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The Viability of Family Mediation in Combating the Practice of Parental Alienation

The Feasibility Of Family Mediation In Combating The Practice Of Parental Alienation

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Summary

This is a bibliographic research based on books, articles and dissertations about the family as the most precious thing a child can have, and that this does not end with the separation of the parents, because what occurs is a modification and not an end, for this reason the child and the adolescent are extremely important to continue receiving all the affection and care that a child should have.

The overall objective is to analyze conflict mediation in family relationships and its viability in cases involving parental alienation. The specific objectives are as follows: to present the evolution of the family institution, the purpose of Family Law, parental authority, custody, and parental alienation; to understand the institution of family mediation, the role of the mediator, and the objectives sought through mediation; to identify the viability and effectiveness of mediation in processes involving the separation of couples and cases where parental alienation is practiced. The results show that it is necessary to use this resource as a means of promoting the well-being of families, especially in cases involving children, who often suffer parental alienation, potentially hindering their development. In these cases, dialogue is most effective.

Keywords: Parental alienation. Family. Shared custody.

Abstract

This is a bibliographic research based on books, articles, and dissertations about the family as the most precious asset a child can have, and that this does not end with the separation of parents, since what occurs is a modification and not an end. For this reason, children and adolescents are extremely important elements in ensuring they continue to receive all the affection and care a child should have.

The general objective is to analyze conflict mediation in family relationships and its viability in cases involving parental alienation. The specific objectives are as follows: to present the evolution of the institution of the family, the purpose of Family Law, parental authority, custody, and parental alienation; to understand the institution of family mediation, the role of the mediator, and the objectives sought through mediation; to identify the viability and effectiveness of mediation in processes involving the separation of couples and cases where parental alienation is practiced. The results show that it is necessary to use this resource as a means of promoting the well-being of families, especially in cases involving children, who often suffer parental alienation, which can harm their development. In these cases, dialogue is most effective.

Keywords: Parental alienation. Family. Shared custody.

1 INTRODUCTION

In custody cases, which are becoming increasingly frequent and are being litigated in the courts, it is defined- whether to grant sole or shared custody of the child. Even after the court decision, conflicts between the parents can persist. Parents continue without a real resolution to the conflict. Typically, the party...

When a parent has custody of a child, they end up influencing the child, turning them against the other parent who doesn't... is fully present in the child's life, thus suffering parental alienation.

feelings of anger, revenge, dissatisfaction with the end of the parents' relationship, having

Thus, their personality is shaken, their psychological well-being is compromised, and their constitutional rights are violated.

Another frequent instance where parental alienation is observed is during the legal proceedings.



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where families face exhausting legal processes, especially when it comes to disputes.

for custody of children. This process often ends up inducing the practice of parental alienation.

which can harm and even confuse the minds of children. Mediation, in these cases, serves as

a resource to support families in the understanding process so that the best decisions can be made.

sockets.

Thus, the problem arises: is conflict mediation a viable method in

combating the practice of parental alienation?

Given this, the overall objective of this research is to analyze conflict mediation in relationships.

Family matters and viability in cases involving parental alienation. And the specific objectives.

They are as follows: to present the evolution of the institution of the family, the purpose of Family Law,

Family power, custody and parental alienation; understanding the institution of family mediation, the role of

mediator and the objectives sought through mediation; identify the feasibility and effectiveness of mediation.

in processes involving the separation of couples and cases where parental alienation is practiced.

Society and law are constantly evolving. This evolution must always be in

harmony. In recent years, the institution of the family has undergone several changes, while the

The judiciary has adapted to the transformations of society, and it too has become a machine.

The state government is overwhelmed with lengthy and drawn-out processes, and methods have been created for this purpose.

Facilitating conflict resolution, including through mediation, proves to be a method applicable to conflicts.

involving children and adolescents in cases where custody needs to be determined and resolved.

conflicts intensified by the practice of parental alienation.

The analysis of this institution is of extreme relevance for social and legal development in

Currently, family mediation is an important tool that is becoming increasingly used.

used in the legal field, aiming, through a mediator, to facilitate dialogue between the parties in

an attempt to find solutions that avoid causing strain for everyone involved.

The study will be structured in two chapters. The first will deal with the right to

The second part focuses on family issues, particularly parental alienation. The second part addresses conflict mediation and...

Finally, the concluding remarks.

2 FAMILY LAW

Understanding the possibility of holding a parent responsible for emotional abandonment demands,

Initially, understanding the concept of family is crucial, given that the institution has undergone...

Changes in its structure over time, which were also reflected in its function and roles.

represented by their members.

