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## CIVIL LIABILITY FOR AFFECTIVE ABANDONMENT IN BRAZILIAN LAW: DOCTRINE, JURISPRUDENCE AND CHALLENGES

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*Flávio Quirino Pereira de Oliveira*

Law student at Centro Universitário Unigran  
Capital

*Cid Eduardo Brown*

Advisor Specialist in Civil Procedural  
Law from the Instituto Nacional de  
Pós Graduação (2004) and Applied  
Constitutional Law from Faculdade Damásio  
de Jesus (2013); Graduated in Law from  
Universidade Católica Dom Bosco (1999),  
Professor at CentroUniversitário Unigran  
Capital  
<http://lattes.cnpq.br/1054630613478576>

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**Abstract:** Civil liability for affective abandonment refers to the possibility of parents being held legally responsible for failing to provide adequate emotional, affective and psychological care for their children. The concept is based on the understanding that parenting goes beyond the obligation to provide material support, and also encompasses the duty of care, affection and emotional presence. When these duties are neglected, this can lead to affective abandonment, which can cause moral damage to the affected child. Affective abandonment can be dealt with by Brazilian legislation in the context of civil liability, in the light of Article 186 of the Civil Code, which provides for the obligation to make reparation for damage, whenever there is an action or omission that causes injury to the rights of others. The basis of this liability is the violation of the duty of care, which is part of family power, established in Article 1.634 of the Civil Code. In addition, Article 227 of the 1988 Federal Constitution reinforces the right of children and adolescents to family life and full protection. Doctrine and jurisprudence have evolved in recognizing affective abandonment as a form of damage, although there are differences between the courts on the viability of convictions for this cause. Some believe that love and affection cannot be judicially demanded, while others argue that emotional abandonment generates concrete damage that deserves reparation. The Superior Court of Justice (STJ) has important precedents on the subject, consolidating the idea that the unjustified absence of affection and support can lead to compensation, as long as the causal link between the abandonment and the psychological damage suffered is proven. Thus, civil liability for affective abandonment is an instrument to guarantee the realization of the rights of children and adolescents, based on the principle of human dignity. The research will adopt the hypothetical-deductive method and a qualitative-quantitative approach. It will be based on

a comprehensive bibliographical review, exploring available sources on the subject

**Keywords:** affective abandonment, accountability for affective abandonment, judicialization of affective abandonment.

## INTRODUCTION

The purpose of this article is to comprehensively address the issue of civil liability for affective abandonment in Brazil, analyzing its legal and social implications. For a deeper understanding of this issue, it is essential to contextualize the evolution of the concept of affective abandonment in the Brazilian legal system, as well as the application of the principle of human dignity and the function of family power, which outline the duties of parents in relation to the emotional and psychological care of their children.

This research is based on the need to highlight the interconnection between two worrying phenomena: parental abandonment and the psychological and social impacts it has on children. The relationship between these two aspects is complex and deserves attention, as the absence of emotional care can increase the vulnerability of children and adolescents, causing profound damage to their development. This connection is particularly relevant in the Brazilian context, where debates about civil responsibility and the protection of children's and adolescents' rights are frequent.

It is necessary to understand whether the affective omission of parents has increased the occurrence of emotional disorders and damage to the formation of healthy family bonds in Brazil. Throughout the text, the chronic exposure of children and adolescents to affective abandonment will be explored, especially in the family context, highlighting the urgency of effective measures to guarantee the integral development of this vulnerable segment of society. Based on this premise, the study focuses on analyzing the possible con-

sequences of applying the concept of civil liability for affective abandonment, considering the high incidence of emotional helplessness in the domestic environment, often resulting in significant psychological damage. In order to address these issues, the following objectives were outlined, with perspectives delimited chapter by chapter.

The first chapter discusses civil liability for affective abandonment in Brazil, focusing on the legal implications and the parents' duty of care. Brazilian legislation, especially the Civil Code and the Statute of the Child and Adolescent, establishes clear criteria for the exercise of family power, which includes the obligation to provide emotional and affective support to children. This duty goes beyond material obligations to include the healthy development of children and adolescents. Recently, judicial and doctrinal debates have explored the possibility of reparation for affective abandonment, raising concerns about the possible emotional impacts on children and the role of the judiciary in intervening in family relationships.

The second chapter deals with the psychological and social effects of emotional abandonment, which are often associated with the development of trauma and emotional disorders. Studies indicate that the absence of emotional support in the first years of life can amplify emotional vulnerability, hindering the establishment of healthy emotional bonds and balanced psychological development. Children and adolescents in situations of emotional abandonment are particularly susceptible to disorders such as depression, anxiety and difficulties in interpersonal relationships. The civil liability of parents, in this context, emerges as an attempt to mitigate the damage caused, highlighting the need for more effective child protection policies.

