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## HETERONORMATIVE INTRICACIES OF PARENTAL ALIENATION LAW (LAP): WHAT FAMILY CONCEPTION ARE WE TALKING ABOUT?

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### ABSTRACT

This article proposes to develop a specific study and a critical analysis around the heteronormative conception of 'family/kinship' established in the 'Parental Alienation Law' (LAP), having as substrate and theoretical reference authors such as Joan Scott, Gayle Rubin, Judith Butler, Monique Wittig and Adriene Rich. The approach will be based on categories such as gender and heteronormativity, which will be tensioned, with a key in elucidating the proposed study. As a methodology, it is an exploratory research, whose main objective is to provide a deepening of understanding regarding the relationship between LAP and heteronormativity, while the designs for data collection include bibliographic research, which will provide approximations and conceptual understandings, in addition, documentary research (normative and jurisprudential) will be developed.

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## INTRODUCTION

The interest in the research theme originated from reflections about the popularization of 'Parental Alienation (AP)'<sup>1</sup>, from the pathologizing perspective, from the judicialization of the supposed conflicting phenomenon and from the meager studies with interdisciplinary and critical bias related to the Justice System, in addition to common sense. In this act, the 'socio-legal' work to be undertaken will be to "dare to ask naughty questions, show what is at stake behind the scene (...) to unsee the hidden reality of social phenomena" (PAUGAM, 2015, p.17). To this do so, it should be clarified that 'Parental Alienation'<sup>2</sup> it is disciplined by Law 12.318/2010, which is known as the Law of 'Parental Alienation (LAP)' and is a conflicting phenomenon in the family area that can be analyzed from multiple angles. Imbued with a 'socio-legal' spirit, it is intended to examine the Law of 'Parental Alienation' (legal norm) in a gender perspective, since gender can be understood as a category of sociological and legal analysis, because it is "a way of indicating 'social constructions', the entirely social creation of ideas about roles proper to men and women" (SCOTT, 1995, p. 75). The normative dispositivo of Article 2 of Law 12.318/2010 characterizes as 'act of parental alienation' the interference in the psychological formation of the child or adolescent promoted or induced by one of the parents, grandparents or those who have the child or adolescent under their authority, custody or surveillance so that it repudiates the other parent or that harms the establishment or maintenance of ties with him.

In a simple and direct reading of the law, it is not possible to dimension sociological or legal problematization in order to formulate a riddle (LEMIEUX, 2015). However, in a work of exploration of literature/legal doctrine<sup>3</sup>, from the legal justification and the judicial decisions that deal with the object of research, it is possible to identify the controversy that gives rise to the formulation of the issues that will guide this article. Based by Judith Butler, it can be said that "problems are inevitable" and that the researcher's task is to "find out the best way to have them" (BUTLER, 2020, p. 07). So the best way to have them is to make them evident. This is what will be done with the need to reflect on the object to be studied and try to unhide heteronormative intricacies hidden in the social reality around the Law of 'Parental Alienation'. It is in the seminal works and in the legal literature that the terms 'Parental Alienation' and 'Parental Alienation Syndrome'- which has as another nickname 'Medea Syndrome'- are used indiscriminately as synonyms<sup>4</sup>. Making a counterpoint to the Greek tragedy narrated by the writer Euripides, the myth that Medea killed the very children she had with Jason to avenge him, for having been betrayed by her unfaithful husband, who agreed to marry Creusa, daughter of Creon. Thus, in the manifestation of the archetype of Medea, the tragedy of Euripides explores the psychology of the wounded, hysterical and vengeful female, being able to use the children to inflict pain on the spouse or partner and punish him at the time of dissolution of a union.

There is nothing different from the narratives that support the Law of 'Parental Alienation' (Law 12.318/2010), since it is based on the 'Theory of Parental Alienation Syndrome' developed by Richard Gardner, an American psychiatrist, who infers women as an alienator par excellence and who uses children to reach and punish the father at the time of dissolution of the marital bond, here it should be said, that

this theory has no scientific support. However, despite not sharing the pathologizing, discriminatory and absent perspective of scientificity proposed by Gardner, this will not be the focus undertaken in this work. This consideration was raised only in the sense of showing that the theme 'Parental Alienation' is wrapped with delicate, problematic and controversial issues. In this context, another consideration to be scored is that there is a political boiling raised by collectives and feminist institutions around the Parental Alienation Act (LAP)<sup>5</sup> which triggered a confrontation and public debate between those in favor of 'repeal' and those in favor of 'modifying' the legal standard in focus.