It is also necessary to analyze the guiding principles of Family Law in



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Currently, the principle of affectivity, which is of particular interest to this study, because as it is

It is known that the family, in the past, was not structured on affection, that is to say, what basically anchored the union of People involved in structuring a family were different, distinct from the well-being of the members of the entity. family, such as the protection of property or procreation, depending on the historical moment and of the society under analysis.

The concept and evolution of the family are discussed, as well as its social function, without prejudice to... A brief analysis of the fundamental principles that guide the family unit today, in particular The principle of affectivity.

According to article 226 of the 1988 Federal Constitution, "[...] the family is the basis of..." society and effectively enjoys special protection from the State" (Brazil, [2024a], chap. VII, art. 226). Marriage creates a marital family; consequently, article 1566, IV of the Civil Code applies. shows that one of the main effects of marriage is the parents' duty to support, protect and educate. the children, preparing them for life according to their possibilities (Brazil, [2023]).

In this context, Article 1568 of the Civil Code stipulates that both the father and the mother have the burden of... to contribute to the child's education expenses in proportion to their assets and earnings, whatever the matrimonial property regime (Brazil, [2023]), including if it is the separation of property, unless otherwise stipulated in the prenuptial agreement, as provided for in Article 1,688 of the Civil Code. (Brazil, [2023]). What if only one of them is able to afford it, due to having assets and engaging in activity? Even if paid, he will be solely responsible for supporting his family, due to the duties of mutual assistance and sustenance. of the offspring.

The right of visitation is guaranteed to the child or adolescent, as well as to the parent, except in cases where there is harm to the physical or mental integrity of the offspring, in order to ensure preservation. of family life.

In another vein, Law No. 12.318/2010 punishes Parental Alienation, as stipulated in Article 2 of said law. any interference in the psychological development of a child or adolescent, promoted by a from parents, grandparents, or those who have them under their care, triggering a process of rejection. to either parent (Brazil, [2022]), violates the Fundamental Right to Family Life in terms of art. 3 of the aforementioned law (Brazil, [2022]).

Parental alienation is an obstacle to the harmonization of human relationships between parents and children. children, when one parent tries to distance the child from the other parent, using illegal means for that purpose.

Law No. 12,318, of August 26, 2010, which provides for parental alienation and amends art. Article 236 of Law No. 8,069, of July 13, 1990 (Statute of the Child and Adolescent – ECA) Introducing the legal definition of Parental Alienation in its Article 2.

Parental alienation means "alienating" (not including; leaving out) one of the parents of



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parental relationship with the child under implausible allegations exemplified in items I

Article VII of the aforementioned federal law. The act of alienation can originate from the mother or the father to distance the child. or adolescent of the other parent, generating feelings of hatred in this relationship. The sole paragraph of Article 2 of Law No. 12.318/10 specifies the ways in which parental alienation actions are carried out. (Brazil, [2022]).

Dias (2010) argues that Parental Alienation Syndrome should be punished so that these Actions should not be encouraged, as they negatively influence the physical and psychological development of children and adolescents, as well as the harm to the minors involved, in addition to harming the parent. victim of the alienator.

Parental alienation arises in similar contexts, that is, when parents are fighting for custody or, simply, the attention of their children. This climate of war is generated by the actions of one of the parents compromises the child's or adolescent's relationship with the other parent as This will be presented in the next item.

When discussing actions that promote Parental Alienation, it is interesting to note that the alienator It is usually the ex-spouse who is unhappy with the end of the relationship and feels unable to... To rebuild one's life without first destroying that of another. For this person, children are instruments of... Revenge (Cardin; Ruiz, 2018).

Regarding the personality of the alienator, the authors Cardin and Ruiz (2018, p. 292) highlight: "the An alienating person isn't always a bad person, but they are unable to separate their individuality from that of others. "He has children and, to achieve his goal, he respects no person, rule or authority."

Lopes Júnior and Di Gesu (2007) argue against the idea of memory being in a reconstructive essence, but they understand that by evoking memory, the human being performs a "Approximate representation." The aforementioned authors classify memory into two major categories. compartments: *procedural memory* that refers to the mechanical acts of the individual (more practical, organic, physical), which can be exemplified by the acts of learning to type on a computer, walking by bicycle. The other type of memory is called *declarative memory*, in which it stores and processes the Memory of facts, events, faces, people, concepts, and ideas.

Sexual abuse is a silent evil perpetrated against children and adolescents by members from family or other relatives, so that the victim is left physically and psychologically shaken and unable to cope. to reveal the abuse due to fear and embarrassment (and shame) about the situation or even because they don't to recognize the harm that it causes him. This phenomenon is called Fear Syndrome. defined by Habigzang *et al.* (2008).