A distinction will also be made between "material abandonment" and "affective abandonment", with a special focus on the latter due to its direct relationship with the psycho-

logical development of children. The concept of affective abandonment, its characterization as an illicit act subject to reparation for moral damages, and its role in contemporary Civil Law will be discussed in detail, with a view to a holistic understanding of the subject.

The third and final chapter will deal with the challenges of applying civil liability for affective abandonment, considering the legal and social effects of this reparation. The judicialization of family relationships and the difficulty of measuring the impact of the absence of affection in a person's life are recurring issues in the legal debate. In addition, the recognition of affective abandonment can influence the behavior of parents and the way family relationships are structured. Therefore, a careful analysis of the legal implications of this liability is fundamental for protecting the rights of children and adolescents, reinforcing the importance of effective fulfillment of family duties.

Methodologically, we opted for the deductive method, starting with a broad analysis of civil liability in Brazilian law and then exploring the possible consequences of its application in cases of affective abandonment. Data was collected and analyzed using a mixed approach, which included both quantitative studies, by analyzing court decisions related to the topic, and qualitative studies, based on interviews and the perceptions of jurists, psychologists and family law specialists.

In addition, the dialectical method was adopted to explore the various perspectives and arguments surrounding civil liability for affective abandonment, considering both the views in favour of reparation for moral damages and the criticisms that question the judicialization of family relationships. Throughout the study, a critical and in-depth analysis of the legal, social and emotional implications related to this complex and sensitive issue will be presented.

## **GROUNDINGS FOR CIVIL LIABILITY FOR AFFECTIVE ABANDONMENT**

Civil liability is one of the pillars of Brazilian law and is governed by the Civil Code, which establishes the obligation to repair damage caused to another person, whether by action, omission, negligence or recklessness. It is a legal mechanism designed to guarantee compensation for losses suffered by third parties as a result of unlawful conduct, ensuring adequate reparation and the restoration of justice. For this liability to be established, three fundamental elements must be present: the unlawful act, the damage and the causal link between the conduct and the damage.

In the context of affective abandonment, the absence of emotional care on the part of parents can be characterized as an illegal act. Brazilian legislation, especially Article 1.634 of the Civil Code, imposes on parents the duty to raise, educate and assist their children in an integral manner, which includes providing the emotional support necessary for healthy development. Family power, as a legal institute, is not limited to material obligations, but also includes the duty to offer affection, attention and presence, essential aspects for the balanced formation of the personality of children and adolescents. Bringing to light the words of Miranda (2012), we have that:

It is undoubtedly in the family that you get your first glimpse of the world, of your obligations as a citizen, of respect for yourself and for others. The experiences you have in the family nucleus define the way you will live together in society, in other words, the main concepts of being are born first in the family and then gain a foothold in society, so that the personality of adult life depends on the first years of a person's life. These guidelines and experiences are particularly important in the relationship between parents and children, due to the closeness of the bond.

When the duty of care is neglected, the possibility of civil liability arises, as long as it can be proven that the omission caused concrete damage to the victim. Affective neglect, by depriving children of affection and emotional support, can result in significant psychological damage, such as low self-esteem, emotional disturbances and difficulties in establishing interpersonal relationships. The violation of the duty of care, therefore, constitutes a wrongful act, while the psychological suffering resulting from this lack of affection represents the damage to be repaired. Parents must be present in their children's lives at all times, guiding them on how to live in society and contributing to their formation as human beings. According to Lacerda (2015):

“Children and adolescents reflect our soul, and they recognize our insecurities and uncertainties. We have to be aware that we are responsible for their balance, their actions and their emotional stability and all of this involves the boundary/care binomial that is socially reproduced, but which begins at home, in the relationship between parents and children.”

The causal link, in turn, consists of the connection between the parents' omissive conduct and the damage suffered by their children. In this sense, Brazilian jurisprudence has evolved to recognize that the lack of emotional assistance on the part of parents can be directly responsible for various disorders and difficulties faced by their children in adulthood. For civil reparation to be effective, it is necessary to demonstrate this link between the affective omission and the psychological damage, proving that the suffering stems directly from parental negligence.

The issue of affective abandonment in Brazil has been the subject of heated doctrinal and jurisprudential debates. Although affection is considered a subjective feeling that cannot be legally imposed, the law does not seek to oblige parents to love their children, but rather to

fulfill the objective duty of care that involves emotional aspects. Thus, civil liability for affective abandonment aims to repair the damage caused by the omission of these duties, without going into the subjectivity of love, but ensuring that the dignity of the human person is preserved and that the healthy development of children and adolescents is guaranteed.