Faced with this clash, anchored in the Bourdiana guidelines (2013), it is possible to establish the "field"<sup>5</sup>(legal field) around the Law of 'Parental Alienation (LAP)' as a space of struggle - field of force-between social agents and organizations occupying different positions, with the aim of conserving or modifying the structures that underpower it.

And what structures underpthe 'legal field' (or Justice System) when it comes around the 'family' category? This question guides the third consideration that composes the introductory aspects of this article, because family law is a field that guides and regulates family relationships – whether consanguineas or affective – and its implications in the socio-legal sphere. In Brazil, the formalization of Family Law occurs from the edition of the Civil Code of 1916 which, due to the influence of canon and roman law, is founded under the aegis of the patriarchal and conservative model of family. The advent of the 1988 Constitution – the largest law of politically organized society– is narrated in law as a milestone in family configurations by changing the previous model of the Civil Code of 1916, "representative of a land society, patriarchal, hiarquizada and strongly marked by Christianity" (MADALENO, 2018, p.25). From the Magna Carta of 1988, the Law of Families goes through the phenomenon of constitutionalization, seeking, from a material point of view, to consecrate "a plural and eudemonist family founded on the principle of equality, which breaks with the hierarchization of roles and patriarchy" (RUZKY, 2005, p. 163). However, despite the law of families having been elevated to constitutional status - and having as guiding principles the dignity of the human person, equality, solidarity and eudemonism - it still is structured in a sexist, patriarchal and heteronormative bias. It is in this context that the present work aims to develop a specific study and a critical analysis around the conception of 'family/kinship' related to the Law of 'Parental Alienation (LAP)'.

The main substrate and theoretical reference of the author as Joan Scott, Gayle Rubin, Judith Butler, Monique Wittig and Adriene Rich was the main substrate and theoretical reference and it is in this logic that it is intended to build the object of study on 'Parental Alienation'. Considering that the analysis to be constructed relates "Gender and Law", it is necessary to interlocution with such references, since the objective of the work is, as researchers, to present a position in the sense of problematizing the universality and fixity of discursive identity constructions presented within the legal framework of Family Law. To epistemologically treat the object and the problem built here, it is important to decline the theoretical dimensions and analytical categories that will be mobilized. For this, the theoretical framework to be worked includes two main angles: 1) gender as a category of socio-legal analysis, 2) to problematize, from the socioanthropological point of view, the conception of a family established and standardized in the Law of 'Parental Alienation (LAP)'. Thus, to achieve the proposed purposes, we adopt the methodology that contemplates the procedure of bibliographic research and documentary research (normative and jurisprudential) and exploratory objectives, according to the classification of Antônio Carlos Gil (2017). Very close procedures, having as a differentiating element the nature of the sources, since the bibliographic research focuses on the contributions of several authors/authors on the theme

<sup>1</sup>"Double" quotationmarks will be used for direct quotes and 'simple' quotation marks to highlight words and expressions to which one wants to give a particular or figurative meaning.

<sup>2</sup>We chose to use the simple quotation marks in the words Theory, Parental Alienation Syndrome and Parental Alienation in view of the absence of scientific support and the non-recognition by the classification manuals of psychiatry of such disorder with the following will be pointed out.

<sup>3</sup>It is a sourceoflaw. The doctrineis constituted in the set ofprinciples, teachings and studies that authors, jurists and philosophers of law perform about law and which has the power to influence and base judicial decisions and positions.

<sup>4</sup>Although they are conceptually different, Parental Alienation Syndrome is a mode of Parental Alienation.

<sup>5</sup>The notion of the field and its implementation of the research follows the Bourdianaline, in the sense of showing that there are specific fields (in the case on screen, legal) in which eachsubjecthashis capital to "play the game" of each field.

