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## REFLECTIVE ANALYSIS ARTICLE

### BIOETHICAL REFLECTION ABOUT HOMOSEXUALITY IN BRAZIL AND THE RIGHT TO BE DIFFERENT

### REFLEXÃO BIOÉTICA ACERCA DA HOMOSSEXUALIDADE NO BRASIL E O DIREITO A SER DIFERENTE

### REFLEXIÓN BIOÉTICA ACERCA DE LA HOMOSEXUALIDAD EN BRASIL Y EL DERECHO A SER DIFERENTE

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#### ABSTRACT

**Objective:** to reflect about homosexuality in Brazil and bioethical issues that permeate the civil rights of homosexuals. **Method:** this is a critical-reflective study, descriptive and analytical, which adopts a qualitative approach, accomplished through the deductive method and conducted through literature review. **Results:** the society often uses archaic ethical-religious principles to justify the prejudice, non-acceptance and legalization of civil rights of individuals for being homosexual. **Conclusion:** it is necessary to reflect about it and encourage more thorough discussions on the theme, considering these people as human beings in essence and that should enjoy of their human conditions and life in the society. **Descriptors:** Homosexuality; Human Rights; Civil Rights; Human Rights Abuses; Bioethics.

#### RESUMO

**Objetivo:** refletir sobre a homossexualidade no Brasil e questões bioéticas que permeiam os direitos civis dos homossexuais. **Método:** estudo crítico-reflexivo, descritivo e analítico, de abordagem qualitativa, realizada por meio do método dedutivo e conduzida a partir de revisão da literatura. **Resultados:** a sociedade muitas vezes usa os princípios éticos e religiosos arcaicos para justificar o preconceito, a não aceitação e legalização dos direitos civis das pessoas por ser gay. **Conclusão:** é necessário refletir sobre o assunto e incentivar mais discussão sobre o tema, considerando se estes indivíduos como seres humanos em sua essência devem gozar de suas condições humanas e da vida em sociedade. **Descritores:** Homossexualidade; Direitos Humanos; Direitos Civis; Violação dos Direitos Humanos; Bioética.

#### RESUMEN

**Objetivo:** reflexionar sobre homosexualidad en Brasil y las cuestiones bioéticas que permean los derechos civiles de los homosexuales. **Método:** se trata de un estudio crítico-reflexivo, descriptivo y analítico, que adopta un enfoque cualitativo, realizado a través del método deductivo y conducido a través de revisión bibliográfica. **Resultados:** la sociedad con frecuencia utiliza principios ético-religiosos arcaicos para justificar los prejuicios, la no aceptación y legalización de los derechos civiles de las personas por ser homosexuales. **Conclusión:** es necesario reflexionar a este respecto y fomentar más discusiones sobre la temática, considerando estos individuos como seres humanos en esencia y que deben disfrutar de sus condiciones humanas y de la vida en la sociedad. **Descriptor:** Homosexualidad; Derechos Humanos; Derechos Civiles; Violaciones de los Derechos Humanos; Bioética.

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## INTRODUCTION

In dignity and rights, all human beings should be treated fairly and in an equitable manner.<sup>1</sup> While the civil rights are ensured to all as human beings, there is still a heated discussion involving rights and homosexuality. As the adoption of children and marriage rights are questioned and removed from the individual due to homosexuality, their quality of human being may be affected.

In this perspective, it is believed that bioethics is related to the birth, life and death, and especially it is essential for both personal and work life, providing the rescue of human dignity with emphasis on quality of life, showing basic principles as autonomy, beneficence, justice and non-maleficence.<sup>2</sup>

Questions or removing rights of an individual because of homosexuality remove their humanness.<sup>3</sup> These are questions that go beyond the condition of being gay because it is permeated by dilemmas and controversies that turn to family, affective, cultural and spiritual factors. The relationship between homosexuality and rights in Brazil has hosted intense discussions and divided opinions in the various levels of power and population in general terms.

