

## The right to education for prisoners in Brazil and its legal aspects

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### Abstract

This paper discusses the right to education of the imprisoned population in Brazil and aims to analyze the legislation surrounding this right. This research is based on a qualitative approach, from a bibliographic and documentary research that starts by examining the main international treaties and national legislation that discuss the right to education of this segment. It is important to emphasize that although education is characterized as an instrument of resocialization, it should not be treated solely for this purpose, but rather as a necessary and concrete right that must be guaranteed especially for historically marginalized segments of the population.

**Keywords:** Right to education. Prisional system. Brazil

### O direito à educação do preso no Brasil e seus aspectos legais

#### Resumo

Este trabalho discorre sobre o direito à educação da população em situação de cárcere no Brasil e tem como objetivo geral analisar a legislação em torno desse direito. A presente investigação fundamenta-se na abordagem qualitativa, a partir de uma pesquisa de cunho bibliográfico e documental que parte do exame dos principais tratados internacionais e da legislação nacional que discorrem acerca do direito à educação desse segmento. É relevante frisar que apesar da educação ser caracterizada como um instrumento de ressocialização, ela não deve ser tratada apenas para este fim, mas sim como um direito necessário e concreto que deve ser garantido em especial para os segmentos historicamente marginalizados.

**Palavras-chave:** Direito à educação. Sistema prisional. Brasil.



## 1 Introduction

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In order to deal with the right to education of prisoners in Brazil it is necessary, first of all, to mention the reality in which we are living, still characterized by the Pandemic of Covid-19, which unfortunately claimed millions of lives globally. In Brazil, this disease has spread rapidly, killing about 603,465 people. This tragedy was the result of the institutionalization of a policy of extermination through the spread of Covid-19 orchestrated by the federal government, as explained in Bulletin No. 10 entitled: "Rights in the Pandemic," published in 2021 through a partnership between Conectas Human Rights and the Center for Research and Studies in Health Law (CEPEDISA).

Thus, it is possible to perceive that the health crisis aggravates the neglect of the public by deepening the neoliberal adjustment. In the sphere of education, there is a budget cut project, especially in universities, boycotting the national development when it directly attacks the investments in training programs such as the Institutional Program of Scholarship and Initiation to Teaching (PIBID) and the Educational Residency (RESPED), extending these attacks to research and, thus, reverberating on science and the generation of new knowledge (BRASIL DE FATO, 2021). In this sense, it is valid to state that an educational project that excludes the poorest people, those who live on the margins of society, is being disseminated. Among them, there are young people and adults who enter the world of crime and, to pay the penalties, are inserted in social-educational environments and in prisons. For these subjects, the current government does not conceive the right to life, much less to education.

In view of this fact, it is necessary to research and learn more about the legislation regarding the right to education for the incarcerated population. Such theme demonstrates its relevance by contributing to the awareness of education professionals about the problems that permeate education in the prison system and the promotion of discussions on the subject, as well as the possibility of creating new public policies aimed at the education of young people and adults in the Brazilian prison system, aiming to ensure the right to education.





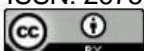
## 2 Methodology

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This research derives from the completion work of the Pedagogy Course of the Faculty of Education (FE), of the State University of Rio Grande do Norte (UERN) and has as general objective to analyze the legislation around the right to education of the population in prison. To this end, a documentary survey of national and international legislation on the subject was conducted, using documents such as the Universal Declaration of Human Rights - UDHR (1948), the World Conference on Education for All (UNESCO, 1998), the six CONFITEAS (MEC, 2014), the Federal Constitution - FC (1998), the Law of Criminal Enforcement - LEP (Law No. 7.210 of 1984), the Statute of Children and Adolescents (law no. 8. 069, 1990), the Law of Directives and Bases of National Education - LDB (Law No. 9.394 of 1996), the National Education Plan - PNE (2014-2024), Minimum Rules for the treatment of prisoners in Brazil (resolution No. 14 of November 11, 1994), the National Guidelines for the provision of education in prisons (resolution No. 2, May 2020), among others.

In view of the above, this research is configured as qualitative, because according to Sampieri (2006), this approach allows the development of hypotheses before the beginning of collection, during and after. Generally, it helps in the discovery of the most relevant questions about the theme, enabling its refinement and, possibly, answers to the problem delimited. In this way, the process occurs dynamically between the existence of the events and the reading and examination made by the researcher. Thus, for Sampieri (2006):

Often this approach is based on methods of data collection without numerical measurement, such as descriptions and observations. Questions and hypotheses regularly arise as part of the research process, which is flexible and moves between events and their interpretation, between responses and theory development. Its purpose is to "reconstruct" reality as observed by the actors of a predefined social system. It is often called "holistic" because it considers the "whole" without reducing it to the study of its parts (p. 5).





