

Planning for homoaffective families: a re-reading of Brazilian public health

José Lenartte da Silva¹, Moan Jéfter Fernandes Costa², Rafaela Carolini de Oliveira Távora³, Cecília Nogueira Valença⁴

Abstract

The concept of family has undergone many changes over the past decades, distancing itself from the traditional nuclear model. Although the Brazilian Federal Constitution has advanced in the recognition of new family nuclei, the homoaffective union is still omitted, depriving it of guarantees and rights. The aim of the present paper is to call attention to the lack of an academic and professional training to deal with homoaffective couples. It is a narrative review carried out on doctrinal works, pertinent national legislation, jurisprudence and electronic documents such as laws and regulations which served as the basis for the elaboration of this scientific article. With the advances in society in recognizing the homoaffective union as a part of civil society, being able to enjoy similar rights to those of heterosexual couples concerning reproduction medically assisted.

Keywords: Homosexuality. Family planning. Family relations.

Resumo

Planejamento para famílias homoafetivas: releitura da saúde pública brasileira

Ao longo das últimas décadas, o conceito de família passou por muitas mudanças, divorciando-se do modelo nuclear tradicional. Embora a Constituição Federal tenha avançado quanto ao reconhecimento de novos núcleos familiares, ainda se omite na união homoafetiva, privando-a em termos de garantias e direitos. O objetivo deste artigo foi apontar a inexistência de preparação de estudantes e profissionais para lidar com casais homoafetivos e suas famílias. Trata-se de revisão narrativa respaldada por obras doutrinárias, legislação nacional pertinente, jurisprudência e documentos eletrônicos, como leis e normativas, que serviram de base para a elaboração do artigo científico. Com os avanços da sociedade e algumas recentes resoluções, hoje a união homoafetiva pode gozar de direitos semelhantes aos de casais heterossexuais quanto à reprodução medicamente assistida.

Palavras-chave: Homossexualidade. Planejamento familiar. Relações familiares.

Resumen

Planificación para familias homoafectivas: relectura de la salud pública brasileña

A lo largo de las últimas décadas, el concepto de familia pasó por muchos cambios, divorciándose del modelo nuclear tradicional. Aunque la Constitución Federal haya avanzado en cuanto al reconocimiento de nuevos núcleos familiares, aún se omite en la unión homoafectiva, privándola en términos de garantías y derechos. El objetivo de este artículo fue señalar la falta de preparación de estudiantes y profesionales para lidiar con parejas homoafectivas y sus familias. Se trata de una revisión narrativa respaldada por obras doctrinales, legislación nacional pertinente, jurisprudencia y documentos electrónicos como leyes y normativas, que sirvieron de base para la elaboración del artículo científico. Con los avances de la sociedad y algunas resoluciones recientes, actualmente la unión homoafectiva puede gozar de derechos semejantes a los de las parejas heterossexuales en cuanto a la reproducción médicamente asistida.

Palabras clave: Homosexualidad. Planificación familiar. Relaciones familiares.

1. **Mestre** lenartte_barca@hotmail.com – Universidade Federal do Rio Grande do Norte (UFRN) 2. **Doutorando** moanjefer@gmail.com – UFRN 3. **Doutora** profenrafaela@gmail.com – UFRN 4. **Doutora** cecilia_valenca@yahoo.com.br – UFRN, Santa Cruz/RN, Brasil.

Correspondência

Cecília Nogueira Valença – Rua Vila Trairí, s/n, Centro CEP 59200-000. Santa Cruz/RN, Brasil.

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Over the last few decades, the concept of family has undergone great changes, moving away from the more well-known traditional models - patriarchal, matrimonial, and hierarchical - that for a long time aimed at procreation and physical patrimony. Today we have more plural families, distanced from this pattern usually composed of a father, a mother, and biological children^{1,2}.

Considering the family environment a fundamental space for the development of personality and potentialities, with sexuality being one of these components, it is concluded that sexual orientations, whether homoaffective or not, must be at the same level with regard to constitutional guarantees. Thus, the State, understood here as responsible for the human being, must extend its power of protection to homoaffective unions as family entities¹, since its role is to guarantee, through public policies, fundamental rights guaranteed by the Federal Constitution (FC) of 1988³. For this purpose, it must ensure access for all population to family planning methods, assisted reproductive technology and contraception⁴.

Family planning is described as a right of women, men, and couples and is covered by the Brazilian Magna Carta³, article 226, paragraph 7, based on Law 9.263/1996⁵. Therefore, it is necessary to provide both educational means and technological, through the actions of professionals that integrate health centers that care for human conception and contraception³⁻⁷.

Despite the growing number of homoaffective couples, the Ministry of Health basic sexual and reproductive health care⁸ does not position itself as regards family planning for homosexuals, even though this public uses assisted reproduction to have children^{1,2}. Given this, this study is justified by the gap in public health policies for homosexual couples in relation to human conception and fosters reflections about the family planning of these people.