(focus on secondary sources), in turn documentary research focuses on primary sources, that is, without analytical treatment (BARDIN, 1977, CELLARD, 2012). Regarding the documentary sources researched, we seek to analyze the specific laws (Bill 4.053/2008 and Law 12.318/2010) and jurisprudential decisions of the Superior Court of Justice<sup>6</sup>, thus, in relation to the latter, the objective is to identify - from the socioanthropological point of view - what the conception of family established in the Law of Parental Alienation (LAP) through the action of the Family Judiciary. Thereby, the search will take place on the 'JusBrasil platform' website, using the following key words: 'parental alienation and homoaffective marriage' and 'parental alienation and homoaffective union' in the time lapse from 2010 (the year of the beginning of the Parental Alienation Act) until 2014 (one year after Resolution 175 of the National Council of Justice, which regulated homoaffective marriages and three years after the decision that the Supreme Federal Court (STF) recognized the union homoaffective).

#### **GENDER AS A CATEGORY OF SOCIOLEGAL ANALYSIS:**

By taking as a guide feminist theoretical contributions, we approach the notion of gender, as well as its understanding and recognition as a fundamental category of analysis to think not only social, political and economic issues, but also legal. In this perspective, we start from the lessons of Joan Scott, who produced a genealogy of the concept in her text "Gender a useful category of historical analysis" from which the author explains that "feminists began to use gender (...) as a way of referring to the social organization of the relationship between the sexes", besides indicating a rejection of biological determinism implicit in the use of terms such as "sex" or "sexual difference". By distancing himself from social sciences approaches, the genealogy promoted by Scott proposes an alternative approach, in order to conceive of gender as an analytical category. Therefore, Scott establishes gender as a methodology, a process of social creation of the roles of men and women, dislinking from natural or biological aspects of hierarchical sexual difference. In this wake, the author conceives the definition of gender as a constitutive element of social relations based on perceived differences between the sexes, being a first way of signifying the relations of power between man-women within society (SCOTT, 1995, p. 79). According to Scott, gender implies four interrelated elements. Among the constitutive elements of social relations based on perceived differences between the sexes are normative concepts and legal doctrine:

normative concepts that highlight interpretations of the meaning of symbols that try to limit and contain their metaphorical possibilities. These concepts are expressed in religious, educational, scientific, political or legal doctrines and typically take the form of a binary position that states categorically and unequivocally the meaning of the masculine and the feminine (SCOTT, 1995, p.21).

The importance of Scott's notes is his apprehension about gender as a process of social and cultural construction - disassociated from natural and biological aspects - that categorize and unequal men and women. In fact, gender as an analytical category in Scottian terms grants the possibility of deconstructing and lowering scientific paradigms and denouncing discursive schemes that the term woman (descriptive category) did not have the capacity, that is, that of the natural and biological superiority of man, besides uncover the social, cultural and historical constructions and oppressions about the sexes. In order to conceive a gender dimension beyond the limitation of binary sexual difference and heterosexual contract, the works of

Gayle Rubin and Judith Butler are paramount for the study undertaken here. In "Tráfico de Mulheres" (1975), anthropologist Gayle Rubin presents not only gender, but also sex as susceptible to construction and deconstruction, which represents a fissure with feminist thinking until then in force, since it was focused on thinking only gender as a target of analytical investment. Thus, unlike Joan Scott who saw only gender as a category for thinking and denouncing situations of oppression and hierarchies between men and women, Gayle Rubin presents sex as a social and cultural product. In this sense:

At the more general level, the social organization of sex rests on gender, compulsory compulsory heterosexuality and the coercion of sexuality. Gender is a socially imposed gender divide. It is a product of sexuality social relations. Kinship systems rest on marriage. Therefore, they transform males and females into "men" and "women", each an incomplete half that can only find completeness when attached to the other. Men and women are certainly different. But they are not as different as day and night, earth, and sky ... From the point of view of nature, men and women are closer to each other than either of the two in relation to one other thing - for example, mountains, kangaroos or coconut trees. The idea that men and women are more different from each other than each is of anything else, must come from somewhere other than nature. (RUBIN, 1975, p. 12)

