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Initial considerations on Accessibility and Public Law: the fundamental guarantee of persons with disabilities.

Initial considerations on Accessibility and Public Law: the fundamental guarantee of people with disabilities

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Summary

The study of Brazilian Public Law, which includes Constitutional Law, encompasses numerous areas, among them the Fundamental Rights of the Human Person, which in turn includes the rights of persons with disabilities. For persons with disabilities to have their rights guaranteed and protected by the state, the pursuit of accessibility in its broadest sense must be prioritized, so that every person has free access to public and private spaces, having the right to freely exercise their human capacities in various environments, such as the workplace, education, culture, and others. The encouragement of public accessibility policies, social and academic awareness on the subject, as well as the promotion of affirmative action policies, are necessary for the construction of a democratic scenario where all people, including those with disabilities, have the same conditions for human and social development, thus bringing about a reality of greater equality and inclusion.

Keywords: Accessibility; Rights; Guarantees; Constitutional; Inclusion; Equality; Plurality;

Abstract:

The study of Brazilian Public Law, which includes Constitutional Law, encompasses numerous areas, among them the Fundamental Rights of the Human Person, which in turn includes the rights of persons with disabilities. For persons with disabilities to have their rights guaranteed and protected by the state, the pursuit of accessibility in its broadest sense must be prioritized, so that every person has free access to public and private spaces, having the right to freely exercise their human capacities in various environments, such as the workplace, education, culture, and others. The encouragement of public accessibility policies, social and academic awareness on the subject, as well as the promotion of affirmative action policies, are necessary for the construction of a democratic scenario where all people, including those with disabilities, have the same conditions for human and social development, thus bringing about a reality of greater equality and inclusion.

Keywords: Accessibility; Rights; Guarantees; Constitutional; Inclusion; Equality; plurality;

Introduction

The fundamental rights and guarantees provided for in Article 5 of the 1988 Federal Constitution, They encompass various areas, with the aim of upholding human dignity and combating Social inequalities, which includes the rights of people with disabilities. Within these rights, There are many legal principles and rules, among the most important is accessibility, which will be more highlighted in this academic work. The objective of this study is to understand the concept of accessibility. What are its scopes and what is its legal framework, whether in constitutional texts or laws? federal laws and international treaties signed by Brazil, which have normative force within the country. national legal system.

For there to be equality of conditions in a society, such as access to public spaces. leisure spaces, cultural spaces, work environments, educational environments, and other examples, is



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It is necessary to adapt these resources to include people with disabilities, for example.

creation of ramps for wheelchair users, sign reading, audiovisual technology tools, parking spaces

in workplaces reserved for these people (quotas and affirmative action), so that these people

so that they can exercise their rights in an equal manner, leading a dignified and independent life, in

various social spaces. The inclusion of people with disabilities is part of maintaining the State.

A democratic state governed by the rule of law, since one of the pillars of this state is the fight against various inequalities.

social, which includes the state's duty to promote public policies that favor this inclusion.

Even though the concept of accessibility is infinitely vast, the search for and achievement of accessibility continues.

The development of rights is a continuous and uninterrupted process; therefore, the aim of this work is not to exhaust this topic.

as well as a semantic scope in Law, but to seek to understand its general concepts, in

The goal is to promote greater interest in this topic within the academic community, for the protection of

of the fundamental rights and guarantees foreseen in the Citizen's Charter of 1988. It is therefore a

This is a vast topic that needs to be analyzed in detail in this research, seeking to provide relevant references.

necessary biographical information for the improvement of this research. Understanding the concept of accessibility.

It is about understanding the importance of including people with disabilities in society, seeking to understand

what are their needs, including overcoming physical and sensory barriers, in the creation of

More inclusive public spaces adapted to their demands.

The role of Constitutional Law, as a branch of Public Law, is the pursuit of...

Serving the public interest, which is non-negotiable and inalienable, requires the State to fulfill its duty.

