

Caroline Buarque Leite de Oliveira, 2017

Volume 3 Issue 1, pp. 806 - 812

Date of Publication: 04<sup>th</sup> May, 2017

DOI-<https://dx.doi.org/10.20319/pijss.2017.s31.806812>

This paper can be cited as: De Oliveira, C., B. (2017). Polyamory: The Need of Recognition of New Family Arrangements and Generation of Legal Effects Based on Human Rights and on Concept of Post-Modern Family of the 21st Century. *PEOPLE: International Journal of Social Sciences*, 3(1), 806-812.

This work is licensed under the Creative Commons Attribution-Non Commercial 4.0 International License. To view a copy of this license, visit <http://creativecommons.org/licenses/by-nc/4.0/> or send a letter to Creative Commons, PO Box 1866, Mountain View, CA 94042, USA.

## **POLYAMORY: THE NEED OF RECOGNITION OF NEW FAMILY ARRANGEMENTS AND GENERATION OF LEGAL EFFECTS BASED ON HUMAN RIGHTS AND ON CONCEPT OF POST-MODERN FAMILY OF THE 21ST CENTURY**

**Caroline Buarque Leite de Oliveira**

*Master Student in Legal Sciences, Autonomous University of Lisbon, Maceió-AL, Brazil*

[carol\\_buarque@hotmail.com](mailto:carol_buarque@hotmail.com)

---

### **Abstract**

*The purpose of this study is to analyze the polyamory, to define it as a family form. The research demonstrates, fulcrum in the rights and guarantees fundamental, the necessity of recognition a new familiar design and generation of legal effects. In according to the perspective Contemporary of Civil Constitutional Law, is made an analysis of the evolution of family models and concepts, bringing influences of fundamental rights and human rights. Based on a deductive methodology, it is defended a concept own of family. Starting from polyamory, the characteristics of a new family model were highlighted. The research brings the Brazilian Judiciary's understanding around polyamory's recognition possibility. From the investigation, it is possible to conclude that polyamory can be understood as a family form and therefore, must be protected by the State. In studies future, investigators will able to examine the multiparenthood as a precedent for judicial recognizing of polyamory in Brazil.*

## **Keywords**

Families, Constitutionalisation of Civil Law, Human Rights, Fundamental Rights, Polyamory

---

## **1. Introduction**

Families are spending through a process of transformation over the years. Family models in the last century, are often seen as outdated by current society. In modern times, the objective of family is into personal fulfillment of the individual. Is the reflection of a Constitutionalized Civil Law.

The dignity of the human person (Barroso, 2012) justifies the recognition of new family arrangements (Dias, 2016). In this scenario, arise the single-parent families, blended families and homoaffective. The affectivity spends to be the base of the families (Dias, 2014).

In Brazil, however, despite several rights conquered, many arrangements are still to shore of the recognition of the society and the State. At the heart of this issue, there are multiple unions (Ferrarini, 2010). And between the various kinds of multiple unions, there are the relations of polyamory.

Many issues arise in relation to this family arrangement that emerges in post-modern society of the 21st century. It will be possible to recognize the polyamory as a form of family? How to protect individuals who live such relationships? Are there denying the polyamor effects? Is possible to recognize the multiparenthood effect of these relationships? Which succession rights of individuals living in a model of polyamory?

It is important to make a study about the relations of polyamory. Without the aim of exhausting all the questions, the present study aims to analyze the possibility of recognizing polyamory as a family model. With base on a deductive methodology and using bibliographical researches, news relevant to legal and social scenery, laws, doctrine, jurisprudence, journals and scientific articles, founded on constitutional rights and guarantees, it will be examined the possibility of recognition of unions multiple of poliamory as family arrangements.

## **2. Fundamental Principles and the Right to Happiness**

Today's families do not have the characteristics of the family model that prevailed in the last century. If in the past the center of the family was the institution itself, today, the quest for

the realization of individuals is the fundamental idea of the family. Is the family called eudemonistic.

Families increasingly spend to have in attaining of its members, to pursuit of happiness. The families are structured, then, by the principle of affectivity. The principle of affectivity was of great importance in Family Law. It was based on it, the recognition of same sex unions. Even though, there is no normative provision about affectivity, can be said, that it is derived from dimensions fundamental rights. (Dias, 2014)

It is essential that there is affection between people and love to oneself, given the personification of human being. That way, could say that new family arrangements have been solidified precisely in relations of affection, equality, solidarity, dignity and freedom. Today, the principle of affectivity is a fundamental principle to recognize families' new models.

