments or even common goods of the couple. This form of violence seeks to eliminate the victim's financial autonomy, making them depend on the aggressor to perform basic activities, including work. Often, this type of abuse intensifies in separation processes, where the ex-partner uses his financial condition to threaten or harm the woman economically, such as destroying assets or denying child support, further aggravating the victim's vulnerability scenario (OLIVEIRA, 2019, p. 21).

The removal of legal, bureaucratic and cultural obstacles that prevent women from freely disposing of their assets is essential to combat this type of violence. Data show that women's participation in the labor market, despite favoring their independence, can intensify patrimonial conflicts, since many aggressors feel threatened by their partner's autonomy and use violence as a way to reaffirm power. This scenario reveals the complexity of gender relations and the need for public policies that ensure effective asset protection for victims (CARVALHO, 2021).

In this context, the Maria da Penha Law provides for protective measures that aim to ensure the property rights of women, protecting them from any losses or damages caused by the aggressor. Article 24 of Law 11,340/06 establishes, for example, the restitution of stolen assets, the prohibition of the sale of common property without judicial authorization, as well as the suspension of powers of attorney given to the aggressor. Such provisions demonstrate that the impact of domestic violence transcends the physical and psychological aspect, directly affecting the economic stability of women, which can compromise their independence and ability to rebuild after the breakup of the abusive relationship (OLIVEIRA, 2019, p. 35).

Although the possibility of granting protective measures represents a relevant innovation in the fight against domestic violence against women in Brazil, they have not been enough to significantly reduce this type of violence. The silence and the lack of

effective measures by the public authorities mean that aggressions within the domestic environment continue to occur frequently. This demonstrates that, although the legislation provides for penalties and forms of protection, in practice, these measures often do not achieve the proposed purpose, that is, to ensure the safety and integrity of the victim (Dias, 2019, p. 9).

Despite its immense importance, proven by the effects caused to the whole society and demonstrated here, what can be seen is that the Maria da Penha Law has not been well applied and has not yet been enough to improve the situation of women, because the increase in complaints, without the support of the protection of the State, creates an even more dangerous terrain for women victims of domestic violence. because it places them under the same roof as the aggressor, already aware of the complaint and possible legal punishments (NUDEM, 2015, p. 13).

Although article 24-A of the Maria da Penha Law, included by Law No. 13,641/2018, has typified non-compliance with protective measures as a crime, the effectiveness of these penalties depends on adequate supervision and swift and integrated action by the justice system. Delays in care and revictimization are factors that undermine the victim's trust in institutions, often causing them to give up seeking support or reporting new aggressions. Thus, it is clear that the simple hardening of penalties does not guarantee, by itself, the effectiveness of protection for women, and investment in structural public policies and humanized care is essential (Dias, 2019, p. 26-27).

Eight years after the entry into force of the Maria da Penha Law, it is necessary to assess the extent to which the regulation has already been able to change the reality of the country. What it was for, which of its devices are put into practice and which are not; its successes and, especially, its failures (NUDEM, 2015, p. 13).

## CONCLUSION

The analysis of legislative proposals that provide for the total or majority loss of assets of the aggressor in cases of domestic violence reveals the search for more effective mechanisms to protect women victims. PLs No. 5,498/2023 and No. 5,958/2023 are based on the recognition that domestic violence is not limited to the physical or psychological sphere, but extends to the patrimonial field, imposing on the victim a situation of economic dependence that perpetuates the cycle of abuse.

In this sense, the allocation of assets to the victimized spouse appears as a measure that combines reparation, protection and social justice, breaking with the traditional patrimonial neutrality of Civil Law. However, the constitutionality of the measure requires

consideration with the principles of due process, full defense and presumption of innocence, and it is correct to condition the loss of assets to the final and unappealable judgment of the criminal conviction.

In addition, the study showed that, although the protective measures provided for in the Maria da Penha Law have promoted advances, their effectiveness remains limited by the absence of oversight, precarious institutional structure, and revictimization. The hardening of penalties, by itself, does not guarantee the safety of the victim if it is not accompanied by structural public policies, humanized care and state commitment to gender equality.

Thus, it is concluded that the penalty of loss of property of the aggressor is constitutionally viable, as long as it is applied with the proper legal and judicial limits. This is a legitimate measure to achieve the proposed purpose: to effectively protect women, repairing the damage suffered and discouraging the perpetuation of domestic violence as a form of patrimonial domination.

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