Methods

It is a narrative review, seen by some authors⁹ as an appropriate resource to discuss a subject from theoretical or contextual points of view. The survey was based on electronic documents referring to doctrinal works, in the current Brazilian legislation and jurisprudence.

We searched the PubMed and SciELO databases, with the following descriptors: “*family planning*”, “*family relations*” and “*homosexual*”. As

a result, 42 articles were found in PubMed and 81 in SciELO only with the descriptor “family planning”. As for the inclusion criteria, only complete articles were available free online, from the last ten years (2008 to 2018), and in the Portuguese and English languages. Duplicate articles in more than one database were counted only once.

Thus, 55 articles were included and the titles and abstracts were read, resulting in 5 articles in PubMed and 3 in SciELO. These articles were selected because they dealt with themes common to this article: assisted reproduction, family arrangements in the homoaffective population and family planning by this clientele.

Other sources were also used, such as ministerial documents on family planning, and books on legislation, such as the Civil Code, Federal Constitution and resolutions of the Federal Council of Medicine to deal with the ethical and legal aspects of assisted reproduction. Considering that the interpretation was based on the critical investigation of these two themes in the context of homosexual couples, content analysis followed the following steps defined by Bardin¹⁰: pre-analysis; exploitation of the material or coding; treatment of results, inference and interpretation.

In the pre-analysis, documents were chosen and formulated the objectives that would support the final interpretation. In the exploration of the material or codification, the data were analyzed specifically to describe characteristics related to the content in the text. In the treatment step of the results, inference, and interpretation, we present the information generated by the analysis¹⁰.

Results

The right to family planning must be a free decision of every couple, regardless of their education, and the State must provide educational or scientific resources so that this right is fully exercised⁴. However, the legal nature that involves factors related to family planning has been widely debated, considering the fact that it is a fundamental right or not. Including reproduction in the right of citizenship allows all people, indistinctly, to be reached by such prerogative, a human right essentially universal in relation to their ownership¹⁰.

Another controversial aspect relates to the concept and the extension of the reproductive right, which must be protected because it is fundamental. Its violation causes serious suffering and damages the

essential nucleus of citizens' autonomy¹¹. If family planning is supported by Brazilian legislation, this does not occur with assisted reproduction. Due to the lack of legal terms in the country regarding the application of these reproduction techniques, the Conselho Federal de Medicina - CFM (Federal Council of Medicine) regulated the practice of professionals through Resolution CFM 2.168/2017¹². However, the CFM initiative does not provide for the need to establish parameters to guide the application of these techniques and to ensure this right for all citizens.

Discussion

Faced with advances not only in institutional relations, but also in relation to legislation when it comes to family aspects, Law 9.263/1996, which regulates article 226 (paragraph 7) of the Brazilian Federal Constitution, when addressing family planning, guarantees equal rights for any natural and free person in the formation of their family, regardless of how it is organized^{4,5}.

Lôbo¹³, for example, points to several changes in family relationships between 1960 and 1970. Studied by various areas of knowledge, from psychology to genetic engineering, these changes in society have changed old patterns. At the time there were still rules defined by family law, which were aimed at preserving the model centered on patriarchy. However, the proposal of the Federal Constitution³ caused a slow and gradual evolution in customs, reflected in the kinship relations in Brazil, which previously had legal status aimed only at the traditional family, although they already admitted the divorce.

Family planning, as referred to in the FC³, is based on the principles governing human dignity and responsible parenthood, and the State's role is to provide all the necessary resources for the norm to become operational. In Article 226, the Constitution defines "family" as an entity instituted through a marriage or stable, biological or adoptive union, extending the concept to any kind of affective relationship with family characteristics^{3,14}.

Until the Civil Code was changed in 2002¹⁵, women were denied the rights and prerogatives guaranteed by the 1988 Constitution³, due to the fact that the current infra-constitutional norm was 1916. Thus, Civil Code¹⁵ was contrary to the Constitution and did not guarantee the equality rights.

In this scenario, socio-affectivity is associated with parenting and some biological aspects. Therefore, article 1.593/2002 of the Civil Code

defined that the relationship could be *natural or civil, as a result of consanguinity or another origin*¹⁶. Also included in this roll were adoption, socio-affective kinship or assisted reproduction techniques^{2,15}.

Socio-affective families are understood as those in which there are affective bonds and solidarity among members; relationships in which those responsible are integral providers of education and protection of any child, regardless of biological or legal relationship. Because of this, the necessary precedents were opened so that homosexual couples in a stable relationship could fight to have their families and children by blood relationship and not only affective¹⁷.

Family planning is described by the Ministry of Health in the technical manual "Assistance in family planning"⁶ as a measure that seeks to democratize the means of access to conception or contraception in health services, whether public or private, in order to guarantee all reproductive rights as provided for in the Constitution: having children or not⁴.

