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LAW OF PARENTAL ALIENATION AS A REACTION TO WOMEN'S RIGHTS: AN EXPRESSION OF THE INTENSIFICATION OF HUMAN RIGHTS VIOLATIONS

A LEI DA ALIENAÇÃO PARENTAL COMO REAÇÃO AOS DIREITOS DAS MULHERES: EXPRESSÃO DA AGUDIZAÇÃO DA VIOLAÇÃO DOS DIREITOS HUMANOS

LA LEY DE ALIENACIÓN PARENTAL COMO REACCIÓN A LOS DERECHOS DE LAS MUJERES: EXPRESIÓN DEL AGRAVAMIENTO DE LAS VIOLACIONES DE DERECHOS HUMANOS

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ABSTRACT

It is well known that within family conflicts are an endemic problem in Brazilian society. Judicial disputes due to the dissolution of unions are increasing daily, offering the academic world an interesting subject for research. Among the issues that have caused significant disturbances is Lei n. 12.318/2010, which addresses the alleged parental alienation syndrome. Various scientific bodies have positioned themselves against it, including UN Women and the World Health Organization. Thus, this article seeks to investigate the relationship between this law, which provides for parental alienation, and the Inter-American human rights system, to which Brazil is part of. The specific objectives are: (i) to present the law on parental alienation as well as the context of its enactment; (ii) to present the Inter-American human rights system and Lei n. 11.340/2006; and (iii) to relate the subject of this article—parental

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alienation—to the Inter-American human rights system. For this purpose, the methodology used will be a literature review along with statistical data and relevant legislation. In the final considerations, it is observed that Lei n. 12.318/2010, besides being clearly unconstitutional, represents the intensification and persistence of human rights violations against women.

Keywords: Patriarchy. Human Rights. Family Law.

RESUMO

É sabido que os conflitos intrafamiliares é um problema endêmico na sociedade brasileira. Os litígios judicializados devido a dissolução da união aumentam cotidianamente e oferecem ao universo acadêmico interesse objeto de pesquisa. Dentre as questões que tem causado transtornos importantes é a Lei n. 12.318/2010, que versa sobre a suposta síndrome da alienação parental. Diversos entes científicos já se posicionaram contra, inclusive a ONU Mulheres e a Organização Mundial da Saúde. Deste modo, este artigo busca investigar a relação entre esta lei que prevê a alienação parental e o sistema interamericano de direitos humanos, ao qual o Brasil está vinculado. Como objetivos específicos, tem-se: (i) apresentar a lei de alienação parental bem com o contexto de sua edição; (ii) apresentar o sistema interamericano de direitos humanos assim como a Lei n. 11.340/2006; e (iii) relacionar o objeto deste artigo - alienação parental - com o sistema interamericano direitos humanos. Para tanto, a metodologia empregada será de revisão bibliográfica bem como uso de dados estatísticos e da legislação pertinente. Em considerações finais, verifica-se que a Lei n. 12.318/2010, além de ser patentemente inconstitucional, é a expressão da agudização e da persistência da violação dos direitos humanos das mulheres.

Palavras-chave: Patriarcado. Direitos Humanos. Direito das famílias.

RESUMEN

Se sabe que los conflictos intrafamiliares son un problema endémico en la sociedad brasileña. Los conflictos judiciales por la disolución de la unión aumentan día a día y ofrecen al mundo académico un interesante objeto de investigación. Entre las cuestiones que han causado importantes trastornos se encuentra la Ley número, 12.318/2010, que trata del supuesto síndrome de alienación parental. Varias entidades científicas ya se han pronunciado en contra, entre ellas, la ONU Mujeres y la Organización Mundial de la Salud. Por lo tanto, este artículo intenta investigar la relación entre esta ley que prevé la alienación parental y el sistema interamericano de derechos humanos, al que Brasil está vinculado. Como objetivos específicos tenemos: (1) presentar la ley de alienación parental, así como el contexto de su edición; (2) presentar el sistema interamericano de derechos humanos, así como la Ley número, 11.340/2006; y (3) relacionar el objeto de este artículo -la alienación parental- con el sistema interamericano de derechos humanos. Para ello, la metodología utilizada será la revisión bibliográfica, así como el uso de datos estadísticos y de la legislación pertinente. En las consideraciones finales, aparece que la Ley número 12.318/2010, además de ser expresamente inconstitucional, es expresión del agravamiento y persistencia de la violación de los derechos humanos de las mujeres.