Although there are not official statistics, it is estimated that no matter what country, culture or religion, a number just under ten percent of the population is composed of homoaffective people, which represents a significant contingent and brings with it ethical and bioethical questions and leads to society to think about inclusion, values, behavior and rights. It can not be unaware of a reality imposed on everyone, because to see and respect the diversity is the minimum ethical that is required of those who live in a democratic and free state, being governed by a constitution which enshrines as the greatest principle the respect for the dignity of human being, based on equality and freedom.<sup>3</sup>

So, who are the homosexuals? How have the Brazilian society seen them? How have the question of their rights been discussed? The federal government through the Brazil Against Homophobia Program brings concepts about gays, lesbians, bisexuals, and transgender (LGBT). More than to conceptualize the homosexuality the program intends to an approximation of the population to issue, making the theme included on the calendars of discussions of the national public policies.<sup>4</sup>

Gays are people who have affective and sexual relationship with people of the same sex and have a lifestyle in accordance with this preference, living openly their sexuality.

Bisexuals have sexual and emotional relationship with both sexes, some assume the facets of their sexuality openly, while others live this sexual conduct in closed form. Lesbian is the terminology used to describe female homosexuality. The term transgender include transvestites, which refers to a man in a physiological sense, but who has relationship with the world as a woman, and Transsexuals are people who do not accept their sexual anatomy and identify themselves with the opposite sex, although being endowed with external and internal genitalia of a single sex.<sup>4</sup>

Rights to health, such as special attention to the lesbian woman, to the homosexuals victims of violence or deprived of their liberty, educational actions to the LGBT population, discussions aimed at updating the protocols related to the adequacy sexual surgeries, mental health care, among others, have been targeted by concern to the Ministry of Health of Brazil, in other words, a way to guarantee the equitable access by the respect for the difference of sexual orientation and the treatment and reception to the specificities of health of this population.

Meanwhile the civil rights are questioned in favor of this population, by the absence of laws that will support the homosexual marriage and the adoption of children by couples formed by two men or two women. The Ministry of Health of Brazil notes that, while there are citizens whose fundamental rights are not respected for reasons relating to discrimination based on sexual orientation, race, ethnicity, age, religious belief or political opinion, we cannot say that Brazilian society is fair, egalitarian, democratic and tolerant.<sup>4</sup>

Nowadays the marriage and the adoption by homosexual couples are not legally legitimized. However many homosexuals have fought to get this right. Thus, this study aimed to reflect about homosexuality in Brazil and the bioethical issues that permeate the civil rights of homosexuals.

## METHOD

This study was realized through the deductive method, conducted to obtain the data through the literature review, and the approach of problem was considered as a critical-reflective study. Therefore, it is characterized as a theoretical reflection about homosexuality and the right to be different.

This is a descriptive and analytical study, which adopts a qualitative approach of facts. This choice occurred for pretending to describe the phenomenon studied through

observation, description and classification of the object of study, going beyond the identification, searching in an exploratory way an explanation for the phenomenon researched.<sup>5</sup> Thus, it was realized a review of literature, to capture scientific articles that describe the association between homosexuality, rights and bioethics.

Articles which were published and books were selected after consultation on electronic databases, and in the library of Universidade Estadual do Sudoeste da Bahia, Brazil. The search was performed using the descriptors "Bioethics", "Homosexuality" and "Constitutional Law" on the Health Sciences Descriptors - DeCS, and the keyword "Rights", through the databases: Scielo-Brasil (Scientific Electronic Library Online), Lilacs (Latin-American and Caribbean System on Health Sciences Information) and Medline/Pubmed through the National Library of Medicine, in April 2013.

It was established floating reading of studies and official documents found, and was cut the corpus. After it was performed exhaustive reading of these clippings to establish the objectives of the analysis. We selected elements as words and phrases endowed with meanings, being considered as important variables in the process of evaluation of the effect of opinions. Finally, it was established the processing of analysis of them with a critical, reflexive and orderly way.