In this context, the recognition of civil liability for affective abandonment represents a step forward in Brazilian law, reflecting the understanding that the integral development of children depends on both material sustenance and emotional and affective support. It is a way of guaranteeing the full protection of children and adolescents, as advocated by the Federal Constitution, and of holding parents and guardians responsible who, through negligence or omission, fail to fulfill their duty of care.

The evolution of the recognition of civil liability for affective abandonment is also directly linked to the principle of the dignity of the human person, established in the Federal Constitution of 1988. This principle underpins the comprehensive protection of children and adolescents, enshrining the idea that human beings, at all stages of life, must be treated with respect for their dignity, which includes the right to a balanced and affectively healthy family environment. By violating this fundamental right, affective abandonment not only affects the child's psychological well-being, but also represents an affront to their dignity as a person.

In this scenario, legal doctrine has focused on the scope and limits of civil liability in cases of affective abandonment. There is a growing consensus that the duty of care, expressed in family power, encompasses not only the provision of material needs, such as food, housing and education, but also the provision of an emotionally safe and welcoming environment. This understanding is in line

with recent decisions by the Superior Court of Justice (STJ), which have recognized the possibility of compensation for moral damages in situations where the parents' omission in their duty of emotional care has caused significant damage to their children's mental health.

However, the issue still generates debate. One of the main arguments against civil liability for affective abandonment is the difficulty of measuring emotional damage and establishing objective criteria for measuring the absence of affection. Some argue that financial reparation in cases of affective abandonment can trivialize family relationships, turning a subjective feeling, such as love, into an object of judicial intervention.

However, the defenders of the compensation thesis argue that the focus of the discussion is not love, but the violation of a legal duty of care, which should be repaired like any other damage that can be compensated.

Brazilian jurisprudence, although still divided, has made progress in recognizing that when parental omission profoundly affects the child's emotional development, there is room for liability. Important precedents have already been set by the STJ, such as the emblematic case judged in 2012, in which the court confirmed the conviction of a father for affective abandonment, emphasizing that "to love is a faculty, to care is a duty". This understanding consolidated the principle that the absence of affection and care, when proven to cause psychological damage to the child, can constitute an unlawful act subject to reparation.

Another relevant aspect is the difficulty of proof in these cases, since the emotional damage is not always obvious or immediate. Proving the causal link between emotional abandonment and emotional disorders often requires psychological and psychiatric reports attesting to the impact of parental absence on the child's psychological development. This evidential complexity is one of the challenges

in the practical application of civil liability for affective abandonment, which requires special care in the analysis of each specific case.

In addition to the legal dimension, affective abandonment has significant social repercussions. In a country where the traditional family structure is changing, with an increase in divorces and the emergence of new family configurations, the debate about parents' duty of emotional care becomes even more relevant. Family relationships are increasingly marked by new dynamics, and the absence of one of the parents in the emotional life of their children, whether due to neglect, disinterest or intentional distancing, highlights the importance of a legal framework that ensures the protection of the fundamental rights of children and adolescents.

Therefore, civil liability for affective abandonment represents a tool not only for legal redress, but also for raising social awareness about the importance of affection and care in human development. By recognizing affective abandonment as damage that can be compensated, the Brazilian legal system reinforces the idea that parental care must be integral, encompassing both material support and emotional support, and that the unjustified absence of this care can result in legal consequences for the person responsible.

## **AFFECTIVE ABANDONMENT AND THE RIGHT TO FAMILY LIFE**

The right to family life is a basic principle of child and adolescent protection in Brazil, reflected prominently in the 1988 Federal Constitution. Article 227 of the Constitution establishes the shared responsibility of the state, society and the family to ensure that children and adolescents are guaranteed their fundamental rights, including the right to family and community life. This article states that:

“It is the duty of the family, society and the state to ensure children, adolescents and young people, with absolute priority, the right to life, health, food, education, leisure, vocational training, culture, dignity, respect, freedom and family and community life, as well as to protect them from all forms of neglect, discrimination, exploitation, violence, cruelty and oppression.”

This constitutional provision also imposes the obligation to protect minors from all forms of neglect, discrimination, exploitation, violence, cruelty and oppression, creating a safe environment for their full development. However, the right to family life goes beyond simply providing material conditions such as food, clothing and housing. It goes further, encompassing the emotional and affective aspects essential for healthy growth, which are crucial for the formation of personality and psychological balance.

The concept of family life is therefore not limited to tangible and practical aspects, such as financial support or the physical presence of parents in the child's life. It also involves creating a family environment in which children feel supported, emotionally connected and emotionally involved with their parents or guardians. Affectivity, in this context, is considered a crucial factor for the integral development of the individual, and is equally important for their emotional and psychological well-being. The deprivation of this affectionate coexistence, especially when caused by one of the parents, can have serious consequences for the mental health of the child or adolescent, often leaving marks that persist throughout adulthood.