Palabras clave: Patriarcado. Derechos Humanos. Derecho De Las Familias.

INTRODUCTION

Family law disputes can be very tense and stressful for the parties involved, especially for women with minor children. A divorce petition requires discussing the division of property, child custody, visitation rights, alimony, and all matters involving the former couple, demanding sensitivity, attentive listening, and technical expertise from those involved in the justice system in order to resolve the issues in the best possible way.

After the legalization of divorce in the late 1970s and the promulgation of the Constitution of the Republic in 1988, which expressly granted equal rights to men and women, including in the family context, there was an increase in actions both for the dissolution of marriage and for the enforcement of fundamental rights. Therefore, remaining in a relationship became a choice for both men and women.

But this does not mean that these personal relationships are free from violence; on the contrary, women are constant victims of physical and verbal abuse, threats, and coercion, including financial coercion. According to the study "Visible and invisible: the victimization of women in Brazil," "33.4% of Brazilian women aged 16 or older have suffered physical and/or sexual violence at the hands of an intimate partner or ex-partner" (2023), which means that this rate is above the global average of 27% (FÓRUM BRASILEIRO DE SEGURANÇA PÚBLICA, 2023). The same survey shows that the average number of assaults in the last year is four, but for divorced women it is nine.

Regarding this serious social problem, it is pertinent to note that on August 7, 2006, based on the Constitution of the Republic and the "Convention on the Elimination of All Forms of Discrimination against Women and the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women" (OAS, 1994), Lei n.. 11,340/2006 was enacted with the aim of curbing domestic and family violence against women in Brazil.

Despite high social expectations, Lei n. 11,340/2006 was enacted with significant resistance from conservative and even reactionary groups. It is worth remembering the case of Judge Edilson Rumbelsperger Rodrigues of the Minas Gerais Court of Justice, who considered the Maria da Penha Law unconstitutional, denying measures against male aggressors. For him, the law is diabolical and, among other considerations, he stated that "human misfortune began in Eden: because of women, as we all know, but also because of the naivety, foolishness, and emotional fragility of men (...) The world is masculine!" This is an example of opposition to Lei n. 11,340/2006, given the normalization of violence against women and the deep-rooted influence of religion in our society (BRASIL, 2007).

The reaction also came through legislative instruments with the enactment of Lei n. 12,318/2010, which, as will be demonstrated, introduced a pathology—parental alienation syndrome—not recognized by the scientific community and which drastically affects women's lives in clear violation of women's rights.

What can be seen with the parental alienation law is that the State, to the same extent that it innovated with the Maria da Penha Law, has exacerbated the precariousness of women's condition in the family context. For Stolz and Lemos (2021), the parental alienation law has been an institutional instrument to prevent women's autonomy and break the cycle of domestic violence.

This justifies the relevance of this research, which aims to investigate the relationship between this law that provides for parental alienation and the inter-American human rights system, to which Brazil is bound. The specific objectives are: (i) to present the parental alienation law and the context in which it was enacted; (ii) to present the inter-American human rights system as well as Lei n. 11,340/2006, which resulted from the recommendations contained in Report n. 54/2001 of the Inter-American Commission on Human Rights; and (iii) to relate the subject of this article—parental alienation—to the inter-American human rights system.

The methodology is a literature review, as it will draw on authors who address the relationship between human rights and women's rights, the use of statistical data, and relevant legislation. Given the interdependence and intertwining present in the theme of this research, in the final considerations, it is verified that the parental alienation law, despite claiming to protect the rights of children and adolescents, represents the sophistication and refinement of social technique (SAFFIOTI, 2013) of controlling the physical and psychological lives of women who seek to leave abusive relationships, constituting a serious violation of human rights.

1 PARENTAL ALIENATION AND THE LEGAL AND POLITICAL CONTEXT OF ITS INCLUSION IN BRAZILIAN LAW

According to Lei n. 12. 318/2010 (Parental Alienation Law or LAP), parental alienation is considered to be the conduct of one of the parents, grandparents, or guardians who interfere in the psychological sphere of the child or adolescent in such a way that they repudiate the other parent who does not have custody or that causes harm to the establishment or maintenance of parental bonds.