It is their duty, in the pursuit of fulfilling these interests, which includes accessibility. It will be up to them

The Public Prosecutor's Office, human rights bodies, and society as a whole are seeking to oversee...

the State, in order to verify whether it is fulfilling this duty, as well as to demand improvement in

Public systems for transportation, education, health, and others, so that effective inclusion can occur.

The role of people with disabilities in society.

Concept of Accessibility

Before analyzing the technical and legal concept of what Accessibility is, it becomes necessary to...

It is important to remember that the 1988 Federal Constitution establishes a list of rights and guarantees.

fundamental rights listed in article 5 (fifth), including the right to come and go, provided for in

Paragraph XV of that same article, allowing every person the right to access public places,

without any prior impediment, except for exceptions provided by law. However, for a place

public spaces should be accessible, guaranteeing equal conditions for all citizens across various sectors.

In various locations, whether for work, cultural, educational, leisure, open spaces, and other examples, this

It is mandatory to include people with disabilities so that they have access to the same things.

environments.



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Therefore, broadly speaking, accessibility consists of overcoming barriers, whether they are physical and sensory aspects, so that the space is freely accessible, in order to facilitate access for all person, including people with disabilities, containing, for example, ramps for wheelchair users, sensory warnings for blind people, reserved spaces for people with disabilities (parking spaces, restrooms, benches, and places to eat), as well as other examples. In educational settings, such as In universities and public libraries, there should also be specific services provided for people with mental or intellectual disabilities, so that they can develop their studies and to gain access to the knowledge offered by the institution.

It is clear that overcoming barriers is about overcoming social inequality, and is an effort which must be carried out by the various social, political and economic sectors, allowing for greater Accessibility and equal opportunities for people with disabilities. It can also be highlighted that... A quota system for people with disabilities in the job market, allowing all of these... so that people have access to these environments and can be compensated for their work. allowing access to fair compensation. Regarding the word "access," without considering its meaning. Within the context of accessibility, Eduardo José Manzini makes an important point when discussing this subject, stating the following information:

"A first reading of the word accessibility brings to mind another: access. But access to what? Access to a higher salary? Access to a higher position? A second, more attentive reading makes one reflect that access means leaving a certain situation or place for another situation or place different from the previous one, that is, access means arriving at a place or situation different from the previous one. The term access has been widely used recently. In the field of education, there is talk about access to the curriculum; in health, one can observe the issue of access to medicines; in terms of social participation, one can visualize the issue of access to work. These concepts are, in a way, related, but their essences are different. One of the interpretations that distinguishes access from accessibility is that the first term seems to reflect a desire for change and the pursuit of some objective. Access seems to mean the process of achieving something. The term access means the need to struggle to achieve an objective. It also seems to be related to the issue of attitude towards exclusion" (MANZINI, 2005, p. 31).

The concept of accessibility is much broader than the word "access," as it deals with... a struggle for inclusion and equal opportunities in a society and its resources, whether in education, in the job market, in politics, and among other examples. Overcoming physical barriers, Sensory and intellectual adaptations are necessary to ensure accessibility for people with disabilities. within social and cultural contexts, in order to encompass the fundamental principles of a State. Democratic rule of law, in the pursuit of greater equality and the achievement of rights.

1.1 Accessibility and overcoming barriers:

The fight against discrimination is an ongoing task that requires changing pre-existing parameters established by society, in order to overcome prejudice and thus achieve the inclusion of all people, especially people with disabilities. Overcoming existing barriers in various



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social environments need accessibility and inclusion for people with disabilities.

environments, for example, work, education, leisure, culture, sports, and others.

Examples. Each barrier must be observed beforehand, as each one has a characteristic.

distinct, which ultimately affects the lives of people with disabilities in the exercise of their rights.

fundamental rights, such as the right to come and go freely. For example, the absence of ramps in public spaces.