Lacerda ([201-?]) cites a case that was prosecuted and judged by the Sixth Criminal Court of Londrina, in which a three-year-old girl was heard in a special room, as part of the "Testimony" process. "without harm," he gave a detailed account in court of sexual abuse committed by his own [person].



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parent, in a regular and habitual manner.

Based on the evidence obtained through the victim's testimony, the defendant was convicted.

In the first instance, the sentence was just over fifteen years of imprisonment. However, the State Court of Justice...

The court in Paraná granted the defendant his freedom, acquitting him of the charges on the grounds that the girl three years old having fantasized about the facts described³.

Due to these issues of the Secrecy Syndrome, the impunity of aggressors, but also

Due to Parental Alienation Syndrome, the multidisciplinary nature of the Law will be addressed.

The family has taken on a new role in the contemporary era due to changes in family relationships and in the very nature of family life.

Definition of Family, in which biological ties have been competing for space with other ties.

socio-affective. In this context, the importance of multidisciplinary in understanding is noted.

Parental alienation, due to its psychological, social, and emotional characteristics.

2.1 Parental alienation violates fundamental rights.

Parental alienation is becoming increasingly evident in the lives of children and adolescents.

given that this is a conflict situation, permeated by social, psychological, and legal factors,

The finding of factors that prove the existence of Parental Alienation often falls upon...

Regarding assumptions of empirical interference, a fact that makes it difficult to identify what is being sought.

(Molinari, 2015, p. 34).

Parental alienation is a problem that transcends the legal field, and it is no coincidence that it arises from this issue.

being studied in depth by psychology.

According to Costa (2011, [pp. 278-281] *apud* Carvalho *et al.* 2017, p. 368), he states that "alienation

Parenting is a growing phenomenon, becoming increasingly recognized, especially by

professionals in the legal and psychological fields". The authors Bernet and Baker (2013, [p. 98-104] *apud*

Carvalho *et al.*, 2017, p. 368), describe that "[...] there is a consensus that research regarding

This phenomenon deserves closer attention, as it affects thousands of children and

Families all over the world.

Due to the changes brought about by Constitutional Amendment No. 65 of July 13, 2010, the

Article 227 of the 1988 Federal Constitution was amended to read as follows, protecting children and...

Teenagers:

Art. 227 – It is the duty of the family, society and the State to ensure, with absolute priority, the right to life, health, food, education, leisure, professional training, culture, dignity, respect, freedom and family and community life for children, adolescents and young people, as well as to protect them from all forms of neglect, discrimination, exploitation, violence, cruelty and oppression (Brazil, [2024a], chap. VII, art. 227).

The 1988 Federal Constitution prioritizes the safety of children and adolescents, taking them into account.

as individuals invested with rights. Due to the arguments presented by the Protection Doctrine.



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Integral, these are in development and require care from the Family and Society.

and the State to ensure their safety.

Family Law refers to guaranteeing the full development of all its members.

so that their desires and emotional interests can be fulfilled, as well as a guarantee of assistance.

educational for children, with the goal of maintaining a lasting and happy family (Diniz, 2011).

In the legal system, it is worth highlighting that the Principle of the Dignity of the Human Person is...

inseparable from the system of fundamental rights. The Federal Constitution of Brazil guarantees

Human dignity as an essential right; therefore, the right to life means to live.

with dignity, respect, and the fulfillment of all rights and guarantees.

The next section will present the constitution of affection as a guarantee of family life.

to the detriment of Parental Alienation.

2.2 The Constitution of Affection as a Guarantee of Family Life as Detrimental to Alienation

parental

Upon finding evidence of Parental Alienation in a separate or incidental action, the judge may, cumulatively or not, without prejudice to civil or criminal liability and the use of means procedural measures to inhibit or mitigate their effects, according to the seriousness of the case:

- a) warn the alienator;
- b) to expand the family visitation schedule in favor of the alienated parent;
- c) to fine the seller;
- d) to determine psychological or biopsychosocial follow-up;
- e) to change custody to joint custody, or its reversal;
- f) to determine the precautionary establishment of the minor's domicile;
- g) suspend parental authority (art. 6., I to VII) (Brazil, [2022]).

It is important to preserve the Right to Family Life, that is, the right of children to live and Growing up in a dignified family environment, free from any acts of parental alienation, and full of affection.

The previous topic provided a familiar perspective on the meaning it has held throughout history. history, bringing it to the present day and explaining that family can be formed of many Forms, and, just as it can be created with distinct origins, it runs the same risks as the others. forms of constitution.

Parental alienation is characterized, in short, by defamatory actions, whether direct or negative.