In other words, among the various questions raised in "Trafficking in Women", what Rubin aims at is to highlight the way in which sex was classified, that is, that it is not part of the context of nature, but of a sociocultural context. Therefore, the anatomical differences were linked to sex and in this sex distinctions of behaviors and power were printed. In this perspective, anatomical differences were linked to sex with the purpose of "repressing some personality traits (...)" The same social system that oppresses women in their relations of exchange oppresses everyone by their insistence on a rigid division of personality" (RUBIN, 1975, p. 12). Therefore, from Rubin's point of view, gender is not only an identification of sex creating "men" and "women", but also implies the targeting of desires, creating heterosexuals. In an approximate logic, Judith Butler teaches that, in addition to this perspective limited to man-woman binarisms, gender is framed as a sociolinguistic process that is tied to a historical perception of performative acts. In "*Problemas de gênero: feminismo e subversão da identidade*" (2020), Butler uncontroi the concept of gender from the dismantling of the binary structure sex/gender. In a post-structuralist analytical perspective, the author questions the linearity between sex, gender, desire and sexual practices - through a performative constitution of the intelligible gender - that legitimize sexual difference. For Butler, the linearity of such narratives - based on binary logic - configure and refer to models of women and men, which can be analyzed from the perspective of gender performativity. The philosopher rebuts in her text the postulate of distinction between sex and gender, in which the first would correspond to the biological domain and the second to the sociocultural domain, stating that both sex and gender are socially constructed, and sex is inconceivable as something natural:

If the immutable character of sex is contestable, perhaps the construct called 'sex' itself is as culturally constructed as gender, strictly speaking, perhaps sex has always been gender, such that the distinction between sex and gender proves to be absolutely none. If sex is itself a category taken in its gender, it makes no sense to define gender as the cultural interpretation of sex (BUTLER, 2020, p. 27).

And it goes further. For Butler, the distinction between sex and gender is also a social, political, historical and discursive construction that effectively ensures differences and/or inequalities based on a logic of nature. That is, for the author sex - as a biological category - is pre-discursive:

Gender is not for culture as sex for nature, it is also the discursive/cultural medium by which "sexual nature" or "natural

<sup>6</sup>The STJ is one of the highest organs of the Brazilian Judiciary, which has as its primary function to ensure the uniformity of interpretations of Brazilian federal legislation. The Second Section of the STJ specializes in Private Law (Family Law is private in nature). Each Section brings together ministers from two classes, also specialized. The Second Section, specialized in Private Law, is formed by Ministers of the Third and Fourth Class of the STJ. In this logic, this project aims to analyze the judges of the Second Section and the Third and Fourth Classes of this Superior Court that deal with parental alienation from the year 2010, year in which Law 12.318/2010 started to produce effects (validity).

sex" is produced and established as "pre-discursive", prior to culture, a politically surface on which culture acts. [...] At the present juncture, it is already clear that putting the duality of sex in a pre-discursive domain is one of the ways in which internal stability and the binary structure of sex are effectively ensured. (BUTLER 2020, p.27)

The discussions raised by Judith Butler in "Gender Problems" give support to rethink categories posed as natural, stable and permanent as the category "woman". Thus, it is not possible to think about gender issues without reflecting the power relations in which this category is discursively constituted. In this logic, the difference between women and men is considered natural, being (re)produced as an absolute and undisputed truth, besides being sustained and guided by medical, religious, media, pedagogical discourses and, as suggested in this article, in legal discourses. This time, it can be asserted that identity policies tend to universalize the term 'woman' and build their definition within a binary system of meanings that needs to be tensioned and rethought. For the purposes of constructing this article, when relating gender and law, it is necessary to understand that legal discourse, more precisely in the field of Family Law, should be seen as a series of utterances that produce gender in various forms. In this wake, gender as an analytical category is a tool that can be used to examine class, race or any social process. Making a relationship with the object of study of this article, this category allows exploring the Law of 'Parental Alienation', not only as a constitutive element of gender, but also – in terms of the "sex/gender system" – as a heteronormative guideline that establishes the heterosexual family as a 'hegemonic and standard model' to be followed and to be protected by the State. That's what will be outlined from then on.