Although this right is guaranteed by public policies in the Sistema Único de Saúde - SUS (Unified Health System), which can guide the family planning of homoaffective couples, there is still a dichotomy between what is ensured by legislation and what is put into practice. This discrepancy between theory and practice is evident in the guidelines of the SUS manual itself when it refers to family planning assistance, specifically in the case of contraceptive methods and orientation in reproduction, which often do not mention homoaffective couples¹.

On the basis of family planning cited by the Federal Constitution³, much has been discussed juridically when it comes to the topic reproduction, given that rights must be defined and protected without distinction for all people, considering their universality¹¹. In this way, any citizen has that right; even without the sexual practice, can generate children through techniques of assisted reproduction in different family arrangements¹¹.

Assisted human reproduction, that is, the laboratory manipulation of male or female gametes to generate embryos has, therefore, become a method for homoaffective couples who wish to assert their right to procreate¹⁸. In Portugal, since 2010, this type of technique is discussed for homoaffective couples. However, no viable solutions were found for male subjects, since the "surrogate" is not yet fully accepted by society and prohibited by law, except in cases in which the woman does not have a uterus, has incapacitating

organ disease or clinical condition justifying the act. Still, it is not allowed procedure for single people nor homoaffection couples^{19,20}.

It should be noted that assisted reproduction in the case of female couples has certain legal advantages, since the insemination technique is much more reasonable. In the case of men, the solution would be through genetic engineering, with the *in vitro* fertilization of eggs collected in banks, by anonymous donation, and the non-profit gestation of the embryo in the womb of another woman, with kinship up to third degree in relation to one of the involved².

In addition, family planning must take into account all the requirements inherent to human dignity and responsible parenthood, based on the legal principles of equality of rights and duties between the spouses, so that universal and equal access to actions and services can also be guaranteed¹¹. In this set of actions, family planning, described in Law 9.263/1996, which, in order not to exclude part of the population and fulfill its role of assuring everyone of the birth control in the family environment, should provide the homoaffection couples the right to enjoy access to assisted reproduction⁵.

CFM Resolution 2.168/2017¹², responsible for ensuring the means for such reproduction in heterosexual couples, can also be used to guarantee homoaffection marriage rights. The text also states the maximum age of donor gametes (50 years for men, 35 for women), emphasizes the anonymous character of the donation and the fact that the recipients can not have any direct connection (kinship or friendship) with the donors.

In the case of "surrogacy," kinship, which used to be 1st to 4th degree and involved only mother, grandmother, sister, aunt and cousin with one of the people involved in the process, may now also be between daughter and niece, being single. It continues to be a totally supportive process, with no form of cash payment for the woman who receives the embryos. In addition, the fetus can not be genetically manipulated to acquire characteristics of the parents, and they must sign protocols recognized

in a notary's office to destine the embryos if the couple divorces during the process¹².

Compared to previous resolutions dealing with this issue, there was progress in the inclusion of social issues in the medical evaluation for assisted reproduction. The 2017 resolution¹² also facilitated the procedure so that couples with no proven reproductive problems and cancer patients could freeze gametes, embryos and germ tissues. The anonymous donation of gametes also became valid for women.

It is worth noting that the most recent resolution proposed by CFM¹² was published in accordance with the understanding of the Supremo Tribunal Federal - STF (Federal Supreme Court), which in 2011 recognized the homoaffection union as a family entity. This understanding broadens the connotation of family and recognizes medically assisted reproduction as the right of all. By inserting these processes in the role of ethical practices and bioethics, one can intensify the fight for normative definition of the Ministry of Health or even of the federal legislation to protect and defend the reproductive autonomy of homosexual couples who wish to form a family with the help of scientific techniques¹².

Therefore, we understand that medically assisted reproduction has evolved over the last few decades by including homoaffection couples, who today may have access to the same benefits, once exclusive to heterosexuals, related to the generation and protection of the family.

Final considerations

Given the constitutional and legal provisions that deal with family planning, there should be no doubt about the recognition of the right to family planning of homoaffection couples in the SUS. It is also understood that it is necessary to discuss the theme in the context of homoaffection couples so that one can build new knowledge and improve legislation.

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Participation of the authors

José Lenarte da Silva and Moan Jéfter Fernandes Costa conceived the article and analyzed and interpreted the data. Rafaela Carolini de Oliveira Távora and Cecília Nogueira Valença performed the critical review of the content and approved the final version to be published. All authors contributed to the writing of the manuscript.

José Lenarte da Silva

 0000-0002-0152-2965

Moan Jéfter Fernandes Costa

 0000-0002-7250-5863

Rafaela Carolini de Oliveira Távora

 0000-0003-0644-668X

Cecília Nogueira Valença

 0000-0003-3998-3983