## RESULTS

### ♦ The homosexuality in Brazil and the right to be different

Among the scientific papers captured and after analyzing the data described it was revealed that results indicate a lack of consensus on the idea that we have about homosexuality, this is considered in various aspects (perverse behavior, deviation, identity problem).<sup>6</sup> The uniqueness in which this question is approached makes the opinions about rights very heterogeneous. There is a heated debate in the formation of a legal structure regarding the significance of sexuality in its various possibilities of manifestation, creating a confrontation not only in the juridical aspect, as well as also in politics, social and cultural sphere, beyond the family relationships, configuring as an important public health problem worldwide.<sup>1-2</sup>

The medicine justifies the homosexuality in genetic and hormonal causes during pregnancy and psychology develops behavioral theories during the formation of the individual's personality<sup>1</sup>, however, without determinants

and conditionings that directs to an opinion, but a condition, like people with special needs. There is no reason to disregarding or deny them rights by a situation that they were not even able to make a choice.

It is also assumed the interaction of the physical and social environment where they are located, or also as a result of a combination of biological and social factors.<sup>6</sup> This conception of homosexuality ignores the complexity of the phenomenon inherent to sexuality, resulting in social and political exclusion of people whose sexuality differs from determination anatomical, biological, social and cultural of sex. From this perspective, it becomes violated the inviolable right to equality, freedom of expression and fair treatment to which everyone has right. Moreover, those who do not submit to this anatomic-biological sex have been subjected, unjustly, to discrimination, suffering, marginalization and living with a society increasingly hierarchized and homophobic.<sup>3</sup>

Nevertheless, the society has established, through moral principles, the ideals of conduct of sexual life, consolidating the traditional view of male-female couple as inseparable condition, in a biological perspective based in the reproductive sexuality. Therefore, the Sexual Revolution, which occurred since 70's, brought an incommensurable expansion of the social dimensions of sexuality and their self-assertion identity.<sup>4</sup>

In this sense, the Bioethics, which corresponds to an applied ethics to the life and every phenomenon that surround it, aiming to reflect about the moral conflicts and controversies involved in the daily practices of the people, began to assign featured to discussions concerning to sexuality in order to protect in their essence the condition and human dignity and of all those vulnerable, among them homosexuals, prioritizing the respect for their rights, for describing and analyzing the conflicts in question that involves them, intending always to support and to protect them in disputes of interests and values, prioritizing them because they are weakened in front of the conservative and fundamentalist society where they live.

However, the Brazilian Federal Constitution, in the chapter about rights and individual and collective duties, the caput of Article 5 says that all are equal under the law, without distinction of any kind.<sup>7</sup> This principle should be reflected in daily practice, respecting the indifferentiation of human

dignity for whatever reason, especially their sexual orientation, their marital union and right to adopt, although this is not the reality experienced in the world. It is necessary to transform the transcultural societal perception and the human rights constitution, understanding that among the equal rights the right to be different prevails.

Regarding the homo-affective union the Brazilian Supreme Court recently judged and finalized the discussion of a jurisprudence of conformity of the homo-affective family with the Brazilian constitutional system, legalizing stable civil unions between homosexuals in throughout the national territory.<sup>8</sup>

Some countries have already considered lawful the homo-affective union, that is the example of Denmark, Holland, Belgium, Canada, Sweden and Portugal, as well as the adoption of children<sup>9</sup>, being Argentina the first country in Latin American to legalize it. Considering the bioethical principles, they were inspired by the principles of equality, freedom and human dignity to approve this union between persons of the same sex and the right to form a homo-parental family.

In this sense, the bioethics can be used as an important tool for the questions about the processes of constitution of homo-parental family, considering the moral precepts which undermine the universality of their rights and other rights which should be guaranteed.<sup>10</sup> This is not just a question of rights, but it is a question of the right to be different in a country like Brazil, which consists of a laic society, of free state of rights and democracy.