#### **HETERONORMATIVITY<sup>7</sup> AND THE CONCEPTION OF "FAMILY" IN LAP: A DIALOGUE WITH WITTIG, RUBIN, BUTLER AND RICH**

In this topic, it is anchored in the socioanthropological point of view to develop the argument that the conception of family established in the Law of 'Parental Alienation (LAP)' is reductionist and binary. To this end, it is based on the Lévi-Straussian view, but focuses on the theoretical contributions of Monique Wittig, Gayle Rubin, Judith Butler and Adriene Rich with the scope of tensioning and shifting the heteronormative parameters of kinship. Thus, in an effort to reconstruct the point of view of the family category that supports the Law of 'Parental Alienation (LAP)', the 'myth of Medea' is resumed, from which the notion of family is built on the binary model 'man/woman' 'straight/homosexual'. Denounces Monique Wittig (1980) that myths and metaphors are rhetorical instrumentals of straight thought that has the attribution of "poetizing the obligatory character of "will be-hetero-or-not-be" (WITTIG, 1980, p.04), for it cannot conceive a culture and/or society where heterosexuality would not guide human relations and the generation of concepts and processes that escape the conscious. In these terms, it is found that the 'myth of Medea', in his discourse, in addition to oppressing women, afflicts lesbians and homosexual men, because it demarcates and legitimizes as a foundation that sustains the arrangements of social and cultural kinship, the heterosexual matrix. From this perspective Wittig underlines:

the oppressive nature of straight thinking in its tendency to immediately universalize its production of concepts in general laws that claim to be applicable to all societies, to all times, to all individuals (1980, p.03).

These are the kinship arrangements – based on heterosexuality – that are hegemonically regarded as viable and recognizable in the legal field, more specifically in the Law of 'Parental Alienation'. In addition

<sup>7</sup>The term heteronormativity was created by Michael Warner in 1991, derives from the Greek hetero, "different", and norma, "square" and has roots in gaylerubin's notion (1975) of the "Sex/Gender System" and Adrienne Rich's idea of compulsory heterosexuality.

to the 'myth of Medea', the text of the justification of Bill 4.053/2008 (which serves as the basis of the Law of 'Parental Alienation') is pointed out, it brings in its bulge the article of the jurist Maria Berenice Dias that demarcates the heteronormative model of family (2010, n.p):

However, often the rupture of married life generates in the mother feeling of abandonment, rejection, betrayal, arising a very great vengeful tendency. When he cannot properly elaborate the mourning of separation, it triggers a process of destruction, demoralization, discredit of the former spouse. Seeing the father's interest in preserving living with his son, he wants revenge, moving this from his father (our griffin).

Thus, it is evidenced in the Law of 'Parental Alienation (LAP)' an matrix of Western, patriarchal and heteronormative thought that culture itself requires a man and a woman to manage a child and that this child has such a dual reference – father and mother – for their own initiation into the symbolic order (BUTLER, 2003). This foundation of sexual difference and paternal and maternal roles rests on a set of prepositions that echo The position of Lévi- Strauss in "The elementary structures of kinship" (1982). Lévi- Strauss writes within an intellectual tradition produced by a culture in which women are oppressed, so much so that he understands that the social and cultural construction of kinship systems lies in the exchange of women between men, from which he builds an implicit theory of sexual oppression (RUBIN, 1993). The Lévi-Straussian kinship system is established in a dual and binary manner tied to what Gayle Rubin calls the "Sex/Gender System" that founds a social order of "compulsory heterosexuality", whose fundamental pieces are the "exchange of women" and the "taboo of incest" that supposes, in addition to a prohibition against certain heterosexual unions, a "taboo" against non-heterosexual unions:

It is interesting to take this Lévi-Strauss deduction work further, and explain the logical structure underlying all his kinship analysis. On a more general level, the social organization of sex is based on gender, the mandatory heterosexuality and the repression of women's sexuality. (RUBIN, 1993, p.12)

In this same sense follows Butler in "Is kinship always regarded as heterosexual?":