Indirectly, the act of one family member towards another in relation to their children. The intent of the person who promotes This alienation ultimately leads to a separation between parent and child, or causes harm in numerous degrees to a relationship that is often already shaken by changes in routine that



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These events occurred with the breakdown of the family unit that gave rise to the young person or child.

The actions of those who cause harm in the relationship between parents and children have the power to generate... in these cases, a disorder known as Parental Alienation Syndrome (PAS) occurs, which, in the words of Gardner (2002, p. 02 *apud* Roque; Chechia, 2015, p. 477), who first coined the term referring to to SAP, that is to say:

[...] is a childhood disorder that appears almost exclusively in the context of child custody disputes. Its initial manifestation is a denigration campaign against one of the parents, a campaign carried out by the child themselves and which has no justification. The result of combining instructions from one parent (the one who does the 'brainwashing, programming, indoctrination') and the child's own contributions to defame the targeted parent. When genuine parental abuse and/or neglect are present, the child's animosity may be justified, and thus the Parental Alienation Syndrome explanation for the child's hostility is not applicable. Denigrating the moral image of the alienated parent in the eyes of the children is a form of psychological abuse that can have serious consequences.

The considerations raised by the above reflection are particularly relevant to

The seriousness of how parental alienation can affect the relationship between parents and children, and also the individual sense of belonging to the child or young person, who lose a very important connection to the development.

Those harmed by parental alienation sometimes have their relationship damaged.

definitively altered, since reconstruction can always be overshadowed by what the alienator...

It negatively promoted [something], and child protection even falls within the constitutional scope, as

reflects Fernandes (2013, p. 6), citing an article of the Federal Constitution:

Art. 227. It is the duty of the family, society and the State to ensure, with absolute priority, the right to life, health, food, education, leisure, professional training, culture, dignity, respect, freedom and family and community life for children, adolescents and young people, as well as to protect them from all forms of neglect, discrimination, exploitation, violence, cruelty and oppression (Brazil, [2024a], chap. VII, art. 227).

The affront to the constitutional provision further clarifies that it is not up to the parents, or

Those responsible for the child, under any circumstances, should not promote the defamation of the parent or undermine their relationship with the child.

The relationship between him and his son should not be deepened or lost, as well as the time spent together.

importance.

There are various ways in which a parent treats their child that constitute the occurrence of...

parental alienation, and correct identification is a fundamental part of getting the case to the appropriate authorities.

magistrate and the situation is resolved in a way that prioritizes restoring the relationship with the

alienated, which will be understood in the following topic, which deals with such factors.

2.3 Forms and consequences

Attitudes that promote parental alienation are present both in the explicit attempt to

separating the child from the parent, through arbitrary decisions regarding visitation, as well as in

Defamatory attitudes built up over time, which sow seeds of the other person's imperfections and



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bringing to light situations that leave children or young people frustrated with their parent.

Attitudes that create obstacles to visits and moments of interaction between the child and the parent

Parental alienation by a parent who does not have custody can also be a form of parental alienation because it deprives the child of the continuity of the relationship.

This undermines the child's trust and the formation of bonds. This type of behavior exists both

between separated parents as well as with the promotion of defamation coming from relatives who have contact with them.

Direct contact with the child, such as grandparents or uncles/aunts.

The consequences of parental alienation are closely linked to the child's perception of...

alienated, who comes to hold onto the idea that the parent does not want to establish a relationship,

since the routine cohabitation bond has been broken. Regarding this, Fernandes explains the marks

What a situation of parental alienation can leave on children:

Thus, the consequences of parental alienation syndrome are serious in a child's life, causing abnormalities in their psyche, leading to various symptoms such as anxiety, depression, nervousness, fear, isolation, insecurity, frustration, and guilt.

Mental disorganization, which can lead to suicidal thoughts. However, it is in adulthood that the syndrome becomes fully formed and its effects are irreversible, since a person develops a guilt complex, concluding that they were complicit with the alienating parent and ended up wronging the alienated parent (Fernandes, 2013, p. 7).

Children and young people are not the only ones to feel the devastating effects of alienation.

parental alienation, which also has repercussions in the life of the parent, who suffers the consequences of the alienation.

In addition to feeling distant from their children, they also see that they are losing their trust.

You may feel demotivated to seek reconciliation.

The relationship then becomes increasingly distant, with visits becoming less frequent.

precarious cohabitation and lack of active participation in the children's routine and lives, until the father or mother

They see themselves as having a merely financial role in their children's education and lives, lacking the vision...

paternal or maternal bond of companionship.