This concept, called syndrome, was created by American psychiatrist Richard Alan Gardner (1931-2003). He was director of child psychiatry in the United States Army Medical Corps in Germany and, after returning to the United States, held the position of clinical professor of psychiatry at Columbia University, without remuneration.

In addition, he served as a court expert in more than 400 child custody disputes, defending parents (mostly men), teachers, and members of religious communities (such as pastors and priests) from accusations of sexual abuse and pedophilia. In his expert reports, as well as in his books, he often recommended to the courts that children be removed from the care of alienators, a term used to refer to mothers, and placed in the custody of fathers accused of sexual abuse. Sheila Stolz and Sibele de Lima Lemos announce that he was the author of several books and articles published by his own publishing house, Creative Therapeutics. In addition, they attest that:

> É notório que seus trabalhos sobre a Síndrome de Alienação Parental (SAP) não foram respaldados por instituições acadêmicas ou sociedades científicas, pois ele não apresentava dados empíricos que comprovam a existência dessa síndrome idealizada. Se valendo exclusivamente a apelação de sua autoridade, o que por si só já torna o termo bastante discutível (Stolz; Lemos, 2021, p. 182).

According to Gardner, who creates the concept in a simplistic manner and without scientific criteria, psychiatric disorders are considered a consequence of the behavior of the custodial parent, known as the alienating parent, commonly associated by him with mothers, which harms or prevents the establishment of a bond between children and the alienated parent (the father) after separation or divorce. This is because mothers, whom he considers to be alienating, often use false accusations of violence and sexual abuse, performing mental manipulation that implants false memories in children. In his works, it is common for Gardner to use terms such as “harmful” and “alienating” mother, and with regard to the parent, he considers his position to be one of

> profundo sofrimento [...], qualificando-o com os seguintes adjetivos: esposo desprezado, abatido, carentes de ajuda, vítima da indiferença, preocupado, alguém que necessita ajuda e ser encorajado para que possa resistir e se proteger das severas punições impostas aos que, em nosso tempo e sociedade, exercem seus impulsos sexuais. Portanto, a terapia com o pai alienado não deve focar na molestação sexual, mas sim no esquecimento deste que atualmente é considerado um problema (Stolz; Lemos, 2021, p. 186).

Without scientific criteria, it should be emphasized, and openly defending parents, Richard Gardner attempted to introduce a pathology that demonizes women and harms children and adolescents involved in the conflict between the former couple. It should be noted that he worked on several cases in which fathers were accused of sexual abuse and pedophilia, demonstrating that the syndrome he created can lead to the silencing of many victims of this heinous crime.

Richard Gardner introduces terms such as brainwashing, brain programming, and amnesiac children. According to him, in some children, the programming was so severe that they forgot any

positive and loving experiences they had with the alienated parent. He goes so far as to say that "children are naturally sexual and can initiate sexual encounters to seduce an adult."

The obvious lack of scientific basis is pointed out by the World Health Organization (WHO) and corroborated by other serious scientists who demonstrate that, although it is possible to find psychological damage in children and adolescents as well as rejection of the non-custodial parent, the construction of false memories would only be possible in a very specific environment, such as a laboratory. The literature also understands that it would be possible to implant memories in a single event, but it would be practically impossible to sustain them in repeated acts. It is also worth noting that memories attributed as false should contain the vocabulary of the alleged alienator, since the child would narrate the facts based on the materiality of their own repertoire.

Neither Richard Gardner nor the advocates of parental alienation have been able to refute these contradictions in the scientific community. What Gardner cites as a smear campaign is, in fact, a violation of the right

Neither Richard Gardner nor the advocates of parental alienation have been able to refute these contradictions in the scientific community. What Gardner cites as a smear campaign is, in fact, a violation of the child's right, who sees their narrative being invalidated as a subject of law.

Psychological violence can be practiced, but parental alienation, having a different meaning, is just dangerous pseudoscience. Even lacking scientific support, in 2008, former congressman Regis de Oliveira, then affiliated with the Social Christian Party (PSC), presented a bill to introduce this pseudo-syndrome into the legal system. Generically characterized as interference in the psychological development of children or adolescents, it was justified by the increase in conflicts in family arrangements, especially since the 1980s[3].