For wheelchair users, it's a barrier, because without these ramps, people in wheelchairs will not be able to access the area.

these environments. Therefore, once this barrier is identified, it will be up to the public initiative (for example, of (city hall) to provide architectural reforms so that wheelchair users can thus

to access these same environments.

For people with hearing impairments, so that they can understand the content of a

Whether in a film, a lesson, or an exhibition, the presence of a message is necessary.

a person who can perform sign language exercises, so that this hearing barrier can be overcome.

allowing people with deafness or hearing impairment to access the same content as

The message, in relation to other people. Braille reading is also necessary in environments...

public and private institutions, so that visually impaired people can understand in which

environments that are circulating, even allowing their movement on public transport,

allowing the free exercise of the right to come and go.

The presence of professionals trained for the inclusion of people with disabilities is

fundamental to overcoming these barriers. In the educational environment, for example in

In universities, whether public or private, there must be at least one teaching assistant per classroom.

to help people with intellectual or cognitive disabilities understand and assimilate the content

taught in the classroom, allowing them full access to education. In the health field, it is even more so.

It's easy to see this need, whether in various areas of medicine, so that people with

People with disabilities have access to appropriate and equal treatment, adapted to their needs.

physical and psychological.

It is evident that overcoming barriers is an arduous and constant task, uninterrupted and

necessary to guarantee a more just and inclusive social scenario, allowing for independent living.

of people with disabilities, in the exercise of their work, in access to education, in interaction with others

people and the places they frequent. Even though there is still much to be overcome, in relation

Urban, cultural, and educational barriers, for example, can always be improved.

A public setting, allowing for greater accessibility and combating existing inequalities.

The promotion of public policies by the State is necessary to overcome these barriers.

enabling the promotion of the fundamental rights of persons with disabilities and human dignity,

in the fight for a more inclusive and plural society.



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2. Brazilian Legislation and Accessibility:

Regarding current Brazilian legislation concerning the rights of people with disabilities:

Regarding disability, especially concerning accessibility, Federal Law No. 13.146 deserves special mention.

2015, also known as the Statute of Persons with Disabilities, which in its article 3, I brings

The technical concept of accessibility, when stating:

"Article 3. For the purposes of applying this Law, the following definitions apply: I - accessibility: the possibility and condition of access for use, with safety and autonomy, of spaces, furniture, urban equipment, buildings, transportation, information and communication, including their systems and technologies, as well as other services and facilities open to the public, for public use or private use by the public, both in urban and rural areas, by persons with disabilities or reduced mobility" (BRAZIL, 2015).

The concept of accessibility has a universal scope, encompassing all sectors of education, work, social security, health, culture and leisure, transportation, and others.

sectors, allowing people with disabilities to live independently, autonomously, and safely.

guaranteeing the exercise of citizenship. The public authorities at their federative levels (federal, state,

Municipal and district governments should promote public policies that favor accessibility for people with disabilities.

disability, bringing economic and political incentives for the promotion of these rights. The initiative

The private sector must also collaborate in protecting these rights, promoting the inclusion of these people.

in the country's economic system, for example, quotas reserved for people with disabilities in the job market.

work, which also includes their protection in the work environment, with the use of equipment.

and access to adapted spaces, as well as social security protection for these people, who are

Contributors to the RGPS (General Social Security Regime) should have access to its benefits.

More specifically, Federal Law No. 10,098 of 2000 deserves highlighting, as it deals with...

Regarding accessibility, including people with disabilities and people with reduced mobility,

which speaks about the need to overcome barriers in order to achieve this inclusion.

of these people in society. By listing the types of barriers that need to be overcome, the

Article 2, paragraph II of this same law states:

"Article 2. For the purposes of this Law, the following definitions are established: [...] II - barriers: any impediment, obstacle, attitude or behavior that limits or prevents the social participation of the person, as well as the enjoyment, use and exercise of their rights to accessibility, freedom of movement and expression, communication, access to information, understanding, safe circulation, among others, classified as: a) urban barriers: those existing in public and private roads and spaces open to the public or for collective use; b) architectural barriers: those existing in public and private buildings; c) transport barriers: those existing in transport systems and means; d) communication and information barriers: any impediment, obstacle, attitude or behavior that hinders or prevents the expression or receipt of messages and information through communication systems and information technology" (BRAZIL, 2000).

