


CHILDHOOD AND PARENTAL ALIENATION: AN INTERFACE BETWEEN LEGAL SYSTEM AND PSYCHOLOGY

 <https://doi.org/10.56238/arev6n3-288>

Submitted on: 20/10/2024

Publication date: 20/11/2024

Francisca Nayane de Sousa Santos¹ and Ronald Taveira da Cruz²

ABSTRACT

The present work investigates parental alienation, focusing on legal and psychological aspects related to the social phenomenon in question. It sought to verify the modes of prevention and repression used by the State to contain this practice, as well as the possible consequences and influences on child development and the establishment of parental relationships. It was investigated how the covid-19 pandemic reflected in cases of parental alienation. Recent data from the Superior Court of Justice of Piauí were broadcast by the Bom Dia Piauí program, pointing out that the number of cases of parental alienation doubled in the state during the period of social isolation, jumping from 10 cases in 2019 to 23 cases in 2020. In this sense, shared custody was explored in the research as a way to inhibit this practice. For the contextualization and analysis, a bibliographic and legislative research was carried out, and the use of theoretical references was allowed through the exploration of data contained in books, articles, scientific works, legislation and websites.

Keywords: Parental alienation, Children and adolescents, Psychological effects, Shared custody, Pandemic.

¹ Bachelor in Psychology
Federal University of Delta do Parnaíba (UFDPAr)

² Dr. in Linguistics
Federal University of Delta do Parnaíba (UFDPAr)

INTRODUCTION

Nowadays, we usually attribute some characteristics to children that differentiate them from adults, but it was not always like this. The idea of childhood dates back to the modern age, around the seventeenth century when there were changes in society regarding the way of thinking and relating to the family, strengthening family ties. It was around this period that children began to be seen with a more affectionate look, giving rise to the conception of children as social beings.

In this way, the gain of a prominent role in the family and in society, based on the recognition of its own particularities and needs, was the result of a social and historical construction. Today it is known that the child develops in interaction with various contexts of specific characteristics, which can be rules, values and ways of being and being. In view of this, childhood is a period of considerable changes in terms of social development (BIASOLI-ALVES, 1997).

In this way, Portugal (2009) defends childhood as the first life experiences of the human being as a learner that determine what the individual will become as an adult, this is due to this period being marked by learning about oneself, about others and about the world. In this sense, even if there are idiosyncrasies of each dimension of the child's development, a change in one dimension leads to many others in the remaining domains.

Therefore, it makes sense to turn to the changes in the understanding of the family institution and childhood that move as the configurations of society change. The approval of constitutional amendment number 9 that deals with the divorce law, the certification of equality between children, the recognition of stable union, the single-parent and homoparental family as a family constitution are presented as great examples.

The family is largely responsible for the formation of an individual, whose subject will have the first interactions and will walk towards citizenship in society. It is the duty of parents to ensure that their children are well advised, that they have access to education and that they are cared for in accordance with the rights guaranteed by the Federal Constitution (FC) and the Statute of the Child and Adolescent (ECA). Thus, considering that children and adolescents are in a phase of full development, they need special care, from parents, the community and the State. But what has been observed is that it often happens that minors are involved in the process of breaking up the parents' marital relationship, being exposed to a conflicting relationship, where they become instruments of revenge and

are marked by a trail of rancor, resulting in what we know as Parental Alienation (PA) (OLIVEIRA, 2015).

In this sense, Parental Alienation is configured as a violation of rights, in addition to violence against the child or adolescent, occurring when one of the parents promotes a discourse against the ex-spouse with the intention of imposing some type of suffering on the same, creating an interference in the psychological formation of the child or adolescent, using the children as a means to deposit their anger, hurt and/or frustration due to the relationship ended, generating for the minor a distorted image of the other parent.

The American psychiatrist Richard Gardner was responsible for registering the first definition of Parental Alienation, after observing characteristic symptoms in children from whom the parents were in the process of divorcing. Gardner tried to achieve recognition of the term as a syndrome, but without success, it is preferable that the term not be used due to lack of validation from the scientific community.

Despite the fact that the Parental Alienation Syndrome (PAS) is not scientifically recognized, the cases of parental alienation that emerge over the years cannot be disregarded. Thus, Velly (2010) highlights the great interest of Psychology, as well as law in this theme, since it is directly linked to aspects of both areas. Therefore, it is notorious that legal science is in constant transformation, in an attempt to keep up with the changes in society, as well as psychology that occupies a place in the legal environment through the psychologist, referred to in the environment as expert and technical assistant. Therefore, it becomes relevant that both areas come together in order to reach a better understanding of this phenomenon.

It is worth mentioning that when there is a controversial topic like this, the need to improve knowledge by bringing new studies and establishing new formulations is highlighted. Thus, this production is justified by the importance of disseminating information about the implications of parental alienation, as well as how this practice affects childhood by violating established rights. Aiming to address legal aspects of parental alienation with the laws that relate to the subject, seeking to understand the modes of prevention and repression used by the State, the psychological consequences in children victims of the practice of parental alienation, in addition to the consequences of parental alienation during the covid 19 pandemic. This production is a qualitative and legislative bibliographic research, for contextualization and analysis a bibliographic survey was carried out, and the

use of theoretical references is allowed through the exploration of data contained in books, articles, scientific works, legislation and websites.

FAMILY, PARENTAL ALIENATION AND ITS INTERTWINING

The family presents itself as a "system inserted in a diversity of contexts and constituted by people who share feelings and values, forming bonds of interests, solidarity and reciprocity, with its own specificity and functioning" (SIMIONATO and OLIVEIRA, 2006, p. 58), attributing to itself different configurations from the conservative father, mother and children. Based on this assumption, alternative family arrangements emerged over time: successive matrimonial unions with different partners, children from different marriages, adoption by homosexual couples, couples with partners or children living with one of the families of origin, solo motherhood (SIMIONATO and OLIVEIRA, 2006).

