

**ACCESS TO EDUCATION AS ONE OF THE MANIFESTATIONS  
OF ACCESS TO JUSTICE IN ITS DIMENSION OF SOCIAL  
INCLUSION**

***ACESSO À EDUCAÇÃO COMO UMA DAS MANIFESTAÇÕES  
DO ACESSO À JUSTIÇA EM SUA DIMENSÃO DE INCLUSÃO SOCIAL***

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**ABSTRACT:** *Fundamental rights and guarantees are divided in the Federal Constitution into individual and collective rights, social rights, nationality rights, and political rights. In this context, the right to education is a fundamental right of a social nature, also recognized in a series of international conventions. In turn, access to justice is a basic principle of the rule of law that describes how citizens have equal access to legal systems in their context. Therefore, the basic notion of education is necessary for the individual to acquire knowledge of his rights and obligations towards the State. In this way, it result in social inclusion and a life with more human dignity.*

**Keywords:** Access to education. Access to justice. Social inclusion. Human dignity.

**RESUMO:** Os direitos e garantias fundamentais estão divididos na Constituição Federal em direitos individuais e coletivos, direitos sociais, direitos de nacionalidade e direitos políticos. Nesse contexto, o direito à educação é um direito fundamental de natureza social também reconhecido em uma série de convenções internacionais. Por sua vez, o acesso à justiça é um princípio básico do Estado de Direito que descreve como os cidadãos têm igual acesso aos sistemas jurídicos em seu contexto. Sendo assim, a noção básica de educação é necessária para o indivíduo adquirir conhecimento dos seus direitos e dos deveres perante o Estado. Desse modo, resultar na inserção social e uma vida com mais dignidade humana.

**Palavras-chave:** Acesso à educação. Acesso à justiça. Inserção social. Dignidade Humana.

Fundamental rights and guarantees are divided in the Federal Constitution by specific themes. They are Chapter I - individual and collective rights; Chapter II - social rights; Chapter III - nationality rights; and Chapter IV - political rights. In this context, the right to education is a fundamental right of a social nature provided for in article six of the Federal Constitution “the social rights are education, health, food, work, housing, transport, leisure, security, social security, maternity and childhood protection, assistance to the destitute”<sup>1</sup>.

Over the years, with the emergence of revolutions, generations of rights were created. From the industrial revolution, mainly from the workers’ struggle in the 19th century and in the middle of the 20th century, the second generation of human rights was consolidated, which comprises social rights, linked to work, education, health, housing, culture, leisure, and security. It refers to the equality of individual conditions before the law.

In the current scenario, fundamental rights are protective rights, which guarantee the minimum necessary for an individual to exist in a dignified way within a society administered by the State. According to the understanding of the Federal Supreme Court:

Violations of these fundamental rights do not only occur in the context of relations between citizens and the State, but also in the relations between individuals and legal entities governed

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1 BRASIL. **Constituição da República Federativa do Brasil de 1988**. Brasília, DF: Presidente da República, 1988.

by private law. Thus, the fundamental rights guaranteed by the Constitution directly bind not only the public authorities, but are also directed towards the protection of individuals in the face of private powers. [...] Private autonomy, which has clear legal limitations, cannot be exercised to the detriment or with disrespect for the rights and guarantees of third parties, especially those affirmed in the constitutional sense, since the autonomy of the will does not confer on individuals, in the domain of its incidence and action, the power to transgress or ignore the restrictions placed and defined by the Constitution itself, whose effectiveness and normative force are also imposed on individuals, within the scope of their private relations, in terms of fundamental freedoms<sup>2</sup>.

## INTRODUCTION

It is impossible not to mention the vertical and horizontal effectiveness of human rights, the relationship between the individual and the State, and the relationship between individuals, respectively. Thus, three theories about effectiveness emerge, and the one adopted by Brazilian jurisprudence is the same one adopted in Portugal, Spain, and Italy, called indirect horizontal, in which fundamental rights apply directly to private relationships, regardless of legislative regulation. But for individuals, they must be applied, taking into account the autonomy of the will. This theory aims to ensure the full exercise of access to justice as a fundamental right (SARMENTO, 2005).