It is noticeable that there are many barriers in various public spaces, which need to be overcome.

observed and overcome, in order to guarantee the protection of accessibility, allowing every person with



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People with disabilities should have free access to social spaces, enabling them to earn a living and interact with others.

People and the conquest of their space, in the pursuit of forming a more just and plural society.

Urban planning organized by the municipality, through a master plan, must include

people with disabilities, developing ramps for wheelchair users, wide open spaces and with

Signage for people with visual or hearing impairments, Braille reading, equipment for

People with motor disabilities, among other examples, are responsible for the duty of the federal public entity.

It should always be monitored by the Public Prosecutor's Office, human rights bodies, and by...

society as a whole.

3. Accessibility and guarantees under International Law.

The achievement of accessibility rights for people with disabilities is also due to...

international contribution, such as the international treaties signed and incorporated into Brazilian law.

Brazil. As an example, the International Convention on the Rights of Persons with Disabilities and its... should be cited.

optional protocol, incorporated into Brazilian law by Federal Decree No. 6,949 of 2009, of which in its

Article 3, paragraph "f" refers to accessibility as a legal principle that shapes the rules.

international matters. Article 9 of that same convention also deals specifically with...

accessibility, as well as the obligations that signatory countries to the treaty must fulfill, thus

available:

Article 9: [...] 2. The States Parties shall also take appropriate measures to: a) Develop, promulgate, and monitor the implementation of minimum standards and guidelines for the accessibility of facilities and services open to the public or for public use; b) Ensure that private entities offering facilities and services open to the public or for public use take into account all aspects related to accessibility for people with disabilities; c) Provide training to all stakeholders regarding accessibility issues faced by people with disabilities; d) (e) To provide human or animal assistance and mediator services, including guides, readers, and professional sign language interpreters, to facilitate access to buildings and other facilities open to the public or for public use; (f) To promote other appropriate forms of assistance and support for people with disabilities in order to ensure that these people have access to information; (g) To promote access for people with disabilities to new information and communication systems and technologies, including the Internet; (h) To promote, from the initial phase, the conception, development, production, and dissemination of information and communication systems and technologies, so that these systems and technologies become accessible at minimum cost" (BRAZIL, 2009).

The article mentioned above provides an illustrative list of affirmative action actions.

which must be observed by the signatory states, allowing the free movement of people.

people with disabilities in public places, as well as access to work environments, culture and

Education. Braille signage, catering to people with visual impairments, as well as the language.

The use of sign language for deaf people and interactive technology are examples that deserve to be

highlighted in Article 9 of the Statute of Persons with Disabilities. It is necessary that



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guaranteeing the interaction of the person with a disability in relation to their environment, in a way that... independent and free individuals can have the same access to resources offered to other people, valuing for a scenario of greater social inclusion and equality.

The right to come and go, the freedom to work, and access to cultural resources. (theatres and cinemas, for example), of the education system (from primary to higher education) These will only be possible if accessibility is guaranteed for people with disabilities, in overcoming... overcoming physical and social barriers in the pursuit of these fundamental rights guaranteed by The 1988 Federal Constitution. Accessibility to political representation and in public spaces is also included. public power in society, on the part of people with disabilities, so that there is a leading role. of their rights and demands for improvements, so that public policies can be promoted. favorable to access to these rights, therefore accessibility in its broadest sense.

International input is very important for improving legislation. Brazilian, always seeking innovations and necessary concepts to meet demands. social issues, especially those of people with disabilities.