In this sense, the family has the right to an ethical-existential autonomy, where the members, including children, can participate in the direction of their lives. The need for the right to family life is confirmed not only by doctrine, but also by legislation, in the caput of "art. 226 The family, the basis of society, has special protection from the State." Thus, the relevance of biopsychosocial training for the family cannot be denied, acting as the main environment for coexistence, so that it is where the child and adolescent will incorporate the fundamental values that will be applied in the future, including their ways towards the community that surrounds them and themselves (GOMES, 2018).

In this way, the child occupies a place of centrality in the family environment, as well as of subjection as it is around him that parental affections are established. In this sense, caregivers when involved in family conflicts tend to lack communication, linked to the difficulty in solving problems together, the result of which these conflicts have negative effects on child rearing (OLIVEIRA, 2015).

Therefore, the conception that the family "leads to its idealization and the belief that, with marriage, everyone will be happy" (DIAS, 2014, p. 5), contributes to the difficulty in elaborating the end of love and the separation process. Thus, the rupture of the marital bond brings the need for a structural adaptation for all family members, with the redefinition of roles and functions within a new family format.

Thus, frequent divorces and separations imply challenges for the legal sphere, as well as for the psychological one, so that the intensity of the effects of the end of the marital relationship will be determined based on the quality of the experiences between parents

and children. That said, the experiences acquired previously will assume a decisive role when the breakup is litigious, influencing the definition of custody of the infants (NÜSKE; GRIGORIEFF, 2015).

Thus, when the child or adolescent is subjected to the conflicting relationship of the parents, so that his condition as a child and subject of rights and desires is disregarded, the infant is subjected to family disagreement, which he cannot interrupt. It is then in the troubled period of separation, with the mourning for an idealized relationship that did not work out that "the emotional load is so much that parents easily forget that children are children and should not enter into the conflicts of adults. Under these conditions, this 'plaything' child can easily go from the status of subject to that of object. And this is where the fertile ground of parental alienation is found" (GOUDARD, 2008, p. 10).

In view of this, at first it is appropriate to transcribe some definitions of the term alienation, in an attempt to outline what parental alienation is. Thus, "the feminine word *alienatio*, *alienationis* means legal transmission of property, assignment, misconduct, alienation (of the spirit), madness, distancing, rupture" (GOUDARD, 2008, p. 9).

Thus, parental alienation is presented as a deviation of conduct, in which the alienator, father or mother are willing to alienate the child, that is, to make him alien to someone, to separate him from living with the alienated parent, acting in an unscrupulous way and omitting the rights of the child.

Goudard defines parental alienation in an elucidative way:

"One or more children are "attached", take sides with one parent and move away from the other, even becoming aggressive or hostile. In the most serious cases, any visit is impossible and, sometimes, the conflict goes as far as the murder of the detested parent. Everything happens as if, suddenly, the world (in the sense of the microcosm in which children live) is simplified into "good" on the one hand and "bad" on the other. Children side with the alienating parent, the "good" parent, the good parent's family, and close friends, and the rejected parent, whom we will call the alienated, is regarded as "bad" just as much as the rest of his or her relatives and friends. This system is the result of an essentially unconscious manipulation by the alienating parent of the children's own behavior who perceive the alienating parent as a victim and wish to support him while making sure that the bond that unites them is maintained. (GOUDARD, 2008, p.9).

It is understood that parental alienation occurs when one of the parents, usually the one who has custody of the child, handles it as a way of taking revenge and hitting the other parent, having motivations of a personal nature, which may be dissatisfaction with the separation, depression, financial dissatisfaction, or even the fact that the ex-partner

maintains a loving relationship with another individual (FONSECA, 2006, p. 163 apud BUOSI, 2012, p. 58).

In this competitive and disputed scenario, the narcissism of the parents is not renounced for the sake of the child, who do not realize that ambiguous discourses and attitudes are detrimental to their offspring. Commonly, however, the practice of alienation occurs unconsciously, but visibly harbors a feeling of revenge aimed at the other parent (MELLO, 2012 apud NÜSKE; GRIGORIEFF, 2015). The intention is not to harm the infants, but to offer difficulties to the life of the other parent.

The work of the alienator is subtle and silent. In this way, the child enters into a conflict of loyalty, being forced to make a choice between the parents, since he is encouraged to think in a dichotomous way, so that one parent is good while the other is completely bad, favoring a dissociation and inability to tolerate differences. In this way, the alienator gets the support of the child, turning him against the ascendant. (NÜSKE; GRIGORIEFF, 2015).

That said, it is important to recognize that the phenomenon in question is not limited to the practice originated only by the parents, but by family members, including grandparents or any people who have responsibility for the child or adolescent. However, the accusation of practicing parental alienation is generally evident in the relationship between the mother and the child, as it is the same who has custody in most cases, since, despite the constitutional isonomy, in Brazilian culture the idea that the woman naturally has the ability to take care of her offspring is strongly rooted in the traditional historical division of roles in the family environment (PERES, 2002).

In addition, it is emphasized that parental alienation today does not come only from the purposes of marital relations, since with the changes that govern society related to morals and good customs, it is unnecessary to establish a marriage, or a stable affective relationship for a pregnancy to occur (FREITAS; CHEMIM, 2021). That said, it is possible to come across cases in which sexual intercourse occurs without some type of affective bond and/or solid relationship built by the couple, where the children may suffer deprivation of the coexistence of one of the parents, having the possibility of suffering parental alienation from their parents.

Therefore, divorce is not always responsible for conflicts as a result of the dissolution of the union. This act simply allows the anxieties previously hidden with the attempt to endure family harmony to emerge. (DESDESPERTA, 1970 apud NÜSKE; GRIGORIEFF,

2015). In this sense, divorce acts as a catalyst, as it appropriates the conflicts and misunderstandings previously cultivated, so that divorce can even be seen as a solution for families that live in a conflicting daily situation, which could cause more harm to the infants.