Thus, the fundamental rights and guarantees present in the Federal Constitution have a very close link to human rights. The close relationship between the two can make it difficult to distinguish between fundamental rights and human rights. Thus, fundamental rights are the rights recognized and guaranteed in a constitutional way by a given State, while human rights are directly related to documents of International Law.

In this sense, the right to education is a human right recognized in a series of international conventions. As for example, the right to education is reflected in Article 26 of the Universal Declaration of Human Rights, which states:

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<sup>2</sup> RE 201.819, Report to the ac. Min Gilmar Mendes, judgment on 10-11-05, DJ of 10-27-06.

Everyone has the right to education. Education is free, at least in the elementary and fundamental grades. Basic education is mandatory. Technical and vocational education is widespread and higher education is equally accessible to all on the basis of merit. Education must be directed towards the full development of the human personality and towards the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall promote the activities of the United Nations for the maintenance of peace. Parents have a right of priority in choosing the education that will be given to their children (UNITED NATIONS, 1948)

**Figure 1 - Eleanor Roosevelt holding the Universal Declaration of Human Rights.**



Fonte: Declaração Universal dos Direitos Humanos. Disponível em: <https://declaracao1948.com.br/declaracao-universal/historia-da-declaracao-por-celso-lafer/declaracao-universal-dos-direitos-humanos-19481>. Acesso em: 10 de out. de 2022.

So, how to put into practice this fundamental right and society have access to education? There are some existing resources, such as open educational resources (OER), a community adopted in Brazil by the United Nations for education, science, and culture for the good common.

These open educational resources (OER) are materials, digital or otherwise, available to retain, reuse, remix, reframe, and re-share. They are openly licensed. It is an international movement or community driven by the internet, which aims to promote the five freedoms, which are access to retain copies, use and reuse, readaptation in different contexts, recombination and redistribution of OER, based on the idea of good common.

In Brazil, the OER movement includes the participation of actors from the most diverse fields, including educators at all levels, civil society organizations, as well as the government. A little more about the history and other educational activities mediated by OER can be found in academic productions such as theses, articles, chapters, and books.

It is observed that the virtual education mechanism was quite useful, for example, during the phase of the covid-19 pandemic. The Federal Supreme Court (STF) declared the constitutionality of Law 14,172/2021, which determined that the Union should transfer R\$ 3.5 billion to the states and the Federal District to guarantee internet access, for educational purposes, to teachers and students of the Federal District. Public basic education network. Unanimously, in the virtual session that ended on 7/1, the Plenary dismissed the request made in the Direct Action of Unconstitutionality (ADI) 6926.

In his vote, the ADI rapporteur, Minister Dias Toffoli, stated that education is the first of the social rights enshrined in the 1988 Constitution and that internet access is a prerequisite for its implementation, a fact that became more evident in the context of the Covid-19 pandemic, where the need for social distancing has moved face-to-face tasks to the remote format. He found that Law 14.172/2021, therefore, met the constitutional mandate on the right to education and the principle according to which education will be provided with “equal conditions for access and permanence in school”.

**Figure 2 - “Aqui notícias”.**



Fonte: autor desconhecido

This knowledge and a basic notion of education are fundamental for the individual to have access to his rights and the duties of the State. In this way, obtain access to justice, which is a constitutional guarantee provided for in article five, item thirty-five, of the Federal Constitution. This expression means the right to seek judicial protection, that is, the right to appeal to the Judiciary in search of a solution to a conflict of interest. As Kelsen points out, only where such conflicts of interest exist does justice become an issue. Where there are no conflicts of interest, there is no need for justice.

## **1. DIMENSIONS OF ACCESS TO JUSTICE**

Access to justice is a basic principle of the rule of law that describes how citizens have equal access to legal systems in their context. Most States have initiatives and programs designed to provide legal services to populations that may otherwise struggle to obtain legal advice and representation. Without access to justice, people are not able to fully exercise their rights, challenge discrimination or hold decision-makers accountable for their actions.