(...) it is important to consider that the taboo of incest plays in Lévi-Strauss not only the role of ensuring the exogamous reproduction of children, but also that of maintaining a unity of the "clan" through compulsory exogamy, articulated through compulsory heterosexuality (BUTLER, 2003, p. 248)

Thus, it is perceived that the provisions in the kinship matrix presented within the juridical field of the Law of 'Parental Alienation' is that of compulsory heterosexuality, from which heterosexual orientation appears as a naturalized sociocultural norm, where the constitution of a family in the heterosexual and binary molds appears as an 'essential and natural' condition, and not as a historical-cultural construct. Until 2011, in Brazil, same-sex unions with the aim of forming a family were not legally recognized. However, the Supreme Federal Court (STF) was urged to speak on the application of Article 1,723 of the Civil Code, to homoffective unions. Such legal provision provides that: "art. 1.723. The family entity recognizes the stable union between man and woman, configured in public coexistence, continuous and lasting and established with the objective of establishing a family" (our griffin). From this, it can be verified that it is a standard whose marker is heteronormativity<sup>8</sup>, the

<sup>8</sup>Lauren Berlant and Michael Warner (2002) understand as 'heteronormativity' "those institutions, structures of understanding and practical orientations that not only make heterosexuality seem coherent – that is, organized as sexuality – but also that it is privileged. Its coherence is always provisional and its privilege can adopt various forms (which are sometimes contradictory): it goes unnoticed as basic language about social and personal aspects, it is perceived as a natural state, it is also projected as an ideal or moral goal." (p.230)

proposition of the Direct Action of Unconstitutionality 4277 DF and The Violation of Fundamental Precept 132 was necessary<sup>9</sup>, so that unions that do not have heterosexual orientation are visible by the Brazilian legal system. During the confrontation of the issue by the Federal Supreme Court, some aspects were questioned, among them, whether public coexistence, lasting and with the objective of the constitution of a family by people of the same sex should be considered for the purposes of formation of a family entity, when based on the Federal Constitution of 1988. If the prediction expressed in the Civil Code (2002) that stable union occurs between a man and a woman, that is, that legal protection refers to heterosexual stable unions, it removes or enables the recognition of other forms of union that are based on diverse sexual orientation. In the judgment of the actions, it was also recalled that the Civil Code of 1916, only provided for family formation, through marriage, which would necessarily occur between man and woman, and was still indissoluble, moreover, stable union was considered an institute of transgression and doomed to legal invisibility.

After that, new legal instruments emerged and to some extent led to the modification of family law, one can mention some legal provisions in this sense, such as Constitutional Amendment No. 9/77 and the Divorce Law (No. 6.515/1977), which allowed the dissolution of the marriage, the Constitution of 1988, which brought in the light of the legal system recognition to families arising from stable union and single-parent family (formed by one of the parents – father or mother – and his(s) child(s)), in addition to marriage already traditionally recognized as a legitimate means for family formation. The Constitution also began to provide for equality between children, within and outside marriage, leaving aside the figure of adult children, equality also of duties and rights between men and women, their role within the family and society, in addition to valuing the dignity of the human person who is a foundation of the Republic, principles such as freedom, private autonomy and isonomy. The fact is that through the actions, in particular, the Direct Action of Constitutionality 4277 DF, by all the arguments cited, the family condition was recognized and legal effects attributed to homoaffective unions, thus the request made, that Article 1,723 of the Civil Code, conveyed by Law No. 10,406/2002, be applied to unions between persons of equal sex, it was well founded and consequently recognized the unconstitutionality of differences in legal treatment to stable unions constituted by persons of the same sex. Following this trial, the National Council of Justice (CNJ), by Resolution (No. 175 of May 14, 2013), established that the competent authorities are denied the refusal of qualification, conclusion of civil marriage or conversion of stable union into same-sex marriage. More recently, on June 13, 2019, the Supreme Court recognized that discrimination by sexual orientation and gender identity is considered a crime. It happens that, despite all these changes and developments in the legal sphere, some paradigms remain intact, such as the heterosexual matrix of norms and kinship.