Furthermore, the dissolution of the union is a moment in "family life preceded by a crisis and followed by strong structural changes" (GRISARD, 2014, p. 260). Thus, marital breakdown cannot be considered the agent responsible for causing parental alienation, but the unique way in which each parent, based on their possibilities and psychic structure, deals with the new reality.

Given the above, it becomes relevant to distinguish the terms dissolution of the conjugal partnership and dissolution of the family, since conjugality separates from the family, so that the relationship established between the marital dyad does not become a family matter. In this way, the question remains to be asked by legal operators about how to facilitate the transposition of conjugality to parenthood, as well as in the reorganization of binuclear families originated from divorce (OLIVEIRA, 2015).

In addition, it is essential to take into account the family as a whole, so that the individuals included receive care and attention, since they suffer subjectively. It is important to emphasize the importance of maintaining bonds in the formation of affective relationships of the child involved in the parents' litigation.

PSYCHOPATHOLOGICAL ASPECTS OF PARENTAL ALIENATION

In the academic environment, there ends up being a duality of terms to refer to the phenomenon of alienation. These are parental alienation and parental alienation syndrome (PAS) that emerged from the studies of American psychiatrist Richard A. Gardner, around 1980. The author found a set of symptoms, which were constantly present together in children, who were inserted in a context where there was a short time ago the dissolution of their parents' marriage, being perhaps in the process of litigation involving the guardianship of the child. Under these symptoms, Gardner created his theory of parental alienation syndrome (PAS), while he believed that parental alienation would be the act of alienating (GARDNER, 2002).

Although some authors corroborate basing their writings on Gardner's work about the existence of a syndrome, so far it cannot be proven that it actually exists, after all, the Diagnostic and Statistical Manual of Mental Disorders (DSM), as well as the International Statistical Classification of Diseases (ICD), do not recognize Parental Alienation (PA) as a

syndrome and for this reason the term should be exempted. As a result, it will not be used in this work in order to prioritize scientificity.

However, the psychological, emotional and behavioral effects arising from exposure to parental alienation cannot be disregarded. That said, some authors argue that psychological suffering results from a mental formation with dysfunctional representations, obtained through difficult interactions between the child and his caregivers. When these interactions do not occur constructively, causing disturbances in these care relationships, the child needs to make an enormous effort in order to be able to deal with these adversities, requiring a great load of energy to maintain homeostasis. Since these disturbances are intense and persistent to the point that the child is unable to deal with them, it is possible that there is a tendency to dysregulation in the creation of cognitive-affective representations and, as a result, susceptibility to pathologies (FRAGATA; FIELDS; BALEIZÃO, 2019).

For Calderaro and Carvalho (2005 apud YAEGASHI; MAINARDES; YAEGASHI, 2011), childhood depression originates from the association between biological and environmental factors. Family dynamics are one of the environmental factors that most favor the triggering of childhood depression. Thus, it is believed that once alienation is practiced and one of the parents abstains from actively participating in the children's lives, this event will certainly have important consequences for the healthy development of the child, and a compromised emotional and psychological development may occur, given the possibility of significant affective losses, in addition to important references for the construction of personality, with the removal of an important figure of identification, be it the father, the mother or a caregiver who plays these roles.

Thus, Silveiro (2012) emphasizes that the child's greater suffering stems from the conflict between the couple and the absence of contact with one of the parents, than from the separation of the parents. Younger children are still very dependent on adults, especially when it comes to building the perception of reality, distinguishing feelings, and even to have a more real or adequate perception of themselves. Involvement with parental alienation can bring a strong feeling of anguish to the child, as well as various symptoms such as: fear, inhibitions, aggressiveness, nervous tics, somatizations and blocks in learning. In addition, the child obtains a Manichean view of life, in which the world is constituted on opposite sides (good and evil), also resulting in the loss of the identification model of one of the parents, given the deprivation of contact that PA produces.

Furthermore, among the most striking psychological characteristics, there is the possibility of repetition in adult life of the behavior learned in childhood, as it will take as an identification model the deprivation of living with one of the parents. Therefore, it is important to emphasize the extreme relevance that living with both parents has for the healthy development of the minor, because it is through this triangulated relationship between the mother figure, the father figure and the child that his personal and sexual identity will be built (VELLY, 2010).

Human beings interact and dialogue with others, with the world, and with themselves, and these actions begin in childhood through playing and moving. This expression allows the child to question the world, to establish dialogues and to build himself as an autonomous and creative being. It is in the relationship that childhood is built, it is in the quality of these interactions that the responsibility for a healthy development remains (KUHN; CUNHA, 2014).

For a child who creates a permanent dialogue between his self and the world, making decisions and predetermining what he needs/should do or feel, simply by making him adapt to the demands that are directed to him, may not be the best way to enable meaningful experiences, and may only be a limitation of being authors and actors of his process of knowledge construction, experiences and meanings, in addition to cooperating with the disrespect for the plurality of children as singular subjects (KUHN et al., 2009, apud KUHN; CUNHA, 2014).

LEGAL ASPECTS OF PARENTAL ALIENATION

Notably, the Constitution of the Federative Republic of Brazil of 1988 alludes to fundamental rights guaranteed to children and adolescents, specifically provided for in the caput of articles 226 and 227, see:

Article 226: The family, the basis of society, has special protection from the State.
Article 227: It is the duty of the family, society and the State to ensure the child, adolescent and young person, with absolute priority, the right to life, health, food, education, leisure, professionalization, culture, dignity, respect, freedom and family and community life, in addition to safeguarding them from all forms of negligence, discrimination, exploitation, violence, cruelty and oppression. (Text given by Constitutional Amendment No. 65 of 2010).

Thus, it is visible that the entire Brazilian legal system, based on the Federal Constitution of 1988, has the duty to respect the fundamental rights mentioned above, and

must be complied with by the family, society and the State, so that children and adolescents can have a minimum of dignity, without harming their healthy development.