## **2.1 Plural Family**

It was from of Civil Law that fundamental rights and human rights were highlighted. Therefore, this Constitutionalization of Civil Law that originated the repersonalization of Civil Law. In this scenario, it is important to mention the understanding of the jurist Canotilho about the rights of personality:

Many of the fundamental rights are rights of personality, [...]. Personality rights certainly include state rights (eg, citizenship rights), rights to the person (right to life), moral and physical integrity, right to privacy, distinctive rights of personality (right to personal identity, right to information technology) and many of the rights of freedom [freedom of expression]. (Canotilho, 2016, p. 396).

It is understood, therefore, that with the exercise of the rights of the personality, widely consecrated in the constitutional scope, together with the incidence of the structuring principles of the Right of Family, no more space for single family. Consequently, is correct to affirm about the existence of families.

Thus, a new vision about family is understood here. Family can be seeing as a central nucleus based on three elements: affectivity, stability and ostensibility (Lôbo, 2011), that characterizing the social arrangement. The family is a single gender (families), is derived this various species, which are determined according to the realization of the personal dignity of its members in pursuit of happiness. Therefore, it adopted an own meaning about the concept of families.

The construction of the concept of the family was done from a systematic and teleological interpretation of the Constitution. Based on the teachings of (Canotilho, 2016), in case of doubts, should be adopted the interpretation that shows greater effectiveness to the rights and principles fundamental.

It is evident that, in the modern world, there are families. Based on: pillars of the constitutionalization of Civil Law; repersonalization of family entities; incidence of structuring principles of Family Law; and eudemonistic family; one can cite the existence of the family coming from marriage, from the recomposed family, from the single-parent family, from the family coming from the phatic unions, and from among them, the family from the polyamory, which we defend here.

It can be seen, therefore, that with constant social change it would be impossible to expose an unchangeable family classification, and the families were then conditioned to societies and their times. In order not to exhaust existing family models, the work will be focused on analyzing multiple simultaneous unions and on polyamorism.

### **3. Polyamory x Family: Possibilities and Legal Effects**

Is it necessary to make a distinction about monogamy: principle or value? It known that the norm can be divided into norm-rule and principle-norm, and that these are commandments of optimization (Alexy, 2015, pp. 90-91). One must understand monogamy as a value that was imposed on society at a given time, especially to those where social groups lived in the Western (Silva, 2013). Therefore, It is defended the overcoming of monogamy as principle.

This way, considering the plurality of family entities, it stresses that many of them do not have state tutelage, and end up staying on the sidelines not only of the State, but also of society. The polyamory is inside this scenery, because is seeing in Brazil as a relation prohibited. But, how with no doubt the monogamy is a value, the polyamory isn't prohibited; it is a phatic situation.

#### **3.1 What is Polyamory?**

It Even though does not have a clear definition of polyamory, "it is based on the decision to honor the most diverse ways in which a loving relationship can manifest itself, being able to take on a variety of forms" (Santiago, 2015, p. 141).

Considering the meaning of family defended by us, one can say that the polyamory is a social arrangement, where there are non-sporadic relationships, between unimpeded people, which are not restricted to gender and number. The polyamory relationships are founded on certain affective bond, without necessarily having sex, where its members consensually approve the multiple unions between them, with a view to the search of their dignities, through their personal accomplishments towards happiness. These relations constitute a single nucleus of familiar entity.

In view of the inherent characteristics of families:

- A) Affectivity, as the foundation and purpose of the entity, with no economic motive, and indisputable scope of family formation;
- B) Stability, excluding casual, episodic or uncommitted relationships, without communion of life;
- C) Public and ostensive coexistence, which presupposes a family unit that presents itself publicly. (Lôbo, 2011, p.80).

Based on such characteristics, polyamory would be a form of family. Ostensibility can be interpreted as mitigated, since polyamory still has a great social reprobation in many cultures.