As mentioned above, psychological reflexes accompany the child throughout life.

that the complexity of interpersonal relationships is taking on an increasingly larger scale and if

making it more questioning, causing absences and distance to become a bridge to

The search for culprits fails to make it possible to recover from years of alienation and to build a relationship that...

It was not properly established on a solid foundation of trust.

2.4 Identification criteria

Properly identifying a situation of parental alienation is of great importance.

for a correct understanding of the evidence that will be presented to the judiciary. The standards of

The alienating parent's behavior builds up situations that qualify as parental alienation.

to the extent that he uses custody of the child to create barriers to contact with the parent.

alienated.



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The alienating parent may also defame the parent's parenting and relationship with the child.

child, both for the child and for third parties, and can even reach more serious cases, such as

Fernandes (2013), when discussing allegations of abuse and mistreatment from the parent, points out:

[...] Makes false accusations of abuse. This is undoubtedly the most serious form of accusation, since the child becomes afraid to meet the parent, especially when the accusation is of sexual abuse, and thus, the child also begins to denigrate the parent's image (Fernandes, 2013, p. 7).

Accusations against a parent in cases of parental alienation have very serious implications in...

This distorts the life of both the parent and the child, further disrupting their relationship when the parent's role is distorted.

by the alienator, who transforms him into a dangerous figure who could hurt her. Gardner (2002, no.

(paginated *apud* Alves; Lorencini, 2016, unpaginated), reflect on the topic, citing teachings

of:

These are typical behaviors of an alienating parent: refusing to put phone calls through to the children; excluding the alienated parent from exercising visitation rights; presenting the new parent as their new mother or father; intercepting letters and gifts; devaluing or insulting the other parent; refusing information about the children's school activities, health, and sports; criticizing the new parent; preventing visits from the other parent; involving close people in brainwashing their children; threatening and punishing the children for communicating with the other parent; blaming the other parent for the child's bad behavior, among others.

There are several situations that are identified as alienating when the child's guardian distances the child from the parent.

The child is having a relationship with the parent and is told that the parent doesn't want to maintain the relationship, so much so that he didn't want to.

to continue with the family structure they had before the separation occurred.

The flaws attributed to the relationship between the parents become a weapon to be used reflexively in

The relationship between the parent and the children, and the reasons that led to the separation from marital cohabitation are used as if they were also sufficient to explain that the parent also wants to cut off relations.

with the children, the offspring of a family relationship that didn't work out.

Another factor of great importance when it comes to identifying a situation of

In cases of parental alienation before the judiciary, the role of a forensic psychologist is crucial, as this is due to...

Given the nature of the alienating action, an expert assessment is carried out in order to identify the situation documentarily, so that that it be established for the magistrate the extent of the damage caused and how much the situation

It has progressed in terms of alienation itself.

Therefore, there is a need for psychology professionals to delve into the problematic nature of

within the family setting, with the intention of understanding and documenting the results of their assessment.

The instruments used by the psychologist must be in accordance with the establishments of

Federal Council of Psychology,

Psychological assessments require specific training and in-depth theoretical and technical knowledge. Furthermore, experts must be able to answer questions posed by the judge reliably and impartially. In cases involving suspected abuse, assessments may be multidisciplinary and include other professionals such as social workers and physicians. Psychology professionals may use interviews and psychological instruments to help evaluate cases. It is important to emphasize that the choice of psychological instruments must be in accordance with their validation and approval by the Federal Council of Psychology (Dal Pizzol, 2009; Rovinski; Cruz, 2009; Freitas, 2014; *apud*



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Fermann et al. 2017, p. 38).

Understanding the data that will form the expert report is the responsibility of both the forensic psychologist and the expert.

Regarding the magistrate, they should discuss the methodology of the approach together. The conclusions that although established in an expert report, they are not carried out with the intention that decide on the dispute, since the analysis of this data and the expert's understanding must lead to... the magistrate so that he can determine what legal action will be taken regarding the matter.

The report prepared by the forensic psychologist has specific criteria that must be followed to that has scope and certifies that care was taken to ensure that the situation was assessed by complete within the family context. Regarding these criteria, we can understand them as follows:

The report must include at least five items: (1) Identification; (2) Description of the demand; (3) Procedure; (4) Analysis and (5) Conclusion. In the identification section, the name and registration number with the Psychology Council of the region of the psychologist who performed the psychological evaluation (author) must be included, as well as the name of the person concerned and the subject matter relating to the adolescent; and (7) changing domicile to a distant location without justification, making it difficult for the child or adolescent to have contact with the other parent, with the other parent's family or with grandparents (Brazil, 2010 unpaginated apud Fermann et al., 2017, p. 37).