In addition, we have law 8.069 of July 13, 1990, better known as the Statute of the Child and Adolescent, which regulates the principles that concern the rights of the child. Among such principles that guarantee the best interest of the minor, article 4 caput, which like article 227 of the Federal Constitution mentions the principle of absolute priority, seeking to protect childhood and promote a healthy physical, psychological, moral and intellectual development of the areas necessary for a good education.

The most important aspect is that undoubtedly in cases involving the practice of parental alienation, the fundamental rights mentioned of children and adolescents are not fulfilled, given that the family institution, the main responsible for ensuring these rights, is the one that does not protect them. Therefore, it is understood that it is not considerable to have a family environment, psychological development, as well as a healthy family life for the child or adolescent inserted in an environment where parental alienation occurs. It is possible to perceive the complete opposite, the violation of all these rights.

Therefore, parental alienation is an offense to the fundamental rights of children and adolescents. Therefore, it will be up to the State, as a guarantor of rights, to interfere in the family environment, with the intention of reducing its scope, as well as the consequences for the minor. Thus, Law 12.318/2010 deals with parental alienation and defines in its article 2 what it is.

"An act of parental alienation is considered to be the interference in the psychological formation of the child or adolescent promoted or induced by one of the parents, by the grandparents or by those who have the child or adolescent under their authority, custody or supervision so that they repudiate the parent or that cause damage to the establishment or maintenance of ties with the parent" (BRASIL, 2010).

After recognizing the evidence of parental alienation, art. 5º §3 of the law provides that the judge, if he deems it pertinent, may request psychological or biopsychosocial expertise, the designated professionals will have a period of 90 (ninety) days to issue a report, with the possibility of extending the deadline if the judge deems it necessary.

Thus, it is understood that there is a collective multiprofessional effort, involving areas such as law, psychology and social work, with the intention that at least the proportion of parental alienation is reduced, reducing the harmful potential of this practice to the health and development of children and adolescents.

Undoubtedly, the parental alienation law is a symbol of the affirmation of the rights of children and adolescents, which predicts not only aspects of this practice, as well as measures to try to remedy it. According to Oliveira (2015, p. 13), "once the presence of alienating maneuvers on the part of the parent is verified, it is necessary that he be held responsible, given the despicable purpose that leads him to such attitudes".

To this end, article 6 of Law 12.318/2010 is highlighted, which determines some warning and penalty alternatives directed to the alienating father, mother or caregiver, namely: "I - Declare the occurrence of parental alienation and warn the alienator; II - to expand the family coexistence regime in favor of the alienated parent; III - stipulate a fine to the alienator; IV - to determine psychological and/or biopsychosocial follow-up; V - determine the change of custody to shared custody or its inversion; VI - to determine the precautionary determination of the child's or adolescent's domicile; VII - declare the suspension of parental authority" (BRASIL, 2010, p. 1).

Among these alternatives for the fulfillment of the rights of children and adolescents, the main ones are psychological and biopsychosocial monitoring, the modification of unilateral custody to shared custody or its inversion, and the suspension of parental authority. However, there is a discussion about the harms that Law 12.318/2010 covers, considering false allegations of the occurrence of parental alienation to the detriment of one's own interest, and not of the infant involved, and/or to cover up real inappropriate behaviors, which causes the distortion of the law and infringes on the violation of the rights of the child or adolescent, facilitating discussions about the lack of effectiveness and providing a basis for movements that support the repeal of the law (SILVA, 2021).

Therefore, not forgetting the good in vogue of the child or adolescent, it is necessary to have a careful and responsible practice arising from the figure of the State through legal operators, as well as Psychology professionals. In this sense, the Federal Council of Psychology promoted in 2018 a digital dialogue with the presence of two invited professionals in order to enhance the discussion. Dr. Analícia Martins, who researches parental alienation, and Dr. Eduardo Ponte, psychologist at the Court of Justice of the State of Rio de Janeiro, who warned about the complexity of the subject and the duty of the professional psychologist not to treat it by a Manichean logic, as occurs in custody processes.

Psychology and Law have been interconnected over time at various times, in the establishment of the ECA, in the shared custody law and in the most recent parental

alienation law, and according to the speech of Dr. Eduardo Ponte (2018) during the digital dialogue, this fact occurs due to the appreciation of affection, making it essential that the courts have technical teams, with psychologists, who can cover up the lack of understanding that legal operators may have, even due to the absence of theoretical and practical instruction. The professional inserted in cases involving the theme should observe the child's behavior, which, as a rule, is multifactorial, and can have several causes.

PONTE (2018) emphasizes that in this scenario it is possible to observe the judicialization of relationships, considering the context in which the cases reach the professionals. As a result, it advises that psychologists, when working with children and family members who are inserted in a context of parental alienation, whether under a clinical or court understanding, position themselves so that their practice and listening are not also judicialized. Valuing an ethics of care in listening and, in practice, especially with children.

SHARED CUSTODY AS A WAY TO INHIBIT PARENTAL ALIENATION

Custody is configured as an institution of family law, regimented in law 8.069, of July 13, 1990, by the statute of the child and adolescent (ECA), by the civil code of 2002 as well as in the Federal Constitution of 1988. Having received the gift of life, the human being bonds with a family, whether biological or affective, establishing bonds and belonging.

In a common language, custody expresses the responsibility of caring for, caring for and protecting those under their guardianship. The person who plays this role is referred to in the legal sphere as a guardian, with the possibility of being exercised by the person of the State, by parents, ascendants, descendants, relatives in collateral line, as well as by third parties, if necessary. In the family, the protective bias indicates only one direction, the one that deals with the child's interest to make the enforcement of their rights viable. In view of this, article 227 of the Federal Constitution brings in its legal text the rights that are guaranteed to them.