Judith Butler (2003) points out in this sense, that the search for recognition, authorization and legitimation of non-heterosexual relationships makes the State as a holder of a right that should be granted in a non-discriminatory and independent manner of sexual orientation, so these terms imposed by the State to grant legitimation are normalized, as a consequence, variations in kinship that differ from the diadic forms of heterosexual family guaranteed by marriage, in addition to being considered dangerous to children, they put at risk laws and culture based on heterosexuality. Tied to this idea, Adrienne Rich (2010) presents some instruments used by men to reinforce heterosexuality over women, such as child marriage, the

blackout of lesbian existence in various areas (literature, art, cinema), idealization of romantic love and heterosexual marriage are some ways to make this heterosexuality compulsory, without the embargo of this compulsion manifesting in other forms of manipulation and relationships, lesbian existence is revealed as an act of resistance, refusal to patriarchy and a break from this system that oppresses the female experience. As an unfolding of sexuality, since sexual orientation has been taken as a scope to legitimize or not affective and family relationships, Butler (2003) brings numerous reflections, about the fact that kinship is always considered as heterosexual. Thus, by concatenating these reflections, it is possible to identify that the authorization given by the State to the organs of the judiciary to celebrate or formalize stable unions and homosexual or homoaffective marriages, end up generating the sensation of equal or non-discriminatory treatment to homosexual or homoaffective relations or unions. In the Brazilian reality, this stems from the fact that, by taking as its basis the Constitution, the Civil Code and other legislation are structured to consider that the State is capable of legitimation for family formation, that is, it is normalized through the national legal system that recognizable kinship relationships come from marriage, or formalized stable union, a clear example of this is the existence in Brazilian law of the institute of "presumed parenthood", with legal provision in art. 1,597 of the Civil Code.

The legal prediction is that membership is presumed during the constancy of marriage, a fact that leads to the realization that the marriage institute is privileged to the detriment of other family arrangements, under the justification of the existence of cohabitation, which is characteristic of marriage. It is worth saying that, currently, this characteristic has been relativized due to the multiple arrangements and forms of family organization. This presumption did not occur in relation to the stable union, and it was necessary to set an understanding for the analogous application of the device mentioned in cases where stable unions are formalized by public deeds or have a vast probative ballast about the existence of the union.

Thus, from this appreciation that exists around marriage, Judith (2003) still questions whether the call to marriage makes it more difficult to defend the viability of alternative kinship arrangements, because aiming and achieving this legitimacy by the State, also matters in accepting the terms of legitimation offered. And more specifically in relation to same-sex marriage, there is a circumscription of the sexual field, so that sexuality is thought of in terms of marriage and marriage is thought in terms of acquiring legitimacy. Thus, establishing the institution of marriage as the only way to sanction or legitimize sexuality means in addition to transcending extreme conservatism, it affects other communities, such as the unmarried, the single, divorced, non-monogamous and how the sexual field becomes reduced in its own readability, if marriage becomes the norm. And all this conjuncture flows into kinship relationships, among which one can mention the 'Parental Alienation', which is the object of this work. It is extracted by intuition that the Law of 'Parental Alienation' creates and directs this phenomenon to a family pattern with heteronormative essence, because based on what has been exposed so far, it is not clear whether homoaffective families were and are considered for the purposes of incidence of the norm. In order to unravel this issue in an empirical manner, in addition to doctrinal and legal sources, we investigated jurisprudential aspects of the Superior Court of Justice on the website 'JusBrasil platform', using the following key words: 'parental alienation', 'parental alienation and homoaffective marriage' and 'parental alienation and homoaffective union' in the time lapse from 2010 (the beginning year of validity of the Law) until 2014 (one year after Council Resolution 175 National Justice regulated homoaffective marriages and three years after the decision that the Supreme Court recognized the homoaffective union). In the search for cases with the key words 'parental alienation and homoaffective marriage' and 'parental alienation and homoaffective union' it was not possible to find any court decision of the Superior Court of Justice – STJ that referred to actions that related to the phenomenon of 'Parental Alienation' within the homoaffective family. Such a result can support two reasonings. The first of which recognition of homoaffective families are recent in the history of Brazilian law and, therefore, this