## 3 Results and Discussion

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The historical process of education in Brazil was/is marked by injustices practiced through the denial of rights, as well as by struggles that sought to reverse this reality. Ribeiro (1992) discusses this by explaining the various phases that go from the colony to the Military Dictatorship, thus enabling the perception of how slow was the proclamation of education as a right for all people, as also says the Brazilian teacher, researcher, and philosopher, Dermeval Saviani (2013).

That said, it is valid to say that for a long time education was only for a minority who used it for their own benefit. According to Ribeiro (1992), the history of education in Brazil has had several moments and divergences since the colonial period. She points out that during the Military Regime, several literacy programs were interrupted, since, based on the Freirean perspective of popular education, they aimed at the political awareness of the people and, consequently, their political and social liberation (RIBEIRO, 1992).

In view of these historical facts, it is essential to know what is set forth in the Brazilian legislation about the right to education of the imprisoned person in Brazil. Therefore, it is necessary to go through the international events/documents which deal with the right to education for prisoners. These are international treaties which have influenced the formulation of laws in Brazil regarding the subject dealt with in this text.

One of the documents considered to be a watershed in the history of education is the Universal Declaration of Human Rights (UDHR), announced by the General Assembly of the United Nations in Paris in 1948. This document stipulates the basic human rights common to all people of all nations and recognizes education as an inherent right of all human beings (GENERAL ASSEMBLY RESOLUTION 217 A).

Another important event was the World Conference on Education for All, which took place in Thailand in 1990 and brought together representatives from many countries to discuss and commit to changing the educational reality of people who live on the margins of society, such as women, the poor, blacks, prisoners, and others subjects





(UNESCO, 1998). This event approved the World Declaration on Education for All and the Plan of Action on the Fulfilment of Basic Learning Needs, which dealt with universal access to primary education, regardless of age, color, sex, and social condition (UNESCO, 1998).

Following this, Resolution No. 14 was approved, of November 11, 1994, responsible for establishing the "Minimum rules for the treatment of prisoners in Brazil" and art. 38 states that "educational assistance shall comprise schooling and professional training of the prisoner". In art. 40 of the same document, it is stated that all persons deprived of liberty who do not have primary education will have access to it by means of primary education will have access to it by means of its compulsory offer.

It was later organized by the United Nations Educational, Scientific and Cultural Organization (UNESCO)

Education, Science and Culture Organization (UNESCO), the United Nations Children's Fund (UNICEF) and the United Nations Development Program (UNDP), under the tutelage of the World Bank, the World Education Forum "Education for All: The commitment to education for all" was organized de Dakar", held in Senegal in 2000. The event brought together several countries that made the commitment to beat the goals established for education, with the main perspective of solving the basic learning needs for the most disadvantaged, such as: children, youth and adults (UNESCO, CONSED, AÇÃO EDUCATIVA, 2001).

Internationally, we also have the six CONFITEAs (International Conference on Adult Education) that took place in several countries such as Canada, Japan, Germany, and Brazil. They are characterized as relevant in defining the criteria relating to adult education in the international and national sphere. (MEC, 2014).

At the national level, the Constitution of the Federative Republic of Brazil (CF of 1988) guarantees the right "[...] to education and learning throughout life" (art. 206 of CF/1988). Thus, it is inferred that people who are in prison units are included in this list, since they do not lose all their rights, as stated in the LEP/1984. In art. 208 of CF/88, it is exposed the means that the State must use to guarantee free education. From this thus,





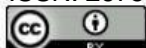
in item I, it is stated that basic education, comprising the stages of Kindergarten, Elementary School (initial and final years) and High School, is compulsory from 4 to 17 years of age, as well as being a right of those who did not have access at this age.

In this same sense, chapter IV of the Child and Adolescent Statute (Law no. 8069, 1990), entitled "The Right to Education, Culture, Sports, and Leisure", ratifies in its article 54, that the offering of compulsory education levels is the State's duty, and that it is also up to the State to offer it to those who did not have access to it at the appropriate age. Having said this, it is valid to affirm that the State is responsible for guaranteeing the access of young and adult prisoners to education.

In this same vein, the Law of Directives and Bases for Education (LDB, nº 9.394, 1996), in its 4th article, states that it is the State's duty to promote public school education, and reaffirms that access to education must be guaranteed to those who did not finish at the stipulated age, as well as the offer of education at nighttime for students who cannot study during the daytime, in the same way that education must be offered to young people and adults "with characteristics and modalities appropriate to their needs and availability [...]".

It is important to remember that education for people in situation of deprivation of freedom was not always portrayed in the Brazilian National Legislation, being found first in the Law of Penal Execution (LEP, 1984), in the Minimum Rules for the treatment of prisoners in Brazil (Resolution No. 14, 1994) set by the National Council of Criminal and Penitentiary Policy (CNPCCP) and, years later, in the National Education Plan (Law No. 10.172 of 2001). Thus, only in 2009 the legal apparatus that provides the National Guidelines for the provision of education in prisons (Resolution No. 03/2009).