It is relevant to note that historically the custody or paternal power over the children belonged to the father, so that the wife and mother were subjugated to his decisions. This understanding conceived the woman relatively incapable of performing actions of a civil life, among them the main fact of not being able to be responsible and provide for the children. With the advent of the Industrial Revolution, the role of women and the attributions performed began to be considered indispensable for production and economy, allowing

insertion in the labor market, the division of the function of educating children and the maintenance of the home. This perspective had a considerable impact within families, until in the middle of the last century, the female figure would in fact become the most responsible for the development, education, guidance and guidance of children (NETO; FIUZA, 2015 apud PIRES et al., 2017).

With the dissolution of a union, the couple's duty to cohabit ends. However, article 1,632 of the CC/02 states that "Legal separation, divorce and dissolution of the stable union do not alter the relations between parents and children except in terms of the right, which belongs to the former, to have the latter in their company." In this way, the function of family power will last between both parents, regardless of whether they are married or not.

In divorce situations, it has become common for unilateral custody of the mother to prevail. In this condition of custody, the child grew up with only one parent as a reference, with the mother most of the time being responsible for caring and educating, while the father maintained a place of lack in the upbringing. In view of this, divorce provided the distancing of the bonds between parents and children, and the image of the father as a friend who walks on weekends was built, removing the responsibility for the child's development (PIRES et al., 2017).

Over time, the doctrine carries criticisms regarding the modality of unilateral custody, causing the contemplation of another custody system by civil law. Maria Berenice Dias (2010, p. 442) instructs that visitation "[...] it creates a shaking of affective bonds due to the father's non-participation in the child's daily life, in addition to generating a certain lack of commitment to his development." The criticisms aimed at this system are related to the visitation period not being enough to strengthen bonds between parents and children, converging on the distance between them.

The civil code of 2002 in its article 1,583 designates and disciplines two categories to perform custody, which are the most relevant, unilateral and shared. In the national legal sphere, the modality of unilateral custody is commonly determined, so that one of the parents is appointed as the guardian of the child, on the other hand, the other is considered as a visitor or non-guardian.

That said, article 1,583 of the Civil Code (2002) began to bring a new model of exercising custody, shared custody.

Article 1,583

(...) Paragraph 1 - Unilateral custody is understood to be that attributed to one of the parents or to someone who replaces him or her (article 1,584, paragraph 5) and shared custody is the joint responsibility and the exercise of rights and duties of the father and mother who do not live under the same roof, concerning the family power of the common children.

Shared custody states that parents in an equal position will continue to have guardianship of the minor, although only one of them has custody. The main objective is to enable the child or adolescent to have the parent who left home close and participate in their daily lives. Thus, there can be a reduction in the losses resulting from the dissolution of the parents' union, through the preservation of coexistence (SILVA, 2021).

The first determination in this system will be in which household the child will reside, and it is possible that the child or adolescent has an anchor point, his or her personal environment, and thus generates bonds that allow his or her development a sense of active stability. Izabela Rejaili (2017, p. 4), points out a measure of care that must be taken when establishing shared custody:

It is necessary for parents to be cautious when opting for shared custody to avoid the characterization of the so-called "backpack guard", a term adopted by scholars to define cases in which children are divided between the father's and mother's homes and end up losing the identity of a home, of their own space, which can cause psychological and emotional damage to the child.

Shared custody became expressly provided for in the Brazilian legal system through the implementation of Law 11.698, of June 13, 2008. This law brought the modification of articles 1,583 and 1,584 of the civil code of 2002, seeking to fill gaps left by other types of custody. Currently, the law in force does not consider the sharing of custody in cases of disinterest in having it by a parent or when there is inability to exercise family power.

Although it is already provided for in the legal system, it was with the advent of Law No. 13,058/2014 of December 22, 2014 (Shared Custody Law) that this modality became a primary option. The main purpose of this system is to meet the rights of children and adolescents in a way that values the maintenance of emotional health, for the healthy development that family life and affective bonds would provide more easily, reducing possible discomfort arising from abandonment or conflicting presence as a result of separation.

After the end of the relationship, the former couple has free autonomy to establish what best fits the children according to their conceptions. However, if there is no agreement, the interested parties resort to a custody mode to raise the State's jurisdictional protection,

so that the judge will establish which modality best suits the case presented, analyzing the socioeconomic, moral, psychological aspects, among others (SILVA, 2021).

Shared custody may be claimed by either parent, and its adoption must be encouraged and suggested by the judges, in order to preserve the best interest of the minor, considering that the continuous coexistence with both caregivers will enable the child to realize that despite the end of the relationship of his parents there was no implication for the relationship of the same as parents and child (SILVA, 2021).

In this conjecture, shared custody produces another positive point, extending to the reduction of the possibility of parental alienation by one of the parents, who often present themselves in unilateral or alternate custody. In short, in order to succeed the ideal relationship in shared custody, the principle is the synchronic work between the State, applied in the figure of judges, guardianship council and the family, in order to be able to understand the essential good in vogue of the child, considering that the family environment is largely responsible for the construction of character, education and the development of personality. preventing the end of the marital union from being an obstacle in the psychological formation of the child (PIRES et al., 2017).

PARENTAL ALIENATION AND ITS CONSEQUENCES IN THE COVID-19 PANDEMIC

It is common knowledge that in the year 2020 humanity was affected by the spread of the SARS-COV-2 virus, popularly named coronavirus or covid-19, surprising the world with its high risk of contagion and comprehensive lethality rate, mainly due to the lack of drug treatment to combat it, as well as a vaccine for the immunization of the population. Faced with this worrying scenario, health authorities indicated social isolation as a measure to contain the spread of the virus and mass contagion of the population, therefore, people, of all age groups, had to adapt to the new reality.