The author of the bill reproduced an extensive excerpt from a book by Maria Berenice Dias, a retired judge of the TJ/RS and founder of the Brazilian Institute of Family Law (IBDFAM). In other words, despite mentioning articles by Rosana Barbosa Ciprião Simão, information from the collectives "SOS – Papai e Mamãe" (SOS – Dad and Mom), APASE, "Pais para Sempre" (Parents Forever), "Pai Legal" (Cool Dad), and "Pais por Justiça" (Parents for Justice), its rationale is strongly anchored in the perspective of the aforementioned jurist.

Although the bill deals with problems in parental relationships - fathers or mothers - the rationale is rooted in the supposed feelings of abandonment, rejection, and betrayal that mothers come to harbor toward their ex-husbands because of the separation. This point already reveals a very serious indication that the law serves to socially control women. In addition, the author of the bill, still

supported by the former magistrate who defends parental alienation, argues that after divorce, women tend to become vengeful and, therefore, crusade to discredit their ex-husbands.

In the words of Maria Berenice Dias, “the child, who loves his parent, is led to distance himself from him, who also loves him. This creates a contradiction of feelings and destroys the bond between them. Left orphaned by the alienated parent, he ends up identifying with the pathological parent, accepting as true everything he is told.” She states that in this game of manipulation, any action is acceptable to remove the parent from the child's life, even accusing him of sexual assault, involving other professionals such as doctors and legal practitioners who will immediately go to great lengths to take measures to remove the parent from the children.

In the understanding of Maria Berenice Dias, mentioned by the author of the bill, the mother, cunningly, uses spurious arrangements to remove her children from her ex-husband out of pure revenge and can manipulate a myriad of professionals. It should be noted that, on this occasion, Maria Berenice Dias is cited because she is the jurist appointed by the author of the bill, but there are other professionals who also follow the same line, both in the fields of law and psychology, social work, and medicine.

At the time the bill was being debated, there was a shift in focus: from reflections on parental equality about custody to the dissemination of the discussion on parental alienation. According to Sousa and Brito (2011), Brazil introduced it with little debate and in an uncritical manner.

This context of the period is important for understanding the LAP. This bill was introduced in 2008 and quickly approved in 2010. In 2006, Lei n. 11,340/2006 was enacted to curb domestic and family violence, strongly supported by the Constitution of the Republic and the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, known as the Belém do Pará Convention. Lei n. 11,340/2006, known as the Maria da Penha Law, proved to be a comprehensive statute, a set of criminal and extra-criminal rules and principles aimed at preventing, protecting, and redressing violence against women in the domestic and family environment.

This law is a significant milestone in the legal system with an impact on the Brazilian social and political structure. It is a viable instrument for transforming the endemic issue of violence against women in the domestic environment and, therefore, capable of promoting a cultural, behavioral, social, political, and even economic schism. This law came to definitively address a very serious problem that affects, to some degree, practically all women in Brazilian society.

In addition to this highly transformative law, on November 5, 2008, Lei n. 11,804/2008 was enacted, which regulates the right to pregnancy support and how it will be exercised. It is a brief law

with the clear intent of guaranteeing material conditions for the pregnant woman and the fetus during a delicate period. The first provisions have the following content:

> Art. 1º Esta Lei disciplina o *direito de alimentos da mulher gestante* e a forma como será exercido.
> Art. 2º Os alimentos de que trata esta Lei *compreenderão os valores suficientes para cobrir as despesas adicionais do período de gravidez e que sejam dela decorrentes, da concepção ao parto, inclusive as referentes a alimentação especial, assistência médica e psicológica, exames complementares, internações, parto, medicamentos e demais prescrições preventivas e terapêuticas indispensáveis*, a juízo do médico, além de outras que o juiz considere pertinentes.
> Parágrafo único. Os alimentos de que trata este artigo referem-se à parte das despesas que deverá ser custeada pelo futuro pai, considerando-se a contribuição que também deverá ser dada pela mulher grávida, na proporção dos recursos de ambos.