The legalization of divorce and the inclusion of women in the labor market brought major changes in the concept of family, however the issue of homosexuality, homo-affective union and their right to adopt is not less polemical or complicated.<sup>11</sup> When faced with this kind of reflection, a vast majority of people alleges moral values to be against homo-parental union, using religious values, traditionalism and political conservatism as a basis to justify this rejection.<sup>12</sup>

Another issue points to the difficulty of the legislator to regulate homo-parental union which refers to the fear of eligible individuals who do not enjoy of full social acceptance, and often this attitude in defense of homosexual rights can reflect on their electorate.<sup>13</sup> Because of this, many lawmakers omit or postpone the decisions of those who dare to propose changes, which configure a real abuse of power to legislate and a disregard with the human dignity of homosexuals and their families.<sup>14</sup>

There are homosexuals who have stable relationships just like heterosexuals, as a part of this new form of family organization, but there have persisted the prejudice, stigmatization and social exclusion of this segment, and difficulty of dealing with issues that go against what the society imposes as norms and standards.<sup>15-6</sup> When someone doesn't have their civil rights respected, this is contradiction of the Universal Declaration on Bioethics and Human Rights which asserts that all human beings can invoke the rights and freedoms proclaimed in its scope, irrespective of race, color, sex, language, political or other opinion, national or social origin, fortune, birth or any other status.<sup>17</sup>

The family is the oldest institution of society and continues to be formed in order to have an affective bond, respect, protection, formation of ethical values, helping in the development of the human personality. The time and changes in the contemporary society brought family restructuring, and it is currently the common presence of families consisting of homosexual couples who dream of the possibility of adopting a child to constitute their families and to complete their happiness.<sup>18</sup>

It is noteworthy that in Brazil the Statute of Children and Adolescents (ECA) do not restrict the adoption of children by homosexuals couples, however, they do not recognize the homosexual couples as family, so the child can only be adopted by one of them.<sup>19-20</sup> It is understood that into a homo-affective union the adopted child would suffer because it will not have as reference a man and woman at home.<sup>21</sup>

Homo-affective families do not correspond to relationships between the subjects, in society. It is different from those that this society use to see, so it provokes great curiosity and fear, because in the society imagination when they think of a couple they think of two people of opposite sex, considering only natural relations between man and woman and that only those couples can constitute families and have kids.

From this perspective, since 2011 there was a breakthrough in the transposition of stable union in marriage between people of the same sex, just by understanding that this relationship cannot be understood like in two centuries ago, with their nucleus rooted in indissolubility, procreation and in heteronormativity. In the same way, if nowadays the wedding were the same like it was in the last two thousand years, it would be possible to get married at twelve years-old with an unknown person, in a "arranged",



marriage, the husband could still glimpse the wife as property and freely use her at ease, or a person could be sentenced to imprisonment for marrying a person of a different race. And, of course, it would be impossible to get a divorce.<sup>22</sup>

It is a matter permeated by ethical and moral conflicts that relates the rights of the child that will be adopted. Faced with the homo-affective couple intention to make the adoption, it is questioned their right to adopt or not, even though in the law of adoption in Brazil there is not prohibition related to homosexuality, but there is a variety of factors of relevant complexity involving society values and legal prerequisites required for adoption.

## CONCLUSION

The society often uses archaic ethical and religious principles to justify their prejudice, like not acceptance and legalization of civil rights of some individuals for being homosexual. It is necessary to reflect about it and promote further discussions about the theme, considering these people as human beings in essence and that this condition should enjoy their human conditions and life in society.

It is not uncommon these situations of prejudices in the society, becoming urgent the necessity of governments and lawmakers to guarantee the respect for the human dignity of homosexuals and that they have their civil rights respected. It is believed that the solutions to this problematic should be interdisciplinary and located within the sphere of the public policies, which exercise responsibility in the genesis of these conflicts.

Thus, homosexuals are faced with a lot of ethical and moral conflicts, especially with regard to the constitution of families traditionally accepted. Therefore, it is necessary to install a process of change in the manner of think and act of the society, which needs to be sensitized to that homosexuals can be treated ethically and morally, anyway to be different is also a right that must be respected.

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