Affective neglect, when analyzed from this perspective, is a form of violation of the child's fundamental rights. It is a kind of emotional neglect, characterized by the omission of the duty to provide affection, care and attention, even if material obligations are adequately met. Even if the parent is present in fulfilling

their financial responsibilities, such as paying alimony or providing housing, the absence of an affective bond and emotional support can be devastating. This type of abandonment creates a deep void, which often manifests itself in psychological problems such as low self-esteem, insecurity, anxiety, depression and relationship difficulties. For Cardin:

(...) affection is elevated to the status of a fundamental right, emerging as a general clause protecting personality rights, thus, the legal principle of affection entails respect for the fundamental rights of the child, in addition to the strong feeling of reciprocal solidarity, where family power is projected from a protective perspective in relation to children. (CARDIN, 2017, p. 47)

Brazilian jurisprudence has increasingly recognized affective abandonment as a form of omission that can generate civil liability, based on constitutional principles and family law doctrine. Although Brazilian legislation does not have a specific provision dealing directly with affective neglect, it does impose a series of duties on parents through family power, which go beyond mere material support. Family power, as set out in the Civil Code, especially in article 1.634, establishes the duty of parents to care for, educate and provide for their children, ensuring not only their physical maintenance, but also their moral and emotional formation. In this way, a lack of affection and care on the part of the parents can be interpreted as a breach of this duty.

It is important to note that civil liability for affective abandonment is based on a broader understanding of the parental role. The role of parents is not only to provide financial resources, but also to offer emotional support and promote the psychological development of their children. The absence of this support can be interpreted as a wrongful act, generating the duty to compensate. Civil liability, in this sense, seeks to re-establish the balance broken by the affective omission, compensating

the child for the psychological damage suffered. In this context, compensation for affective abandonment has a pedagogical and reparatory nature, aiming to make society aware of the importance of affection in raising children and, at the same time, compensate the victim for the emotional damage caused.

Over the years, affective abandonment has come to receive greater attention in Brazilian courts. Decisions such as the one handed down by the Superior Court of Justice (STJ) in Special Appeal No. 1.159.242-SP, in 2012, marked a significant advance in the way the judiciary deals with this issue. In this judgment, the STJ recognized the possibility of compensation for moral damages arising from paternal emotional abandonment, consolidating the understanding that, although love is a feeling that cannot be demanded or compelled, the duty of care is a legal and moral obligation. The famous phrase used by the rapporteur, "To love is a faculty, to care is a duty", perfectly sums up the difference between the feeling of affection, which is voluntary, and the obligation to care, which is imposed by law.

On the other hand, doctrine and case law also face significant challenges when it comes to applying civil liability for emotional abandonment, especially when it comes to measuring emotional damage. Psychic damage is subjective and often difficult to prove, which makes proving the causal link between affective omission and psychological disorders a complex task. In many cases, psychological reports are needed to prove the direct link between the lack of emotional care and the problems faced by the child. In addition, the issue also involves the risk of trivializing family relationships, since the judicialization of affective issues can turn the emotional field into an object of legal dispute, distorting the principles underlying family law.

However, defenders of civil liability for affective abandonment argue that the focus of the issue is not on affection itself, but on the violation of the legal duty of care. Parents are not obliged to love their children, but they do have an obligation to look after their physical and emotional well-being. When this obligation is breached, whether through lack of interest, negligence or unjustified withdrawal, the Brazilian legal system offers mechanisms to repair the damage caused to the child. Compensation for affective abandonment, in this sense, has the main objective of recognizing the emotional suffering of the victim and alerting them to the importance of the duty of care in the context of family relationships. Sergio Cavalieri explains that

Conduct that is contrary to the rule of law, in itself, deserves to be classified as unlawful, even if it does not originate from a conscious and free will. This, incidentally, is a point on which there is no disagreement. Everyone agrees that the core of unlawfulness is precisely that the fact - event or conduct - is contrary to the law, in the sense that it denies the values and purposes of the legal order. And this is so because the legislator, when imposing a certain conduct, does so because, at a previous moment, it positively valued the end that this conduct aims to achieve. (CAVALIERI, 2007, p. 9)

For Valeria Silva Galdino Cardin:

In order for there to be civil liability and consequent compensation for moral damage, the facts generating the duty to compensate must be present, thus the causal link between the damage suffered and the agent's action or omission, which finds legal support in the Federal Constitution in art. 5º, items V and X, as well as in the Civil Code in its art. 186, establishing in a generic way with regard to the liquidation of moral damages that compensation is measured by the extent of the damage under the terms of art. 944. (CARDIN, 2017, pp. 51 and 52)

In addition to the legal aspects, affective abandonment has a relevant social dimension. In a context of family transformations, with an increase in separations and new family configurations, the debate about the role of parents in the emotional lives of their children becomes even more crucial. In many situations, the physical or emotional distancing of one of the parents, especially after a divorce, can lead to the severing of emotional ties with the children, which contributes to the perpetuation of emotional abandonment. In this scenario, the judiciary plays an important role in reinforcing that family life is not just a formal right, but a fundamental right that must be effectively guaranteed.