In other words, along with legal instruments to prevent and protect women in situations of domestic violence and punish their aggressors, a law was enacted that determines that the alleged father indicated by the pregnant woman must bear part of the expenses during pregnancy and the postpartum period, aiding the fetus and future baby, the child of this couple.

This context of recognition of the material inequality experienced by women in Brazilian society, expressed through important laws that protect women in vulnerable situations, led to a reaction from those who defend the maintenance of the status quo; those who aim to preserve their privileges and prevent more profound changes in Brazilian society.

The reaction came in the form of a law to put a brake on the process of harmonizing Brazilian laws with the international human rights system. The law, which is the subject of this article, was enacted to prevent mothers from rebelling against the intense and contentious divorce process, in which parents often use their children as bargaining chips. In this regard, Stolz and Lemos, in their research on the Rio Grande do Sul Court of Justice, demonstrate that, in many cases, decisions on parental alienation are unfavorable to mothers.

Along with the Statute of the Unborn and the Statute of the Pregnant Woman and so many other projects that are a clear affront to human rights, this law came as a reaction to keep women's lives and bodies under control, preventing them from enjoying their right to freedom, equality, and security, as demonstrated in the following items.

2 BRAZIL AND THE INTER-AMERICAN HUMAN RIGHTS SYSTEM: INTRODUCTION

Since 1988, Brazil has been consolidating its project to respect and promote human rights (Piovesan, 2013). In fact, this is the scenario throughout Latin America due to long periods of dictatorship with restrictions on rights and impediments to popular participation. Talking about human rights during this period was practically delusional.

The democratic transition that culminated in the promulgation of the Citizen Constitution in 1988 is a milestone in Brazilian society because, at least formally, it envisions a project aimed at enforcing the fundamental rights of freedom and equality, a robust social protection system with the prevalence of human rights.

According to Article 1, the Federative Republic of Brazil is a democratic state governed by the rule of law and founded on the principles of sovereignty, citizenship, human dignity, the social values of work and free enterprise, and legal pluralism. In addition, Article 1, sole paragraph, explicitly states that the people are the holders of power, which may be exercised representatively or directly. In other words, the Constitution of the Republic, from the outset, sets forth its founding principles, which will guide all other precepts contained therein.

It should also be noted that the Constitution of the Republic imposes the following objectives: "(i) to build a free, just, and supportive society; (ii) to ensure national development; (iii) to eradicate poverty and marginalization and reduce social and regional inequalities; (iv) to promote the welfare of all, without prejudice based on origin, race, sex, color, age, or any other forms of discrimination." The project conceived during the Constituent Assembly is to promote and respect the rights of Brazilian citizens, without distinction. To reiterate: the project focuses on the dignity of the human person and the construction of a free, fair, and supportive society without prejudice or discrimination. The constituents left it to subsequent congressmen to determine how to build a materially equal and free society.

It is also important to mention that, according to the fundamental principles of the Brazilian Republic, international relations are governed by the prevalence of human rights, the peaceful resolution of conflicts, the rejection of racism, and cooperation among peoples. Article 4 of the Constitution also provides for the self-determination of peoples, equality among states, the defense of peace, and the granting of political asylum as core principles of the Brazilian legal and political system, in the apt words of Celso Antônio Bandeira de Mello (2000).

In short, anyone who reads the Constitution of the Republic is greeted by the fundamental principles of Brazilian society, which cannot be disregarded in any way and which guide all political measures, whether in the public or private sphere.

With regard specifically to human rights, in addition to their prevalence, Article 5, which enshrines fundamental rights and guarantees, establishes that:

> Art. 5º Todos são iguais perante a lei, sem distinção de qualquer natureza, garantindo-se aos brasileiros e aos estrangeiros residentes no País a inviolabilidade do direito à vida, à liberdade, à igualdade, à segurança e à propriedade, nos termos seguintes:
> [...]
> § 2º Os direitos e garantias expressos nesta Constituição não excluem outros decorrentes do regime e dos princípios por ela adotados, ou dos tratados internacionais em que a República Federativa do Brasil seja parte.
> § 3º Os tratados e convenções internacionais sobre direitos humanos que forem aprovados, em cada Casa do Congresso Nacional, em dois turnos, por três quintos dos votos dos respectivos membros, serão equivalentes às emendas constitucionais. (Brasil, 1988)