<sup>9</sup> The Direct Action of Unconstitutionality (ADI) 4277 and the Violation of Non-Compliance with Fundamental Precept (ADPF) 132 were actions whose object required was the analysis and interpretation of Articles 226 § 3 of the Federal Constitution and art. 1723 of the Civil Code in force, in the light of the Constitution. ADI 4277 had been proposed by the Attorney General's Office, with the purpose of the Supreme Court declaring legality and legitimacy in the recognition of homoaffective unions, as fit to the family constitution. ADPF 132 was an action proposed by the State Government of Rio de Janeiro, in order to guarantee pension rights and assistance to employees and their homosexual members.

is the reason for not finding cases of incidence of the Law of 'Parental Alienation' in this parental arrangement. On the other hand, the second reasoning gains strength based on the investigation and the result of the search for processes with the keywords 'parental alienation', from which 65 judicial cases are detected in which the subjects in dispute follow the binary and heterosexual logic, namely: "father" and "mother", "genitor" and "genitora".

What in addition to reinstatement the argument that the Law of 'Parental Alienation' is structured central to heteronormativity, unveils homoaffective union as a model that confites and displaces the geneficated norm, undermines the "straight concepts" and "breaks the heterosexual contract" (WITTING, p.06). But not only that. Diamentralmente, it also carries hesitation and insecurity in order to question whether at all times it will be necessary to demand judicially that phenomena and institutes, especially with regard to rights and duties, always need to be re-adequate to include family forms that do not level with the heterosexual matrix, or if at least homoaffective families are remembered when important decisions and regulations in this area. There is a very fine line, even, placed by Judith Butler (2003), which is about the extent to which this legitimacy by the State goes, what are the terms of this recognition, what are the limits and criteria for the submission of this legitimation, what is the real need to seek this state recognition, what are the legal, practical effects and whether the only way to attribute rights and duties to homoaffective families, that is, to make them visible, is through this recognition by the State. This form of binary organization and cultural belief that requires a man and a woman to manage a child and that the child have this dual point of reference for their own initiation in the symbolic order, from which a set of rules permeate the senses of reality and cultural intelligibility, which is consistent with the structuralist conception that there must be a father and a mother as a double point of reference for the child's origin, as if gender were acquired through the satisfaction of heterosexual desire, thus consolidating compulsory heterosexuality and the heterosexuality of the norm.

## FINAL CONSIDERATIONS

This study aimed to present a study, as well as to perform an analysis based on the relationship of family/kinship conceptions and a legal instrument in force in the Brazilian legal system, which is the Parental Alienation Law (LAP). In order to achieve the pre-established objective, it was necessary to understand the existing construction around the gender category, its nature and aspects that are indispensable for its socio-legal analysis and the main authors who made it possible, through the bibliographic design, to tension the various conceptions and constructions about the gender category, were Judith Butler, Gayle Rubin, Adrienne Rich and Monique Wittig, however other authors who were essential to the development of this guideline. To make tangible the second guideline that was established, the aforementioned analysis was essential, so that taking it as a starting point, emerges the other purpose of this production, which was to problematize and counteract the conception of normalized family and legitimized by national law to the detriment of families that do not fit the heterosexual orientation, therefore they do not fit the heteronormative matrix, nor in the binary and dual system, from which the norms are guided and oriented, among them, the Law of 'Parental Alienation'. To further elucidate the problem investigated, a documentary research was carried out that materialized through a jurisprudential search, specifically, of decisions that would address or at least cite the phenomenon of 'Parental Alienation' within the homoaffective family, an unsuccessful attempt, since, on the contrary, it was demonstrated that decisions, legislation and even doctrines preestablish heteronormativity as a marker of family conception, able to generate, care and assist a child, that is, revealing in this way the binary and heterosexual logic in which, on the one hand there is a father, and on the other a mother. Thus, what can be indemnify is that the Law of 'Parental Alienation' actually has as scope heteronormativity, moreover, despite the legitimacy attributed by the State, when the 'recognition' of unions and opening the possibility of

celebration of homoaffective marriage, which predominates and guides the terms of the State is the heterosexual matrix.

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