Therefore, affective abandonment and the violation of the right to family life directly affect the individual's integral development, with lasting impacts on their emotional and psychological health. Recognizing affective abandonment as a wrongful act for which reparations can be made is a step forward in terms of valuing the social and emotional function of the family, ensuring that children not only have their material needs met, but are also emotionally supported. By adopting this stance, the Brazilian legal system reaffirms its commitment to the integral protection of children and adolescents, as advocated by the Constitution and the Statute of the Child and Adolescent (ECA).

## **THE DIMENSION OF THE RIGHT TO FAMILY LIFE**

The right to family life, as guaranteed by the Statute of the Child and Adolescent (ECA), is one of the most important protections offered to children and adolescents in Brazil. This right establishes that children and adolescents must be raised and educated within the family, in an environment of affection, protection and security. Articles 3, 4 and 5 of the ECA state:



Art. 3: Children and adolescents enjoy all the fundamental rights inherent to the human person, without prejudice to the comprehensive protection dealt with in this Law, and are guaranteed, by law or by other means, all the opportunities and facilities in order to allow them to develop physically, mentally, morally, spiritually and socially, in conditions of freedom and dignity.

Article 4. It is the duty of the family, the community, society in general and the public authorities to ensure, with absolute priority, the realization of rights relating to life, health, food, education, sport, leisure, vocational training, culture, dignity, respect, freedom and family and community life.

Sole paragraph. The guarantee of priority includes:

- a) primacy of receiving protection and help in all circumstances;
- b) precedence in public services or services of public relevance;
- c) preference in the formulation and implementation of public social policies;
- d) privileged allocation of public resources in areas related to child and youth protection.

Art. 5 No child or adolescent shall be subjected to any form of neglect, discrimination, exploitation, violence, cruelty or oppression, and any violation of their fundamental rights, whether by action or omission, shall be punishable by law.

Family life is not just a social right, but an essential necessity for the full development of the individual, encompassing not just the provision of material care, but above all the formation of emotional bonds that allow children and adolescents to develop in a balanced way. This inalienable and fundamental right is directly related to the dignity of the human person, which is one of the pillars of the Brazilian legal system.

Family life not only involves the physical presence of parents or guardians, but also emotional and emotional interaction, the exchange of experiences and psychological support, which are essential for the healthy development of any individual. Growing up in a healthy family environment is one of the first steps towards the formation of a child's personal identity and their balanced integration into society. It is in this context that they learn to deal with their emotions, understand limits, build their self-confidence and establish interpersonal relationships. The role of the family goes beyond physical and material care, and is the basis for the formation of an emotionally healthy and socially adjusted individual.

When this coexistence is compromised, either through neglect or emotional abandonment, the damage to the child or adolescent can be profound and long-lasting. Affective abandonment occurs when parents, although present in some material aspects of their child's life, fail to provide the emotional and psychological support necessary for their child's full development. This can occur in various situations, such as when one of the parents withdraws emotionally from the child's life, even though they maintain financial support. The lack of affection and attention can generate feelings of rejection and insecurity, negatively impacting the child's psychological development.

Psychological studies corroborate that the deprivation of affectionate family life during a child's formative years can have serious, long-term consequences for mental and emotional health, as emphasized by the aforementioned Cardin (2017, p.47). In addition to the author, Paulo Luiz Neto Lobo points out that:

The principle of affection is enshrined in the Federal Constitution of 1988, more precisely in its articles 226 §4, caput, §5 and §6, which respectively recognize the community made up of parents and their ascendants, including adopted children, as a constitutionally

protected family entity, in the same way as the matrimonial family; the right to family life as an absolute priority for children and adolescents; the legal institute of adoption as an affective choice, prohibiting any kind of discrimination against this type of filiation; and the absolute equality of rights between children, regardless of their origin. (LOBO, 2003, p. 43)

Children who grow up without the necessary emotional support, or who are victims of emotional abandonment, often show signs of low self-esteem, difficulty in forming healthy relationships, anxiety disorders, depression, among other emotional problems. In more serious cases, this lack of affection can lead to the development of personality disorders or destructive behavior, significantly affecting the individual's adult life. These emotional traumas can reverberate in various spheres, such as interpersonal relationships, professional life and even in the way these individuals build their own families.