It is therefore evident that there is a commitment to the principles of equality and freedom, respect for the life and safety of all, without discrimination, and the country's adherence to the international human rights system, including making it clear that future documents must be incorporated into the domestic legal system. The congressmen gathered there marked the choice of society: the construction of a society requires the acceptance of political transformations and, therefore, the embrace of new human rights as well as the deepening of what is already established. At this point, it is worth remembering Article 26 of the American Convention on Human Rights, known as the Pact of San Jose, Costa Rica, which states:

> Artigo 26. Desenvolvimento progressivo
> Os Estados-partes comprometem-se a adotar as providências, tanto no âmbito interno, como mediante cooperação internacional, especialmente econômica e técnica, a fim de conseguir progressivamente a plena efetividade dos direitos que decorrem das normas econômicas, sociais e sobre educação, ciência e cultura, constantes da Carta da Organização dos Estados Americanos, reformada pelo Protocolo de Buenos Aires, na medida dos recursos disponíveis, por via legislativa ou por outros meios apropriados (OEA, 1969).

Brazil has been a member of the Organization of American States (OAS) since its inception in 1948, but it was after 1988 that it began to ratify the legal documents produced there. For example, the American Convention on Human Rights was ratified by Decree No. 678 of November 6, 1992. The 1988 Constitution is, above all, a civilizational milestone that promotes the protection and promotion of human rights for Brazilian society.

In this sense, Brazil is internationally obliged to develop internal rules that take into account the documents of the inter-American human rights system; therefore, any regression in the legal protection of citizens is prohibited. This has been called conventionality control, which, according to Valerio de Oliveira Mazzuoli, is the “conventionality control” of laws, which is the harmonization of domestic legislation with human rights treaties ratified by the government and in force in the country

(2009, p. 237). It is simple: public officials must be guided by the Constitution of the Republic and by international treaties ratified by Brazil in the development of all measures, actions, and public policies.

Invariably, public officials are subject to these controls, which, it should be emphasized, are based on material equality, freedom, human dignity, and the prohibition of regression, which is, in itself, a violation of human rights. In the same vein, Flávia Piovesan understands that the Pact of San José, Costa Rica "is limited to requiring States to progressively achieve the full realization of these rights through the adoption of legislative and other measures that prove appropriate" (2013, p. 333).

The American Declaration of Human Rights establishes, in its Article 2, that "for the purposes of this Convention, a person is every human being," that is, women are human beings and, therefore, are subjects of human rights. In addition, this same document deals with the right to life (Article 4), physical, mental, and moral integrity (Article 5), personal liberty (Article 7), and protection of honor and dignity (Article 11). There is also the right of the child in the sense that "every child has the right to the measures of protection that his or her condition as a minor requires from his or her family, society, and the State."

Thus, it is up to the Member States to comply with what is set forth therein, under penalty of suffering the penalties provided for at the international level. Pointing out that this movement of primacy of human rights is recent in the history of Western civilization, Flávia Piovesan highlights the "impact and repercussion on the process of defining and reconstructing citizenship in the Brazilian context" (2013, p. 441). However, recognizing its "youthfulness" does not mean relaxing the application of human rights.

Brazil has been urged by the bodies of the inter-American human rights system—the Inter-American Commission on Human Rights (IACHR) and the Inter-American Court of Human Rights (IACHR)—for violating human rights in various ways. With regard to women's rights, the Maria da Penha Law is the result of Report 54/2001, in which Brazil was denounced for its lethargy in prosecuting and punishing Mr. Marco Antonio Heredia Viveros for two attempted homicides in a domestic context. In the mid-1980s, Maria da Penha Maia Fernandes was the victim of an attempted murder, leaving her paraplegic. The perpetrator was her then-husband, who reported a story of home invasion for such aggression. As she survived but needed care, he tried again, electrocuting her in the bathtub.

Another example that relates women's rights and the inter-American human rights system is that in 2021, Brazil was condemned by the Inter-American Court of Human Rights for discrimination in access to justice, for failing to investigate and judge from a gender perspective, for using negative

stereotypes in relation to the victim, and for the improper application of parliamentary immunity in the case of the murder of Márcia Barbosa de Souza by the then state deputy for Paraíba, Aércio Pereira de Lima.

