



Homosexual adoption: a new concept of family in the 21st century

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INTRODUCTION

The family structure has undergone profound transformation in recent decades. The old traditional and patriarchal concept has been gradually replaced by new family arrangements, especially those based on affection. Among these new forms of family formation, same-sex adoption stands out, as a result of the recognition of stable unions and civil marriage between people of the same sex in the Brazilian legal system. The issue, which for many years was invisible in the legal and social debate, has been gaining prominence in light of the evolution of human rights, the fight for equality and the search for dignity for sexual minorities.

This study is set in this context of plurality and respect for diversity. Adoption by same-sex couples is not only a right guaranteed by constitutional and infra-constitutional provisions, but also represents a humanitarian response to the growing number of children and adolescents in vulnerable situations, waiting for a home. However, despite being legally supported, same-sex adoption still encounters ideological, social and even judicial barriers, which hinder the effectiveness of this right.

This paper seeks to understand the historical and normative evolution of the concept of family and adoption, especially with regard to the LGBTQIA+ population, by analyzing the legal and jurisprudential frameworks that enabled the inclusion of same-sex couples as subjects capable of parenthood. Furthermore, it aims to expose the social, moral and institutional challenges that still persist, even after the recognition of the legitimacy of these families by the Brazilian State.

OBJECTIVES

The main objective of this work is to analyze same-sex adoption as a new family configuration recognized in the Brazilian legal system, exploring the legal advances and practical challenges faced by same-sex couples in the adoption process.

Specific objectives:

- Investigate the historical evolution of the concept of family in Brazilian law;
- Understand the legal frameworks that allowed same-sex unions and adoption;
- Assess the compatibility of adoption by same-sex couples with the constitutional principles of human dignity, equality and full protection of children and adolescents;
- Identify the legal and cultural obstacles that hinder same-sex adoption in practice;
- Point out ways to strengthen legal security and social acceptance of this type of family.

METHODOLOGY

The research is developed using the qualitative method, adopting bibliographical and documentary research as the main techniques. Doctrinal works by authors such as Maria Berenice Dias, Rolf Madaleno and Ingo Sarlet were consulted, as well as scientific articles, relevant legislation and case law from the Federal Supreme Court (STF), the National Council of Justice (CNJ) and the Superior Court of Justice (STJ).

In the normative field, the research analyzes the Federal Constitution of 1988, the Statute of Children and Adolescents (Law No. 8,069/1990), the Civil Code (Law No. 10,406/2002), Resolution No. 175/2013 of the CNJ, among other documents. As part of the jurisprudential sources, the Argument of Non-Compliance with a Fundamental Precept (ADPF) 132 and the Direct Action of Unconstitutionality (ADI) 4277, judged by the STF in 2011, which recognized the stable union between people of the same sex, stand out.

Data analysis was carried out descriptively, seeking to understand the impacts of judicial decisions on the consolidation of the rights of same-sex families, as well as the social and institutional reaction to these decisions.



RESULTS AND DISCUSSION

The evolution of the concept of family in Brazilian law reflects a profound change in social values. Traditionally, the family was seen as an institution formed exclusively by the union between a man and a woman, with a focus on biological reproduction. However, the 1988 Constitution inaugurated a new perspective by stating that the family can also be founded on other bonds, such as stable unions and single-parent families, based on solidarity, protection and affection.

This new paradigm was reinforced by the decisions of the STF in 2011, when it recognized that stable unions between people of the same sex deserve the same legal treatment given to heterosexual unions. Subsequently, with Resolution No. 175/2013 of the CNJ, the right to civil marriage between people of the same sex was guaranteed, paving the way for the exercise of parenthood through adoption.

However, although legally authorized, adoption by same-sex couples still faces resistance. Data from IBDFAM and groups such as GEACRI indicate that these couples often face discrimination in adoption procedures, including from technicians and judges. Many still question, without scientific basis, the ability of these couples to raise children in healthy environments. Psychological and sociological studies, however, have already shown that the sexual orientation of parents does not negatively influence the development of children.

Another important aspect concerns the civil registration of children adopted by same-sex couples. Law No. 12,662/2012 still requires the designation of "father" and "mother", which forces adoptive parents to seek legal action to change the term to "filiation" in order to respect the identity of the new family. ADPF 899, still pending judgment in the STF, seeks precisely this legislative change.

Furthermore, the challenges are not limited to the legal field. Symbolic, moral and even physical violence against LGBTQIA+ people is still a reality in Brazil, making it difficult for these individuals to form family ties. Same-sex families not only fight for their legal right to exist, but also for social acceptance and protection against hate speech.

FINAL CONSIDERATIONS

Same-sex adoption is a well-established legal reality, but it is still in the process of becoming a practical and social reality. The Brazilian legal system, by recognizing same-sex civil unions, extended the fundamental rights to family formation and parenthood to same-sex couples. The dignity of the human person, the principle of equality and the best interests of the child must guide all judicial and administrative decisions related to adoption, with no room for discrimination of any kind.

However, positive law often advances faster than culture. Therefore, it is essential to develop public policies that promote education campaigns and respect for family diversity, the training of professionals in the justice system and the legislative reform of provisions that still carry remnants of a traditional and exclusionary view of the family.

More than a legal debate, it is a fight for recognition and humanity. Guaranteeing same-sex families the right to adoption means ensuring children and adolescents the fundamental right to family life, based on love, care and respect.

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