In this way, the right to family life, guaranteed by the ECA, cannot be interpreted narrowly, considering only the material aspect. Affective neglect is a direct violation of this right and must be treated with due seriousness. Affective neglect is just as damaging as material neglect, as it directly affects the emotional balance of the child or adolescent, compromising their development and future life prospects. Thus, the duty of emotional care is not only a moral or social obligation, but also a legal obligation imposed on parents. The responsibility to raise and educate children, according to article 1.634 of the Civil Code, includes not only guaranteeing physical and material support, but also providing an affectionate and welcoming environment where the child can grow up emotionally supported.

From the point of view of the law, affective abandonment is considered a civil offense for which liability can be incurred. Brazilian jurisprudence has evolved to recognize the

possibility of compensation for moral damages in cases of emotional abandonment, especially when the emotional suffering of the child is proven. The Superior Court of Justice (STJ) has taken a position in favor of this liability, emphasizing that love may not be obligatory, but the duty of care is. The expression "Love is a duty, care is a duty", used in emblematic decisions, reflects the difference between affection, which cannot be imposed, and the legal duty to provide adequate conditions for the child's emotional development.

It is important to emphasize that civil liability for affective abandonment has a pedagogical and reparatory nature. Pedagogical because it aims to sensitize society and parents to the importance of emotional care in raising children. Reparatory because it seeks to compensate the victim for the emotional suffering caused by affective neglect. In this context, emotional neglect is not just a family problem, but a social and legal issue that requires attention and appropriate measures for the full protection of children and adolescents.

In addition, civil liability for emotional abandonment involves a series of challenges, both in proving the damage and in quantifying the emotional damage suffered. Psychic damage, due to its subjective nature, is difficult to prove, which requires a careful analysis of the facts and, often, psychological expertise that can attest to the extent of the damage suffered by the victim. However, the growing body of case law on the subject shows that the Brazilian judiciary has shown itself to be sensitive to these issues, seeking to balance the rights of children and the responsibilities of parents, in order to guarantee the comprehensive protection provided for in the Constitution and the ECA.

Therefore, the right to family life goes far beyond mere physical presence or the provision of material conditions. It is a fundamental right that guarantees children and adoles-

cents an environment of affection, respect and care, which is essential for their full development. By violating this right, affective neglect is a serious form of negligence that can cause deep and lasting emotional damage. In this sense, civil liability for affective abandonment emerges as an important legal tool to ensure that parents fulfill their duty to care not only physically, but also emotionally for their children, guaranteeing their right to family life in its entirety.

### THE LEGAL ASPECTS OF AFFECTIVE ABANDONMENT

In the legal sphere, affective abandonment is analyzed from the perspective of civil liability, requiring three essential elements to be proven in order to establish damage: the unlawful act (in this case, the omission of the duty of care and affection), the damage suffered (the emotional and psychological damage caused to the child) and the causal link between the parental omission and the emotional disorders. It is not a question of forcing parents to love their children - as love is a subjective feeling - but of ensuring that they comply with the objective duty of care imposed by the legal system.

Case law has shown itself to be sensitive to this issue, although there are still differences of opinion as to the uniform application of civil liability in cases of emotional abandonment. An important milestone in this debate was the decision of the Superior Court of Justice (STJ) in Special Appeal No. 1.159.242-SP, in 2012, in which the court recognized the possibility of compensation for moral damages arising from affective abandonment.

CIVIL AND CIVIL PROCEDURE. FAMILY. AFFECTIVE ABANDONMENT. COMPENSATION FOR MORAL DAMAGE. POSSIBILITY. 1 There are no legal restrictions on the application of the rules concerning civil liability and the consequent duty to indemnify/compensate in Family Law. 2

Care as an objective legal value is incorporated into the Brazilian legal system not with this expression, but with locutions and terms that manifest its various endings, as can be seen in art. 227 of the CF/88. (3) Proving that the legal obligation to care for one's offspring has been breached implies recognizing the occurrence of civil wrongdoing, in the form of omission. This is because the *non facere*, which affects a legally protected good, i.e. the necessary duty of upbringing, education and companionship - of care - implies a breach of the legal obligation, which gives rise to the possibility of claiming compensation for moral damages for psychological abandonment. (4) Despite the countless hypotheses that minimize the possibility of one of the parents taking full care of their offspring, there is a minimum core of parental care which, beyond mere compliance with the law, guarantees the children, at least in terms of affection, the conditions for an adequate psychological formation and social insertion. (5) The characterization of affective abandonment, the existence of excludable or even mitigating factors - because they require a re-examination of factual matters - cannot be re-evaluated in the narrow way of a special appeal. (6) Alteration of the amount set as compensation for moral damages is possible, on special appeal, in cases where the amount stipulated by the court of origin proves to be derisory or exaggerated. 7. special appeal partially granted.