In mid-March of the same year, Brazil was hit with the first case of contamination by the virus, causing a drastic change in the scenario experienced by Brazilians, bringing direct implications in professions, relationships, ways of being and experiencing. Among these changes, Family Law had to adapt to social distancing and isolation measures, causing modifications, especially in the lives of children of separated parents, since social isolation can provide a direct relationship with parental alienation (SILVEIRA; THOMÉ, 2021).

The information obtained by a report aired by the journalism program Bom dia Piauí on February 26, 2021, corroborates this information. The numbers were obtained through the Court of Justice of the State of Piauí and reveal a worrying scenario, where during the pandemic the number of cases involving parental alienation doubled, changing from 10 cases in 2019 to 23 cases in 2020.

The unpredictability of the pandemic has made the suspension of family life between the infant and the non-custodial parent one of the most discussed topics regarding this branch of law, bringing to justice important demands that need firm and quick analysis, especially when it comes to families and children (ULLMANN; CALÇADA, 2020). The preservation of parental coexistence has become a dilemma, raising issues inherent to every child and adolescent, namely, the right to health and the right to family life.

In this sense, the exceptionality of the current moment puts family relationships to the test, given the numerous judicial decisions that make family coexistence impossible, even in cases where the established custody modality is shared (ALT, 2020). In this sense, isolation was presented as a relevant factor for the occurrence of the practice of parental alienation, which can be disguised by the discourse of care and protection of the child, by some parents (PINTO, 2020).

The restriction on face-to-face family life is an extreme and controversial act, however, on March 25, 2020, the National Council for Children and Adolescents – CONANDA, issued a document suggesting, among other recommendations, the change of face-to-face coexistence between child and non-resident parent, online or by telephone, aiming at the full protection of children and adolescents during the covid-19 pandemic period (IBDFAM, 2020).

"18. It is recommended that children and adolescents children of couples with shared or unilateral custody do not have their health and the health of the community at risk as a result of the fulfillment of visits or period of cohabitation - provided for in the agreement established between their parents or defined by the court." (IBDFAM, 2020, p. 1).

According to the considerations sent by the Brazilian Institute of Family Law to CONANDA, on the full protection of children and adolescents in the pandemic, it was found that the recommendations issued by the agency could encourage the practice of parental alienation. It should be noted, however, that there is no determination or suggestion in the guidance mentioned above to suspend face-to-face coexistence, but rather the express

recommendation of care so that children and the community are not subjected to the risk of contagion.

In view of this, even understanding that the rights of children and adolescents provided for in article 227 of the Federal Constitution must be preserved, especially the right to family life, the right to health is highlighted, on the other hand, protected by the legal provision of No. 196 of the Federal Constitution, which provides:

Article 196. Health is a right of all and a duty of the State, guaranteed through social and economic policies aimed at reducing the risk of disease and other health problems and universal and equal access to actions and services for its promotion, protection and recovery (CONSTITUIÇÃO FEDERAL, 1988).

In an exceptional situation like this where there are no parameters to proceed, for a period while maintaining a higher rate of contagion and high death rates, it was reasonable to understand that suspending travel during the period of peak transmission of the virus was more sensible, in order to serve and protect children and adolescents. It is possible to mitigate this break in the affective bond, through technologies that favor virtual coexistence.

Even in the event of the permanence of this atypical environment, if it is not possible to prove unfitness, or if the risk of contagion is non-existent, as well as if the preventive provisions proposed by the World Health Organization (WHO) are properly complied with, the two guardians are able to exercise parental authority and live with the infant (FERREIRA; PINTO, 2021).

Notwithstanding, the distance of its members, the family institution is a link that is perpetuated over time, which is a reason for the components to care for and protect the infants, as well as family life, which has a great responsibility for the healthy development of children and adolescents (SILVEIRA; THOMÉ, 2021).

Distance and time together are strong allies of those who practice alienation in order to break ties between the child and the other parent. Therefore, the social isolation provided for by the quarantine can become the justification and necessary opportunity to manipulate children according to their will. That said, the current moment must be considered, and each case must be carefully analyzed, both by legal operators as well as by multiprofessionals, especially psychology, in order to adopt appropriate measures so that children and adolescents are not physically and emotionally penalized.

FINAL CONSIDERATIONS

When dealing with the phenomenon of parental alienation, we realize how complex and broad the issue becomes, and it is necessary that we turn our attention to the development of relationships in the family environment, since in addition to the dissolution of a union, the ground of alienation can be fertile even in current relationships, when one of the parents presents behaviors that involve the disauthorization and suspension of authority of the other parent, or even allow the child to be involved in relationship discussions, which may interfere with the minor's perception of one of the caregivers.

Thus, it is understood that parental alienation is marked by the dichotomy in thought, in which the child victim oscillates between the ideal situation and the situation experienced, at the same time that he desires the presence of the alienated parent, he feels obliged to please the alienating parent, who is proud of the rejection directed at the former partner. It is perceived that the bond established with the child strengthens parental alienation precisely because of the occurrence of approval by the alienator, whose child in seeking this approval will tend to reduce the bonds more and more.

The absence of coexistence of the parent and his child caused by the interference of the practice of parental alienation causes damage mainly to the child, considering that the coexistence between the family triad is essential for the development of bonds and for the notion of difference and otherness. Therefore, sincere dialogue during the period of separation becomes essential so that it is clear to the child or adolescent that the love relationship with him or her will remain intact.

Since the family institution is a space permeated by meanings and possibilities, where processes, relationships and phenomena should not be synthesized to operational elements, it is important to perceive the parties involved who suffer from the rupture of something idealized, whether it is the end of a relationship in the case of the alienator, or for the child the breaking of ties with the estranged parent, or in the case of the alienated person with the suspension of his parental authority.

In this sense, we were able to affirm that there are no winners in the game of alienation, leaving the biggest setback for the child or adolescent with guilt, the breaking of ties and the estrangement of one of the parents. They are the most injured, since they are violated and their rights are annulled.