The authors Fermann *et al.* (2017, p. 37) state that: "The definition of AP and the criteria or However, behaviors associated with this process are not yet consensual in the literature, nor "Nor between areas of knowledge such as Psychology and Law."

Thus, it is understood that the document that substantiates the factual reality of a situation of Parental alienation should present in an organized manner the situation found in the evaluated family and the How much do these damages affect the alienated parent's relationship with the child?

3. CONFLICT MEDIATION

Currently, alternative methods of conflict resolution are gaining prominence. encouraged in various legal systems, not only by the low delivery of judicial protection and the delays in the processes that the State has through the judiciary, but also because He was drawn to the effectiveness and humanity in using such methods as a means of conflict resolution. One of the main alternative tools for conflict resolution is mediation, which stands out. because it is a self-compositional method of conflict resolution (Cardin; Ruiz, 2017).

Regarding the conceptualization of the institution of mediation, the authors Cardin and Ruiz highlight this. (2017, p. 298, emphasis added):

Mediation is a *self-compositional* method for resolving conflicts of interest, employing techniques that enable the parties themselves, through a mediator, to work through the conflict of interest and find a solution to the specific case. It is, therefore, a *non-adversarial solution*, hence the name self-composition. The third party, when present, does not present any solution, nor does it suggest or point out a possible solution for the specific case. This third party, who can be anyone chosen by the parties themselves, functions as someone who only assists those involved in the conflict of interest, acting as a mere facilitator of communication. Hence, one can speak of *facilitative mediation*. The mediator is not a judge. They do not judge. They assist the parties so that they themselves find the solution. The decision regarding conflicts of interest is an act of the subjects themselves.



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Mediation is a method that has been frequently used as a resource to minimize the effects of the Parental Alienation process (Oliveira Neto; Queiroz; Calçada (2015, p. 81). This method is very valuable because family conflicts are resolved more quickly through it. Regarding the dialogue, the authors Oliveira Neto, Queiroz and Calçada (2015, p. 81) state:

Family Mediation is an option available to families seeking to resolve certain family conflicts, as it allows the parties to reflect and dialogue with the aim of generating ways to overcome the conflicts. It is a voluntary and confidential process, in which the responsibility for constructing the resolutions belongs to the parties involved and must consider the interests of all.

The use of family mediation in conflicts where those involved are characters in a Family law proves to be a very suitable measure, given the nature of the conflicts observed, and provides Cardin and Ruiz (2018).

In this environment, the solution is consensual, amicable, and non-adversarial, through communication. Direct marriage between spouses is mediated, which is recommended for its own benefits. Among these... Advantages include improved family relationships between those in conflict and their... offspring, especially in situations involving parental alienation (Cardin; Ruiz, 2018).

The importance of judicial intervention in cases of parental alienation is... directly linked to the support that the State must give to the minor who is victimized by the alienator of in a way that leads to permanent, lifelong disorders. The foundation of the search for measures that bring An effective resolution for cases of parental alienation is the well-being of the one who suffers the most. loss, the son.

Legally, the application of alternative means has become the preferred measure in legal proceedings. judicial matters were introduced with the advent of the current code of civil procedure, which inaugurated a specific chapter. for family law proceedings, providing explicit provisions encouraging the application of means alternative dispute resolution methods as per article 694 of the Brazilian Code of Civil Procedure (Brazil, [2024b]).

3.1 Law 12.318/10

Law 12.318/10 was enacted with the purpose of making alienating conduct illegal. of parents in relation to their children, whether in cases of defamation of the parents or interference in parental authority. established, and interference in visits and interaction between the parent and the child, such as, for example, in cases where the alienating parent hinders communication between the alienated parent and their child or always wants to to mediate the relationship between the two. Article 2 of the law establishes the cases:

Article 2. Parental alienation shall be considered to be interference in the psychological development of a child or adolescent, promoted or caused by one of the parents, grandparents, or those who have a child or adolescent under their authority, custody, or supervision, with the aim of causing the child or adolescent to reject the other parent or to prejudice the establishment or maintenance of bonds with that parent.

Sole paragraph. In addition to the acts so declared, the following are examples of parental alienation:



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by a judge or ascertained by expert analysis, committed directly or with the help of third parties:

I - To conduct a campaign to discredit the conduct of the parent in the exercise of fatherhood or motherhood;

II - to hinder the exercise of parental authority;

III - hindering contact between a child or adolescent and a parent;

IV - hindering the exercise of the regulated right to family life;

V - Deliberately omitting relevant personal information about the child or adolescent from the parent, including school, medical, and address changes;

VI - to file a false complaint against a parent, against their family members, or against grandparents, in order to obstruct or hinder their contact with a child or adolescent;

VII - changing domicile to a distant location without justification, making it difficult for the child or adolescent to maintain contact with the other parent, with the other parent's family, or with grandparents (Brazil, [2022], art. 2º).