Polyamory can be considered a form of existing and valid relationship, not eventual, based on intimate, sexual and/or loving relationships with more than one person simultaneously, forming a single nucleus. Its members are aware of the multiple relationships between them, with respect and reciprocal fidelity, in view of the search for their dignities through their personal achievements with a view to happiness. It is verified incidence of the structuring principles of family in this type of relation.

Adding to this rationale, the principle of the dignity of the human person is beyond fundamental and human rights, such as written Universal Declaration of Human Rights. This document still brings other rights inherent to families as freedom, equality. Therefore, polyamory arrangements are considered as family, and must have the protection of the State and also of society, according to family protection (Unic, 2009).

### **3.2 Advances in Family Law and the Search for Dignity**

The polyamory has its greatest foundation in the principle of affectivity, being this the principle that governs the eudemonistic families of the postmodern society. The truth in this assertion can be seen precisely in several advances in the Family Law, as in the example of

Brazil, the non-differentiation between biological children and adopted children, the recognition and constitutional protection of the phatic unions in the Greater Law, the recognition of homosexual unions, and recently, the recognition of multiparentality by the Federal Supreme Court.

There are many questions about the possible effects of polyamory. However, although it still with no state tutelage, it must be understood that the children born from these relationships will have multi parenthood effects; there will be repercussions on inheritance rights for cohabitants in the social arrangement, as well as social security effects.

It known that many effects can be born from polyamory; these are legal effects, which need and must be protected by the State. The society mustn't close the eyes for this reality of new families. It need respect the polyamory families.

#### **4. Conclusion**

There is no doubt about the importance of fundamental rights and human rights for the protection of 21st century families. Regardless of moral or ethical values, it is imperative that the State protects the existing family arrangements, as well as those that come to born of the social transformations of a modern and globalized world.

The non-observance of human rights at the heart of family relations would be, at least, considered injustice. As was defended throughout the work, the relations of polyamorism fulfill the necessary requirements for be considering as family. And the constitution of a family arrangement, and mustn't be forgotten by the State-judge.

Despite the many effects generated in polyamory relationships, not is found in the doctrine a vast study on the subject. The multi parent alidade as one of the most important and visible effects, can be target of researchers, and serve as a precedent for that polyamory be recognized in Courts.

Each time appear more news about people who live relationship of polyamory. They seeking ways to ensure their rights; they need be respected; being seen by society and by the State. These people want guarantee your dignity.

Thus, in the absence of legal prohibitions, phatic situations should be interpreted in the light of the structuring principles of Family Law. Specially, that which permeates most of the legal systems of the various countries of the world: dignity of human person.

It is concluded, therefore, it is obligation to State recognize and protect polyamory as a family form of the 21st century, while ensuring the generation of legal effects arising from their relationships.

### **References**

- Alexy, R. (2015). *Teoria dos Direitos Fundamentais* (2nd ed., V. A. Silva, trad.). São Paulo: Malheiros.
- Barroso, L. R. (2012). *A dignidade da pessoa humana no direito constitucional contemporâneo: a construção de um conceito jurídico à luz da jurisprudência mundial*. Belo Horizonte: Fórum.
- Canotilho, J. J. G. (2016). *Direito Constitucional e teoria da Constituição* (7th ed.) Coimbra: Almedina.
- Cunha, D., Jr. (2016). *Curso de direito constitucional* (10th ed.). Salvador: Juspodivim.
- Dias, M. B. (2014). *Homoafetividade e os direitos LGBTI* (6th ed.). São Paulo: Revista dos Tribunais.
- Dias, M. B. (2016). *Manual de direito das famílias* (12th ed.). São Paulo: Revista dos Tribunais.
- Ferrarini, L. (2010) *Famílias Simultâneas e seus efeitos jurídicos: pedaços da realidade em busca da dignidade*. Porto Alegre: Livraria do Advogado.
- Lôbo, P. (2011). *Direito civil: famílias* (4th ed.). São Paulo: Saraiva.
- Santiago, R. S. (2015). *Poliamor e direito das famílias: reconhecimento e consequências jurídicas*. Curitiba: Juruá.
- Silva, M. A. (2013). *Da monogamia: a sua superação como princípio estruturante do direito de família*. Curitiba: Juruá.
- Unic. (2009). *Declaração Universal dos Direitos Humanos*. Retrieved January 25, 2017, from <http://www.onu.org.br/img/2014/09/DUDH.pdf>