When appealing to the STJ, the father argued that the case did not constitute an illegal act. However, Justice Nancy Andrighi, a member of the Third Panel, concluded that parental responsibility could be established on the basis of affective abandonment and uttered the famous phrase in the decision: "To love is a faculty, to care is a duty". Her words sum up the court's understanding of the issue. The STJ emphasized that, although the feeling of affection cannot be compelled, the absence of care and attention on the part of parents, when it causes significant damage to the child's psychological development, must be repaired.

## THE IMPACT OF EMOTIONAL ABANDONMENT ON PSYCHOLOGICAL DEVELOPMENT

The legal recognition of affective abandonment is based on the understanding that the deprivation of parental affection during childhood can cause profound and lasting damage to an individual's mental health and emotional development. Children who do not receive adequate emotional support from their parents tend to face difficulties in establishing emotional bonds and developing their own identity. In many cases, these children carry the emotional scars of neglect into adulthood, manifesting self-destructive behavior, self-esteem problems, insecurity and even difficulties in their personal and professional relationships. For Valéria Silva Galdino Cardin:

With regard to the damage experienced and the causal link, it should be noted that parental neglect of their children has been identified as one of the main factors triggering antisocial behavior in children, and is closely associated with the life history of alcohol and other drug users, and adolescents with offending behavior, as well as causing various psychoneuroses and character deviations. (CARDIN, 2017, p. 52)

Affective neglect, therefore, is not a simple moral or family deviation, but a serious violation of the fundamental rights of children and adolescents. Emotional support is an inseparable part of the process of personality development and formation. Parents who deliberately or negligently fail to provide this support break their commitment to creating a safe and healthy environment for their children, violating the right to full family life and the constitutional principles of dignity and integral protection. Cardin states that

Psycho-affective support or moral assistance involves, in general terms, parents transferring essential values to their children so that they can relate to other members of society. It is not possible to conceive of responsible parenting without parents necessarily providing their children with this type of support, because the parents' responsibility consists mainly of helping them to build their own freedom. (CARDIN, 2017, p. 47)

Furthermore, it is important to emphasize that the right to family life and the duty of care are not exclusive to biological relationships. In the case of adoption or recomposed families, for example, the obligation to offer emotional support and guarantee an environment of affective coexistence also applies, reinforcing that the bond of affection transcends the blood relationship and is consolidated in the legal and affective responsibility of those who assume the role of caregiver.

In light of the above, affective abandonment and the violation of the right to family life must be understood as issues that go beyond the individual scope of family relationships, reaching a legal and social dimension of great relevance. Civil liability for affective abandonment represents a step forward in recognizing that a child's full development depends, in addition to material support, on affection and harmonious family life. The right to family life, guaranteed by the Federal Constitution and the Statute of the Child and Adolescent, cannot be neglected without legal consequences, since the deprivation of emotional care causes significant damage to the developing personality.

Therefore, by recognizing civil liability for affective abandonment, the Brazilian legal system reinforces the principle of human dignity and guarantees that children and adolescents are protected not only in their material aspects, but also in their emotional dimension, which is essential for their full development as citizens.

In addition to civil liability, it is essential to discuss the public and social policies that can be implemented to prevent affective abandonment and promote healthy family coexistence. Society as a whole, including governments, institutions and non-governmental organizations, plays a crucial role in building an environment that values and protects the right to family life. Education programs for parents, which address the importance of emotional support and communication in raising children, can contribute significantly to reducing cases of affective abandonment.

These initiatives can include talks, workshops and awareness campaigns that emphasize the importance of affection in raising children. In addition, it is essential to offer psychological support to families facing emotional and relational difficulties. Access to mental health services, family therapy and parental guidance can help prevent emotional neglect and promote a healthier family environment.

Another important aspect is the training of professionals who work with children and adolescents, such as educators, social workers and psychologists. These professionals must be prepared to identify signs of emotional abandonment and act proactively, offering support and guidance to families in need. Collaboration between schools, social services and health institutions is vital to create a protection network that ensures the right to family life and intervenes in situations of risk.

Furthermore, it is essential that society broadens the discussion about what it means to be a good father or mother, demystifying the idea that material support alone is enough. Affective education should be an integral part of human and family development, just like formal education. In this sense, public policies that encourage positive parenting and emotional care should be prioritized, with the inclusion of topics on healthy family relationships in school curricula.

It is important to note that affective abandonment does not only occur in the context of parental separation or divorce. It can manifest itself in intact families, where one of the parents is emotionally absent or unable to offer support and affection. It is therefore necessary to broaden the perspective on family dynamics and recognize that affective abandonment can be a wide-ranging problem that can affect any family, regardless of its configuration.