3.1 Organization of American States (OAS) Convention on Accessibility:

The Federative Republic of Brazil is a signatory and participant in the Organization of American States (OAS), and therefore, the OAS's international treaties on human rights have binding force on member countries, which must observe its guidelines in combating discrimination and promoting the fundamental rights of the human person. In the case of the rights of persons with disabilities, there is a convention addressing various topics, including accessibility. Even using only the word "access," its concept is more comprehensive, as it deals with accessibility, requiring the guarantee that people with disabilities have the opportunity to frequent the same public spaces, with the State having a duty to assist in overcoming existing barriers. Regarding the issue of overcoming existing barriers to create a scenario of greater social inclusion, researcher Flávia Renata Feitosa Carneiro makes an important statement, saying: "[...] Reflected in the pursuit of protecting rights and promoting autonomy, self-determination, independence, as well as the elimination of barriers, prejudices or discrimination of any kind, the struggle for changing social paradigms began."

For the purposes of this research, a qualitative, exploratory methodology was used, employing bibliographic and documentary procedures, supported by scientific articles, as well as existing legislation on the subject. Investigating and analyzing the associations between History and Law is of great importance, especially given the normativity perceived in a given historical context as a past experience that clarifies the present" (CARNEIRO, 2021, p. 08).

Accessibility, as the same international OAS convention already reinforces, encompasses the various environments, such as the work environment, study environment, leisure environment, cultural environment, financial environment, sports environment and Among other things, the State has a duty to promote the inclusion of people with disabilities in society, in effort to combat social inequality. The same convention was incorporated into Brazilian Legal System with Federal Decree No. 3,956 of 2001, having the force of law in Brazil, making the Brazilian State, as a legal entity, responsible for To promote public policies that encourage the inclusion of people with disabilities in society. This



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The OAS international convention, incorporated by Brazil, was the result of the OAS Convention which occurred in Guatemala in 1999.

Also noteworthy is Federal Decree No. 678 of 1992, which incorporated the Convention into Brazilian law. American Convention on Human Rights, also known as the Pact of San José, Costa Rica of 1969, addressing the issue of combating all forms of discrimination, which includes protection of the fundamental rights and guarantees of people with disabilities, and Brazil must comply with These determinations are in accordance with the requirements of this international protocol. As previously stated, the Promoting public policies to combat social inequalities also includes promoting Accessibility, in its broadest sense, refers to overcoming physical and sensory barriers. allowing for the effective and equal inclusion of people with disabilities in society.

Accessibility and Brazilian Public Law:

As seen throughout this academic work, the need for understanding is evident. the concept of accessibility and its construction based not only on national law, but also based on international human rights treaties and conventions, which address rights Regarding people with disabilities. About Brazilian Public Law, which encompasses many areas, among them... Regarding Constitutional Law and Administrative Law, it is important to mention the principle of supremacy. The principle of public interest over private interest is one of the pillars of this branch of law, and the State must... To meet the interests and demands of the community.

In this sense, accessibility is part of the public interest, as it is in the interest of... The inclusion of people with disabilities is a collective effort, as they too are part of the social collective. Brazilian citizens, whose rights must be recognized and fulfilled by the State. The State must To promote public policies that favor the inclusion of people with disabilities, allowing their free participation. access to public places, such as squares, parks, museums, theaters, cinemas, as well as transportation. public and in work environments, for example. Also the principle of unavailability of Public interest shapes the relationships of Public Law, and the State cannot abandon it. The need for inclusion of people with disabilities in society, having the duty and the Civil liability in promoting good public service, promoting accessibility in its In a broader sense, regarding public policies in favor of the rights of people with disabilities, the researchers Victor Dantas de Maio Martinez, Luciana Romano Morilas and Fernando Luís Barroso da Silva Filho makes an important point on the subject, saying:

"The development of public policies aimed at people with disabilities is enshrined in the Constitutional text as a concurrent competence of the Union, the States, and the Federal District, as provided for in Article 24, item XIV, of the Magna Carta: to legislate on "protection and social integration of people with disabilities." [...] In Brazilian cooperative or vertical federalism, the autonomy of the federated entities helps in understanding the functioning of the State and, especially, in the constitutional implementation of public policies. In this regard, it is necessary to analyze the capacity for self-organization."