Thus, when there is an occurrence of parental alienation, without the possibility of understanding between the parents, it is up to the State to carry out judicial measures. If

there are no preventive measures on parental alienation or its negative effects, it is necessary to intervene by the State, in order to curb this practice that usurps the fundamental rights of infants.

That said, shared custody can be presented as an alternative to protect the best interest of the child or adolescent, whose objective is to preserve the maximum affective bond between parents and children. Thus, considering the importance of ensuring the subject that the child constitutes, in order to ensure that the identity and roots of the infants are not lost in the process of family change, therefore, shared custody presents itself as the most effective method for both parents to live together and educate the offspring. In a way that asserts respect for the dignity of the child, through care, affection and protection, guaranteeing their condition as a subject of desires and rights.

In the face of numerous situations that are beyond the sphere of control and that human beings may be subject to, as is the case with the covid-19 pandemic. It is the responsibility of legal operators, as well as interdisciplinary areas, to analyze whether it is essential to suspend physical coexistence, and it is important even in affirmative cases, to opt for alternative means to physical coexistence, such as the use of electronic means, since affective assistance is as important as patrimonial assistance.

It is relevant that as psychologists certain phenomena are not naturalized, recognizing that family relationships are diverse and thus must be addressed, understanding that the cases will not be the same and that each one must be perceived as unique in itself. We need to take special care so that psychological practices are not judicialized, keeping a certain distance from the concepts of Law, so that they guide our field of knowledge, instead of relying on them.

Thus, it is important to emphasize that not only the legal psychologist must be technically supported to recognize and deal with the family that is going through the PA, but also all those who enter the profession, since the cases may arise in the private practice, in the Guardianship Council, in the hospital, and in various institutions where the psychologist is inserted.

To conclude, it is considered extremely important to preserve childhood, freeing it from conflicts that are harmful to its formation, helping the child or adolescent to acquire their own experiences, their perception of themselves and others, helping to create autonomy in childhood, so that they themselves discover the world and position themselves in it.

REFERENCES

1. Estatuto da Criança e do Adolescente (Lei 8.069/90). (1990). Disponível em: http://www.planalto.gov.br/ccivil_03/leis/l8069.htm Acesso em: 17 jun. 2021.
2. Lei 12.318/2010. (2010). Disponível em: http://www.planalto.gov.br/ccivil_03/_ato2007-2010/2010/lei/l12318.htm Acesso em: 17 jun. 2021.
3. Alt, C. (2020). Alienação parental em meio à pandemia da Covid-19. Espaço Vital, RS, abr. Disponível em: <https://www.espacovital.com.br/publicacao-37873-alienacao-parental-em-meio-a-pandemia-da-covid19> Acesso em: 11 nov. 2021.
4. Betty, B. F., & Roizen, L. (2011). Alienação parental: A família em litígio. Polêmica, 10(1), 56–73. Disponível em: <https://www.e-publicacoes.uerj.br/index.php/polemica/article/view/2836/1963> Acesso em: 21 jun. 2021.
5. Biasoli, Z. M. M. A. (1997). Famílias brasileiras do século XX: os valores e as práticas de educação da criança. Temas em Psicologia, Ribeirão Preto, 3, 33–49.
6. Brasil. (2002). Código Civil. Brasília, DF: Senado Federal. Disponível em: <https://www2.senado.leg.br/bdsf/bitstream/handle/id/70327/C%C3%B3digo%20Civil%202020ed.pdf> Acesso em: 13 out. 2021.
7. Brasil. (1988). Constituição Federal da República Federativa do Brasil de 1988. Brasília, DF: Presidência da República. Disponível em: http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm Acesso em: 17 jun. 2021.
8. Buosi, C. C. F. (2012). Alienação parental: uma interface do direito e da psicologia. Curitiba: Juruá.
9. Casos de alienação parental dobram durante a pandemia. Direção de Clarissa Castelo Branco. (2021). Piauí: Rede Globo, 1 vídeo (5 min.). Disponível em: <https://globoplay.globo.com/v/9303174/> Acesso em: 11 nov. 2021.
10. Conselho Federal de Psicologia. (2018). Alienação parental será tema de Diálogo Digital do CFP. 1h 27min 6s. Disponível em: <https://www.youtube.com/watch?v=f0QkLG34BQc> Acesso em: 15 nov. 2021.
11. Dias, M. B. (2010). Manual de direito das famílias (6ª ed. rev., atual. e ampl.). São Paulo: RT.
12. Dias, M. B. (2014). Síndrome da alienação parental, o que é isso? Disponível em: <http://migre.me/oqmVWf> Acesso em: 22 nov. 2021.
13. Ferreira, E. C., & Pinto, L. M. (2021). Alienação parental e seus desdobramentos durante o cenário pandêmico. Disponível em:

<http://lamoreirap.jusbrasil.com.br/artigos/1194338672/alienacao-parental-e-seus-desdobramentos-durante-o-cenario-pandemico> Acesso em: 11 nov. 2021.