Reading the legal text reveals the practices within a general context, and it is up to the process of

The identification process involves framing the reported attitudes according to what the law stipulates. Article 3 of the legal provision states...

Regarding the magnitude of this problem, which affects a fundamental right of the child or young person to...

Having a healthy family that provides good development for the child:

Art. 3. The practice of parental alienation violates the fundamental right of the child or adolescent to healthy family life, impairs the development of affection in relationships with the parent and the family group, constitutes moral abuse against the child or adolescent, and is a breach of the duties inherent in parental authority or arising from guardianship or custody (Brazil, [2022], art. 3).

Furthermore, the third article reveals an understanding that parental alienation is a form

of moral abuse against the child or young person, which even compromises the parental authority that the

The alienating parent has a problem with this parent, since they are using their position as guardian to defame or distance themselves from the other parent.

their continued contact with their son for personal reasons that are solely related to the end of their marital relationship.

Or another reason is a way of abusing the privilege they have, since they hold the advantage of strengthening the relationship.

with her son because of their advantageous routine together.

Law 12.318/10 includes the legal provision for the application of fines and...

The need for psychological support for both the alienated individual and the child, with the

with the intention of rescuing the family through the deconstruction of the image created by the alienating parent, who also

can lose custody due to attitudes. For Xaxá (2008, p. 44),

The judge has an obligation to guarantee full and unrestricted protection to the child. Any parent who perceives any form of alienation should bring the case to the judiciary so that appropriate measures can be taken. Parental alienation can last for years and is usually overcome when the child becomes independent. In adulthood, the victim may experience emotional problems for having consciously been complicit in an injustice.

The identification of parental alienation in a legal context must be accompanied by a

psychological overview, since it is an institution that demonstrates the need for not only the right to

The family is a topic thoroughly familiar to the magistrate, but so are the peculiarities of the family unit.

familiar, and the observation of these in a context where there is a possibility of harm to the alienated parent and the child.

with attitudes of moral character.

Law 12.318/10, in its article 4, outlines the procedures that must be followed when there is...

Evidence that a case of parental alienation is occurring:

Art. 4. Declaration of parental alienation, whether required or made ex officio, at any stage of the proceedings, in a private action or incidentally, the process will proceed accordingly.



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Priority will be given to the case, and the judge will urgently determine, after hearing the Public Prosecutor's Office, the provisional measures permitted to preserve the psychological integrity of the child or adolescent, including guaranteeing contact with the parent or facilitating their effective rapprochement, if applicable.

Sole paragraph. The child or adolescent and the parent shall be guaranteed a minimum of supervised visitation at the court where the action is pending or at entities affiliated with the Justice system, except in cases where there is a risk of harm to the physical or psychological integrity of the child or adolescent, as certified by a professional eventually appointed by the judge to monitor the visits. (Brazil, [2022], art. 4^o).

From the analysis of the article, it is understood that it can occur both through autonomous action.

Regarding the incidental aspect, the process is being treated as a priority, which reflects the importance of time. in a situation of constant emotional strain, where the losses increase every day.

The measures are designed to promote a closer relationship between the two victims. of alienation, bringing immediate forms of psychological support and promoting encounters and An attempt to re-establish healthy communication between parent and child.

3.2 Civil liability of the transferor in relation to acts

The seriousness of acts involving parental alienation can lead to consequences such as traumas that will last a lifetime for the child or young person, causing numerous problems in their life. personal development and depriving her of a healthy family life through the actions of a third party, violating fundamental rights of the minor as expressed in the law on parental alienation itself.

Attitudes of alienation, therefore, also had regulations relating to the measures. legal actions that can be taken against the alienator, including sanctions that can be applied. by the magistrate. An examination of article 6 of law 12.318/10 reveals the following:

Article 6. In cases characterized by typical acts of parental alienation or any conduct that hinders a child or adolescent's relationship with a parent, whether in a voluntary or incidental action, the judge may, cumulatively or not, without prejudice to the resulting civil or criminal liability and the broad use of procedural instruments capable of inhibiting or mitigating its effects, according to the seriousness of the case:

- I - declare the occurrence of parental alienation and identify the alienating parent;
- II - to expand the family visitation schedule in favor of the alienated parent;
- III - fine stipulated for the seller;
- IV - to determine psychological and/or biopsychosocial follow-up;
- V - to determine the change of custody to joint custody or its version;
- VI - to determine the precautionary establishment of the domicile of a child or adolescent;

§ 1. In cases of abusive change of address, making family contact impossible or preventing it, the judge may also reverse the obligation to take the child or adolescent to or from the parent's residence during the alternating periods of family contact. § 2. Psychological or biopsychosocial monitoring must be subject to periodic evaluations, with the

submission of at least an initial report containing an assessment of the case and an indication of the methodology to be employed, and a final report at the end of the monitoring. (Brazil, [2022], art. 6).