There are many other emblematic cases involving violence against women, such as Case 12.001 Simone André Diniz v. Brazil, in which the Inter-American Commission recommended several measures to the country to eradicate human rights violations against black women. Another case worth mentioning is Case López Soto et al. v. Venezuela, due to the deprivation of liberty and submission to psychological, physical, and sexual violence suffered by Ms. López Soto, without the facts being investigated and the perpetrator being held criminally responsible.

In the wake of the prohibition of retrogression and the imposition of improvements to international legal instruments, the National Council of Justice (CNJ) issued Recommendation n. 123, dated January 7, 2022, recommending "that the Brazilian Judiciary comply with international human rights treaties and conventions and use the jurisprudence of the Inter-American Court of Human Rights" (CNJ, 2022). In addition, on March 17, 2023, the CNJ issued Resolution n. 492/2023 which, according to its summary,

> estabelece, para adoção de Perspectiva de Gênero nos julgamentos em todo o Poder Judiciário, as diretrizes do protocolo aprovado pelo Grupo de Trabalho constituído pela Portaria CNJ n. 27/2021, institui obrigatoriedade de capacitação de magistrados e magistradas, relacionada a direitos humanos, gênero, raça e etnia, em perspectiva interseccional, e cria o Comitê de Acompanhamento e Capacitação sobre Julgamento com Perspectiva de Gênero no Poder Judiciário e o Comitê de Incentivo à Participação Institucional Feminina no Poder Judiciário. (CNJ, 2023)

Thus, the Judiciary in Brazil is required to use the "Protocol for Judgments with a Gender Perspective," which recognizes that social relations are "simultaneously the result and reproducer of inequalities, reinforcing them in terms of stereotypes, asymmetries, hierarchies, and inequalities (material and symbolic)." (CNJ, 2023). This Protocol recognizes that, despite the provision of human rights to equality, freedom, and security, thousands of women are assaulted, raped, and murdered in Brazilian society, and that there is persistent violation of the human rights of women and girls.

Violence against women, not only domestic violence, is an endemic problem that must be addressed as such, and the main instrument for combating it is the international human rights system, specifically the inter-American human rights system.

3 LEI N. 12,318/2010, PARENTAL ALIENATION LAW: THE EXPRESSION OF THE VIOLATION OF WOMEN'S HUMAN RIGHTS IN THE DOMESTIC AND FAMILY ENVIRONMENT

The violation of human rights by the parental alienation law is a sensitive issue that requires a thorough analysis of its implications from the perspective of women's and children's rights. The concept of indirect discrimination is fundamental here, referring to laws or actions that, although apparently neutral, result in harmful effects for groups or individuals based on characteristics such as gender, age, sex, or race.

When it comes to women, it is crucial to highlight that several international treaties, to which Brazil is a signatory, establish the obligation of authorities to eliminate legislative measures or government practices that may result in discrimination and disadvantage. The State has a duty, as stipulated in international treaties and national legislation, to adopt all necessary measures to combat discrimination against women, as provided for in the Federal Constitution, the Maria da Penha Law, the Statute of Children and Adolescents, among other legal instruments.

From the perspective of women's human rights, the existence of laws that subjugate women and make reporting domestic violence a means of punishment for both women and their children is questioned. The parental alienation law is criticized for being based on gender bias and incompatible with the right of women and children to live free from violence and discrimination. Although seemingly neutral, this law carries a significant burden of discrimination in its application, reproducing gender roles and stereotypes that harm women.

The concept of parental alienation lacks a reliable scientific basis and tends to stereotype and discriminate against women. What parental alienation has proven to be is a tool for maintaining power and control over women who are victims of gender-based violence. In addition, the symptoms listed as indicative of alienation are often confused with those of children who are victims of violence and abuse, which makes it difficult to accurately assess the situation.

It is important to note that, in cases of reports of abuse and violence against children, the investigation has been distorted and public officials have not focused on the facts of the complaint, but rather on questioning whether the child or mother is lying. As society is deeply sexist, as recognized by public documents such as the Protocol for Gender-Sensitive Judgments, professionals considered experts, who commonly lack gender literacy and, therefore, knowledge about the issue of parental alienation, end up pointing their doubts toward mothers. Stolz and Lemos (2021) demonstrated this in their research on court decisions. Furthermore, the presumption of guilt against women is so serious that mothers claim that the courts ignore or minimize their reports of violations

committed by the aggressive/abusive parent against the child. As a result, these mothers are punished for trying to protect their children (Pina, 2022).