14. Fragata, A. S., Campos, R. C., & Baleizão, C. (2019). Representações das figuras parentais e dor psicológica: Um estudo exploratório. *Análise Psicológica*, 37(3), 313–325.
15. Freitas, H. V., & Chemim, L. G. (2021). Alienação parental e a violação dos direitos fundamentais da criança e adolescentes. Disponível em: <https://heloisevfreitas.jusbrasil.com.br/artigos/263378429/alienacao-parental-e-a-violacao-aos-direitos-fundamentais-da-crianca-e-do-adolescente>
16. Gardner, R. A. (2002). O DSM-IV tem equivalente para o diagnóstico de Síndrome de Alienação Parental (SAP)? Disponível em: <http://www.alienacaoparental.com.br/textos-sobre-sap-1/o-dsm-iv-tem-equivalente> Acesso em: 21 jun. 2021.
17. Gomes, M. M. (2018). A evolução da família: concepções de infância e adolescência. *Revista Educação Pública*, Rio de Janeiro, p. 1–4. DOI 10.18264/REP. Acesso em: 22 nov. 2021.
18. Goudard, B. (2008). A Síndrome da Alienação Parental. Disponível em: <http://www.sos-papai.org/documentos/0.%20Doutorado%20em%20Medicina%20-%20A%20SNDROME%20DE%20ALIENAO%20PARENTAL.pdf> Acesso em: 21 jun. 2021.
19. Grisard, W. F. (2014). Guarda compartilhada: Um novo modelo de responsabilidade parental. São Paulo: Editora Revista dos Tribunais.
20. IBDFAM, Assessoria de Comunicação. (2020). IBDFAM envia ao Conanda considerações sobre proteção integral à criança e ao adolescente na pandemia; há risco de alienação parental. Belo Horizonte. Disponível em: <https://ibdfam.org.br/noticias/7390/> Acesso em: 11 nov. 2021.
21. Nüske, J. P. F., & Grigorieff, A. G. (2015). Alienação parental: complexidades despertadas no âmbito familiar. *Pensando Famílias*, 19(1), 77–87.
22. Oliveira, A. L. N. (2015). Alienação parental e família contemporânea: um estudo psicossocial (organização de Álvaro de Oliveira Neto, Maria Emília Miranda de Queiroz e Andreia Calçada; coordenação, Maria Quitéria Lustosa de Sousa). Recife: FBV/Devry.
23. Oliveira, N. K. L. (2015). Alienação parental: a proteção da criança e do adolescente à luz da garantia constitucional. *Jus Navigandi*. Disponível em: <https://jus.com.br/artigos/38012> Acesso em: 24 jun. 2021.
24. Peres, L. F. L. (2002). Guarda compartilhada. *Jus Navigandi*, Teresina, 7(60). Disponível em: <http://jus.com.br/revista/texto/3533> Acesso em: 21 jun. 2021.
25. Pinto, L. S. (2020). A alienação parental no contexto de pandemia. Instituto Brasileiro de Direito de Família, Belo Horizonte. Disponível em:

<https://www.ibdfam.org.br/artigos/1537/A+alienação+parental+no+contexto+de+pandemia> Acesso em: 11 nov. 2021.

26. Pires, M. R. G., Barbosa, A. C. T., Razzéra, S. M., Silva, T. A., Almeida, M. S., & Souza Neto, G. C. (2017). Conversando sobre guarda compartilhada e alienação parental: olhares jurídicos e psicológicos em um projeto de extensão acadêmica. *Psicologia Ensino & Formação, Rondônia*, 8(1), 48–57.
27. Portugal, G. (2009). Desenvolvimento e aprendizagem na infância. In Conselho Nacional de Educação (Org.), *Relatório do estudo – A educação das crianças dos 0 aos 12 anos* (pp. 1–60). Lisboa: Ministério da Educação.
28. Rejaili, I. F. S. (2017). Guarda compartilhada ou guarda unilateral: como definir o futuro dos filhos menores. *Estadão*. Disponível em: <https://politica.estadao.com.br/blogs/fausto-macedo/guarda-compartilhada-ou-guarda-unilateral-como-definir-o-futuro-dos-filhos-menores/> Acesso em: 13 out. 2021.
29. Silva, D. M. P. (2021). Alienação parental: o que é? O que não é? E porque é invisível ao judiciário? *Migalhas*. Disponível em: <https://www.migalhas.com.br/depeso/339336/alienacao-parental> Acesso em: 15 nov. 2021.
30. Silva, S. C. O. (2021). A guarda compartilhada como instrumento para a redução de casos de alienação parental. *Monografias Brasil Escola*. Disponível em: <https://monografias.brasilecola.uol.com.br/direito/a-guarda-compartilhada-como-instrumento-para-reducao-casos-alienacao-parental.htm> Acesso em: 13 out. 2021.
31. Silveira, G. F., & Thomé, L. M. B. (2021). Alienação parental e a convivência na pandemia. Disponível em: https://www.pucrs.br/direito/wp-content/uploads/sites/11/2021/01/graciele_silveira.pdf Acesso em: 11 nov. 2021.
32. Silveiro, A. R. (2012). Análise interdisciplinar da síndrome da alienação parental: aspectos jurídicos e psicológicos (Monografia). Curso de Direito, PUCRS, Porto Alegre. Disponível em: https://www.pucrs.br/direito/wp-content/uploads/sites/11/2018/09/alice_silveiro.pdf Acesso em: 26 jun. 2021.
33. Simionato, M. A. W., & Oliveira, R. G. (2006). Funções e transformações da família ao longo da história. I Encontro Paranaense de Psicologia - ABPPP. Disponível em: <https://docplayer.com.br/10929157-Funcoes-e-transformacoes-da-familia-ao-longo-da-historia.html> Acesso em: 11 nov. 2021.
34. Ullmann, A., & Calçada, A. (2021). A convivência familiar e o COVID-19. Disponível em: <http://conhecimento.tjrj.jus.br/documents/5736540/7186707/CONVIVENCIAFAMILIARALIENAcOPARENTALECOVID.pdf> Acesso em: 11 nov. 2021.
35. Velly, A. M. F. (2010). A síndrome de alienação parental: uma visão jurídica e psicológica. In Congresso de Direito de Família do Mercosul com apoio do IBDFAM (2º, pp. 3–5). Porto Alegre: IBDFAM. Disponível em: <https://ibdfam.org.br/artigos/666/novosite> Acesso em: 26 jun. 2021.

36. Yaegashi, A. C., Mainardes, S., & Yaegashi, S. (2011). Síndrome de alienação parental como fator de risco para a depressão infantil: possibilidades de intervenção. In Encontro Internacional de Produção Científica (7º, pp. 1–12). Maringá: Sesumar. Disponível em: http://www.cesumar.br/prppge/pesquisa/epcc2011/anais/ana_carolina_yaegashi1.pdf Acesso em: 26 jun. 2021.