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of the member states, through their Constitutions" (MARTINEZ; MORILAS; FILHO, 2024, p. 299).

Article 37, paragraph 1 of the 1988 Federal Constitution deals with the principles that govern...

Public Administration, with the State having a duty to provide a service with efficiency and speed,

Morality, respecting legal limits and impartiality in the service provided. The service of

People with disabilities in public offices should be protected by these principles, seeking to overcome barriers and allowing accessibility for these individuals, as exemplified by the Unified Health System.

Health (SUS), which must understand the characteristics of each person with a disability, seeking to serve them efficiently, observing the legal norms regarding their fundamental rights. Case

If the State fails to fulfill its civil and legal duties towards the person with a disability, it will be up to them...

accountability and even the possibility of compensation for the person with a disability, given that

State civil liability is provided for in article 37, §6 of the same constitutional text. In

In cases of harm to a person with a disability, the public official may be held liable for the harm caused, whether... in the civil, administrative, and even criminal spheres.

Understanding accessibility in Public Law is necessary for public service.

provided not only in the area of health, but also in education, public safety, culture and

Among other spheres, it may encompass constitutional principles, promoting human dignity.

of people with disabilities, as well as combating discrimination, thus enabling the construction of a more just, equal, and pluralistic society.

Conclusion

The historical evolution of Law presents several interesting factors that need to be...

studied by researchers in the legal field, as well as by other branches of the humanities and

social issues, in the pursuit of understanding and constructing concepts. One of these concepts explored in this...

The academic work focused on accessibility, which arose as a result of the historical evolution of law.

Brazilian and the contributions of international treaties and conventions, in the pursuit of implementation

and the achievement of the rights of persons with disabilities, in order to better serve the universal right of

The dignity of the human person. Understanding the concept of accessibility is not an easy task, requiring...

to be improved by the various branches of Law, especially Public Law, which in turn

It regulates public relations between the State and private individuals.

In the pursuit of a democratic environment, the promotion of public policies is necessary.

favorable to the inclusion of people with disabilities in society, whether through affirmative action.

(quotas in job openings, for example), as well as in the construction of inclusive environments, adapted to each disability, whether visual, sensory, auditory, intellectual, motor, and among other examples. It is

Overcoming barriers is necessary to adapt public spaces to...



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welcoming these people into academic, cultural, educational, work, and leisure environments, health facilities and others.

Accessibility is a very broad and profound concept that needs to be achieved more and more. more, with the greatest possible scope, so that all people with disabilities can be included and having their rights guaranteed, such as the right to come and go, frequenting places without no restrictions, the right to work, economic activity, social participation and full exercising citizenship, including access to polling places, to exercise their rights. Electoral matters. Accessibility should be adopted as a fundamental legal principle of the dignity of... A person with a disability, seeking to improve public relations between the State and private individuals. as a person with a disability.

In the pursuit of overcoming social inequality, in the construction of a more just society. And in a pluralistic way, it is necessary that the concept of accessibility be taught to students and promoted by The State, seeking to understand the types of barriers that still exist in the social context, in order to... It would be better to overcome them, bringing about a more inclusive and democratic scenario, as the text proposed. of the Federal Constitution of 1988. Article 5 of the same constitutional text contains the list of fundamental rights and guarantees, which includes the need for inclusion of people with disabilities, This being one of the priorities in the construction and consolidation of a democratic state. The incorporation of international treaties on these rights into Brazilian law makes it even more... The topic is relevant in building this democratic scenario, promoting these fundamental guarantees. as a universal human right, the right to accessibility.

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