In addition to infringing on women's rights, the law violates children's rights to a life free from violence and neglect. This includes the right to be heard, the right to experience a childhood free from trauma, the right to free development of personality and the ability to form healthy bonds, as well as the right to personal integrity.

The parental alienation law, by disqualifying complaints and hindering proper investigation, places victims—especially women and their children—in situations of risk and ongoing suffering. Judicial decisions, therefore, reflect a misogynistic view, discrediting women's complaints and placing them at a disadvantage in the justice system.

In the old Código Civil de 1916, Article 233 stipulated that married women did not enjoy full civil capacity. They could only engage in work activities or carry out financial transactions with their husband's authorization, reflecting a clear patriarchal mentality that gave men power over women and children. This same logic is found in the Parental Alienation Law, but with cunning maneuvers cloaked in science. As Saffioti (2013) teaches, the increasing complexity of society promotes the sophistication of social techniques. Without confronting the structures that sustain the various forms of violence, their eradication cannot be achieved.

The parental alienation law imposes on women the need to obtain permission from the father for fundamental aspects such as housing and work, leaving them subject to the constant threat of unfounded accusations of implanting false memories. This legislation alarmingly supplants even constitutional principles and international human rights treaties, perpetuating male hegemony over women and children.

Ultimately, the parental alienation law runs counter to the best interests of children by preserving coercive methods, inequalities in family relationships, and gender discrimination. It is essential to rethink this legislation in light of human rights, ensuring the protection of women and their children against all forms of violence and discrimination.

In addition to violating constitutional provisions—Articles 1, 3, 4. 5, and 226, §8—and the American Convention on Human Rights, this supposed syndrome is rejected by the UN and UN Women, and the WHO has already called for its removal from the ICD-11 classification, as it violates the provisions of the Belém do Pará Convention and CEDAW. It should be clarified here that ICD 11 stands for the "11th International Classification of Diseases" and in this catalog is "QE52.0 Caregiver-child relationship problem" or "QE52 - Problems associated with interpersonal interactions in childhood." Considering that caregiver can be translated as personal carer, advocates of parental

alienation as a syndrome use this parameter. However, what it is, in fact, is more of a search term in this list of diseases that associates some interpersonal problems in childhood, such as poverty, malnutrition, and abrupt separation from affectionate relationships.

The introduction of this law into the legal system is, therefore, a reaction to the achievement of women's rights. In addition, this law means the institutionalization of violence, mainly psychological and patrimonial. At any disagreement with the demands of women-mothers, parents allege parental alienation, increasing the conflict and further judicializing family law issues. Therefore, the parental alienation law is an expression of the worsening violation of the human rights of women and children.

4 CONCLUSION

The existence of a direct relationship between the Parental Alienation Law and the condition of violence against women in family contexts exposes a serious violation of human rights, especially about the autonomy and protection of women and children.

Thus, this study contributes to a critical analysis of Lei n. 12,318/2010, highlighting the discrepancies between the apparent protection of the rights of children and adolescents and the real impacts on women victims of domestic violence and children's victims of abusers and aggressors.

The objective of this article was to investigate how the Parental Alienation Law violates the inter-American human rights system, aiming to understand the mechanisms that perpetuate the violation of the rights of women, children, and adolescents in family contexts.

Regarding limitations, it is important to note that this study was based mainly on a literature review and studies conducted by international organizations, as court decisions on this subject must be kept confidential in accordance with current legislation. In addition, the complexity of the subject requires a multidisciplinary analysis that could be explored in future research.

For future research, we suggest conducting empirical studies that investigate the specific impacts of the Parental Alienation Law as a means of coercion for women victims of domestic violence to report abuse, as well as comparative analyses between different legal and cultural contexts for a broader understanding of the problem and possible solutions.

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[3] Interestingly, it can be seen that controversies over custody and parental authority began a few years after EC No. 09 of 1977 to Lei n. 6515/1977, which established an end to the indissolubility of marriage.