Thus, the Normative Resolution No. 03 of 2009, states in its article 2 that education developed in prison contexts should be based on educational legislation in force in Brazil and the LEP, given the particularities of each level and type of education and teaching. It establishes that education in the units should meet, result, contemplate, associate and promote (BRASIL, 2009).



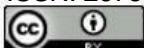


Article 4 provides that the management of education should allow partnerships with other areas, such as: government, universities and civil society organizations. Article 5, on the other hand, deals with the structure of the spaces destined for education within prisons, making it incumbent on the authorities responsible for penal establishments to provide appropriate physical spaces for the development of educational activities, such as, for example, the availability of classrooms and libraries, as well as including educational activities in the institution's routine. It is also up to the authorities of penal establishments to disseminate information to encourage inmates to participate in educational practices (BRASIL, 2009).

Article 8 shows that prison work must be offered at a time that makes it possible to combine it with educational activities. The Resolution also brings in its art. 9 the concern with access to integrated and continuing training programs for all agents involved with penal establishments, in order to understand the importance of educational actions and the educational dimension of work. In article 10, it states that educational activities may be planned beyond formal education, contemplating the non-formal, professional, and allowing the adherence to distance education - EaD (BRASIL, 2009).

The Resolution No. 2, of May 19, 2020, provides about the "National Guidelines for the provision of education for youth and adults in situations of deprivation of liberty in prisons. In this same follow-up, it is worth mentioning law 13.005/2014 that approved the National Education Plan (PNE), a document responsible for determining the educational guidelines, goals, and strategies nationwide from 2014 to 2024. One of the strategies established was the 9.8 encountered in goal 9 that has as its target audience people who are in conditions of deprivation of liberty (BRASIL, 2014).

In this continuation, in art. 3 of LEP, it is stated that all rights not achieved by the sentence/law should be guaranteed, that is, people who are incarcerated have their right to freedom restricted, however, the other rights that are not affected, they will endure, such as: adequate food, leisure and education, the latter being organized/offered within the specificities of each establishment.





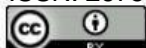
In LEP, one can also count on the possibility of sentence remission through study, since in Art. 126 (Redaction given by Law No. 12.433, 2011) it is pointed out that "the convicted person serving a sentence in a closed or semi-open regime may remit, through work or study, part of the time of execution of the sentence. It is also put in the referred law that for every 12 hours of school attendance, 1 day of sentence is decreased. For this modality, the activities can be elementary school, high school, vocational, higher education or professional requalification (BRASIL, 2011).

Recommendation No. 44 of 2013, of the National Council of Justice, provides about complementary educational activities for the remission of sentence by study and determines criteria for remission through reading. In this sense, the participation of prisoners in reading projects should be voluntary and the deadline set for the reading of one work is 21 to 30 days, at the end, the reader will have to submit a review about the book read, because this is the criterion for the remission of 4 days for 1 book read to be valid (BRASIL, 2013). Thus, during a year it is only possible to read a maximum of 12 literary works and, therefore, 48 days redeemed.

In view of these points and considering the abundance of documents that guarantee the right to education for all and understanding that the convicted and the interned do not lose it, it is considered that people deprived of freedom have the right to public education aimed at their reintegration into society and it should be guaranteed. In this way, it is valid to affirm that the offer of education in prisons is not a privilege, but a right preconceived and ratified by the Brazilian legislation.

## 4 Final considerations

In view of the above, it is observed that education in Brazil for a long time was destined only to a minority that used it to satisfy their political and economic ideals (RIBEIRO, 1992). As the years go by, education for all people starts to be discussed and defended worldwide and nationally. In view of this, internationally education is recognized as a universal and natural right of the human being first in the UDHR of 1948,







nationally, it is defended as a fundamental right of social nature in the Federative Constitution of 1988. Besides these two significant legal instruments that deal with the right to education, there are also several events, documents, and laws that deal with the subject.

It is therefore valid to affirm that the right to education for people who are in situation of freedom deprivation is strongly supported by the legislation worldwide and rectified in the Brazilian laws. Therefore, it is relevant to emphasize that although education is characterized as an instrument of re-socialization as stated in the LEP (1984), it should not be treated only for this purpose, but rather as a necessary and concrete right that should be guaranteed especially for historically marginalized segments.

Moreover, it is considered that this work is relevant for dealing with a theme that needs to gain more space for discussion in society to bring to light the problems that permeate prison education and thus enable research to be produced on the subject and, consequently, the creation of new public policies and the realization of the right to education for all people deprived of liberty. To this end, it is important to conduct investigations that dialogue with what is presented in the Brazilian legislation about the right to education for prisoners with what happens in practice, so that it is possible to see beyond what is stated in the documents, i.e., discover how this right actually occurs in the daily life of prison units.

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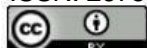
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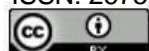
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