The social implications of emotional abandonment are also significant. The lack of emotional support during childhood and adolescence can result in a cycle of helplessness and abandonment that is perpetuated in subsequent generations. Children who grow up without adequate emotional support are more likely to become adults who struggle to form healthy bonds, perpetuating a pattern of dysfunctional relationships. Thus, affective abandonment is not just an individual issue, but a social phenomenon that impacts on family cohesion and collective mental health.

Finally, it is essential that Brazilian legislation continues to evolve in recognizing and protecting the rights of children and adolescents in the face of emotional abandonment. The inclusion of guidelines that ensure that parents are held responsible not only for material support, but also for emotional care, is fundamental to guaranteeing the integrity and well-being of future generations. The fight against affective abandonment requires a multifaceted approach, combining legal, social and educational efforts, always aiming for the full protection of children and adolescents, as advocated by the Federal Constitution and the Statute of the Child and Adolescent.

Thus, it is possible to envision a future in which the right to family life is fully respected and guaranteed, where children and adolescents can grow up in loving, safe and healthy environments, conducive to the development of their potential. This will not only benefit the individuals affected, but will also contri-

bute to a fairer and more supportive society, in which respect for the dignity of the human person is a reality for everyone. The responsibility to care, love and educate is a shared

duty that must be exercised with seriousness and commitment by all members of society, especially by those who occupy the most important position in a child's life: their parents.

## REFERENCES

BRASIL. **Constituição Federal**. 10 ed. São Paulo. Saraiva: 2010.

BRASIL, **Lei nº 10.406 de 10 de janeiro**. Código Civil, 2002. Disponível em [http://www.planalto.gov.br/ccivil\\_03/Leis/2002/L10406.htm](http://www.planalto.gov.br/ccivil_03/Leis/2002/L10406.htm) Acesso em: 10 de outubro de 2024.

CARDIN, Valéria Silva; VIEIRA, Tereza Rodrigues; BRUNINI, Bárbara Cissettin Costa. **Famílias, Psicologia e Direito**. Brasília, 1. Ed, 2017.

CARVALHO, Cleide. **STJ condena pai a indenizar filha por abandono afetivo**. 2012. Disponível em: <<http://STJ condena pai a indenizar filha por abandono afetivo. Leia mais: https://oglobo.globo.com/brasil/stj-condena-pai-indenizar-filha-por-abandono-afetivo-4793531#ixzz5J1hW0uTy stest>>. Acesso em: 10 de outubro de 2024.

CAVALIERI FILHO, Sergio. **Programa de responsabilidade civil**. 10. Ed. São Paulo: Atlas, 2012.

COELHO, Fábio Ulhoa. **Curso de direito civil, volume 2: obrigações: responsabilidade civil**. 5. ed. São Paulo: Saraiva, 2012.

CUNHA, Mariana Bezerra. **Abandono Afetivo: A possibilidade de Reparação pecuniária em face da omissão do dever de cuidado**. 2017. 62 folhas. Monografiapara conclusão de curso - Faculdade de Ciência Jurídicas e Sociais do Centro Universitário de Brasília – UniCEUB, Brasília, 2017.

GAGLIANO, Pablo Stolze; PAMPLONA FILHO, Rodolfo. **Novo curso de direito civil/responsabilidade civil**. 11. Ed. São Paulo: Saraiva, 2013.

LACERDA, André Reis. **O papel dos pais perante o Estatuto da Criança e do Adolescente**. 2013. Disponível em: <<https://asmego.org.br/2013/10/23/o-papel-dos-pais-perante-o-estatuto-da-crianca-e-do-adolescente/>>. Acesso em: 12 de outubro de 2024.

LÔBO, Paulo Luiz Netto. **Código Civil Comentado. Direito de Família. Relações de Parentesco. Direito Patrimonial (Coordenador Álvaro Villaça Azevedo)**. São Paulo: Atlas S.A., 2003.

MIRANDA, Amanda Oliveira Gonçalves de. **Responsabilidade civil dos pais nos casos de abandono afetivo dos filhos**. Jus Navigandi, Teresina, ano 17, n. 3242, 17 maio 2012. Disponível em: <<http://jus.com.br/revista/texto/21799>>. Acesso em: 5 de outubro de 2024.

SCANDELARI, Cibele. **A importância do pai na vida dos filhos**. 2015. Disponível em: <<https://www.semprefamilia.com.br/a-importancia-do-pai-na-vida-dos-filhos/>>. Acesso em: 5 de outubro de 2024.

TENIUS, Márcia Regina. **Abandono Afetivo: Responsabilidade Civil pelo Desamor**. 2014. 37 folhas. Monografia para conclusão de curso – Universidade Tuiuti do Paraná, Curitiba, 2014.