The measures outlined in the legal text convey not only the understanding that the sanctions have applicability to the author of the acts of alienation, but also that they may have a cumulative character, aiming to eliminate all possibilities of continued alienation, which must be prevented at the same time.



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This is a time when a solution is being sought to improve the relationship between the alienated parent and their child.

It is important to understand that the first paragraph of the aforementioned provision

This includes the possibility that the alienating parent may physically separate the child from contact with the parent.

the parent through a change of address, with the sole purpose of hindering routine contact between the two and, therefore, it is up to the magistrate who identifies such a situation to reverse the obligation regarding to transport the child for visitation with the alienated parent.

The application of the sanctions foreseen in Law 12.318/10, even though its main character is...

Ending the alienating situation and promoting a judicial response to the alienator does not extinguish the...

the possibility that he may be held liable under civil or even criminal law,

It depends on the scope of the consequences and the actions taken during the sale.

In this regard, Guilhermano (2018) offered a reflection on the appropriateness of a judicial form of a remedial measure aimed at holding the seller accountable for the seriousness of the acts.

about the life of this person and the child:

The warning was included in the law because 'the mere recognition of parental alienation by the judiciary, in many cases, is sufficient to interrupt the practice, something formidable from the point of view of prevention and education'. Along with the warning, another measure that must be taken promptly is the expansion of family contact in favor of the alienated parent, as provided for in item II of the aforementioned article. Re-establishing ties with the other parent is urgent and must be done immediately, before it becomes irreversible (Guilhermano, 2018, p. 20).

Furthermore, the legislator included a provision that a fine may be imposed on the seller.

establishing yet another way to curb the continued practice of acts that are established as

Parental alienation. This legal provision clarifies that the main intent of the legislative determinations

It is about prioritizing the child's well-being and re-establishing a healthy relationship between the child and their parent. parent.

These are legal measures clearly based on the desire not only for clarity regarding

the occurrence of alienation and punishment as a result of it, but mainly a desire for it

Stop it from happening to allow for the recovery of the relationship damaged by the actions.

harmful actions by the alienator.

4 CONCLUSION

Effective legislation is fundamental for a comprehensive resolution of alienation cases.

parental rights that occur throughout the country, as it is a way of formalizing that there is a

recognition of the serious harm that alienating conduct causes to the alienated parent and children, and allows

that, in addition to seeking a restoration of the relationship, there is the possibility of holding that person accountable.

which promoted alienation.

The search for a solution that puts an end to acts of parental alienation, when based on the existence of



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of a legal device that supports the magistrate's intention to rebuild the relationship that is being
Although impaired, it is easier to achieve effectiveness, insofar as the production of a
legal context with solid evidentiary elements, such as expert reports prepared by psychologists
forensic science gives much more strength to curbing alienating practices and creating opportunities for
Restoring the relationship between the alienated parent and their child, which was much more difficult to prevent in
prior to the enactment of federal law 12.318/2010.

However, with the advent of the current Code of Civil Procedure in 2015 (Federal Law)
(Law 13.105/2015) the Brazilian legal system, expressly, inaugurated new forms of resolution
of such conflicts, which prove to be preferential given the need to give effectiveness and
concrete solutions to family conflicts.

Therefore, it is evident that the use of mediation is a means positively foreseen in
Brazilian legal system as a way to seek solutions to conflicts involving issues such as
parental alienation. But beyond its legal provisions, this method proves effective in the face of
the contours that the problem reveals, so that it is necessary, at the same time, to awaken in
The alienating factor is the perception of the harm one is causing with their actions, and in those who are alienated, the need...
reconstruction after the psychological trauma suffered.

In situations involving the issue of parental alienation, it becomes clear that an approach...
A multifactorial and multi-professional approach is recommended, since it will take place in a different environment from...
typically judicial, anchored in polarized relationships, where the aim is to find right and wrong, of
to distinguish between what is lawful and what is unlawful, so that in the end we have a winner and a loser. In this vein, the use of
Mediation, in addition to being a method provided for in procedural law, is an advisable and effective way to...
the solution to conflicts involving parental alienation, since the method pursues the

The solution to the problem lies in the root of the issue, not the punishment of the parties involved.

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