Developing an analysis of society from the period of modern history, the existence of social groups is verified. So, access to justice is not only a legal-formal issue, but it is also, especially, a social-economic problem, and its real application depends on the removal of several obstacles of a material nature so that the poor can enjoy the principle of a justice equal for everyone.

The dramatic situation of access to the principle of equal justice for all consists precisely in the inequality of material conditions between litigants, which condition

profound injustice on those who are faced with fortunate and powerful litigants, are unable to exercise their right of action and defense. This is a matter of education, which promotes the full development of the person and prepares them for the exercise of citizenship and their qualification for work, as formally determined by the Constitution (art. 205), but which practice fails to effect.

Equality is an element common to every conception of Justice, especially in its most characteristic and relevant manifestation, which is equality before the judge. Citizenship will not be realized with simple equality before the law because, as Cappelletti reminds us, “today, it is quite clear that treating individuals who are economically and socially disadvantaged as equals are nothing but a further form of inequality and injustice” (CAPPELLETTI, 2010, p. 155).

In general, for citizens to have the right of access to justice, citizenship must be exercised, so everyone needs to be aware of their rights in order to be able to fulfill them. In Brazil, there is a considerable number of illiterates; consequently, they are uneducated people who do not have the means to access justice. Furthermore, as stated above, this principle is not only present in the Federal Constitution but also in internationalization and universality through international treaties.

Therefore, the term access to justice includes access to the judiciary, that is, to jurisdiction. It comprises jurisdictional equivalents such as mediation and arbitration. To defeat the procedural barrier, an effective alternative is the arbitration provided for in Law n<sup>o</sup>. 9.307/96, which aims at broad access to justice in order to resolve the conflict and does not need to be approved by the Judiciary.

The arbitral award cannot be reviewed by the Judiciary with regard to the hereby; it can only execute it or annul it. The justice of the decision cannot be contested, only the validity, for some defect of form; arbitration is an option for the parties. It is, therefore, an instrument that enables access to justice.

Furthermore, the way in which nations help their citizens gain access to justice varies. Access to justice can be increased through properly funded and staffed legal aid organizations that provide free legal services to the poor, through *pro bono* programs through which volunteer lawyers provide services and representation in court, or through other programs designed to help people obtain legal remedies through the courts or other justice institutions.

So, this article shows access to justice and scope as a fundamental right. In this context, the principle of human dignity is present as a foundation of citizenship and democracy. Because access is not just a fundamental social right, it is also, necessarily, the central point of modern proceduralism, and access to education allows the individual to claim his right before the Judiciary.

## 2. EDUCATION AND SOCIAL INCLUSION IN BRAZIL

Access to justice must be seen as the fundamental requirement – the most basic of human rights – of a modern and egalitarian legal system that intends to guarantee and not just proclaim the rights of all. It is concluded that through education, basic knowledge is acquired for social insertion.

All the instruments analyzed in this text significantly help Brazilians to have a better educational condition and begin to continuously exercise the rights affirmed by the Federal Constitution and thus have better access to justice. This results in social inclusion.

**Figure 3 – Charge do Gilmar.**



Fonte: Rádio Peão Brasil. Disponível em: <https://radiopeaoabrazil.com.br/12844-2/>. Acesso em: 10 de out. de 2022.

In view of all the above, it is concluded that although access to education is a right, in practice, it is a privilege. Just look at the challenges to maintaining access

to education with the outbreak of the pandemic and the closing of schools, such mechanisms of creation and reproduction of inequalities have become even more active. Several operators of social differentiation were accentuated, increasing educational distances between public and private schools, rich and poor, “heirs” and “non-heirs” (BOURDIEU, 2015).

In addition to educational and social inequalities, digital inequalities were added. Thus, with education as a focus, it is increasingly necessary to question connectivity as a social privilege when it could already be understood as a right. This is, in fact, the understanding of the United Nations (UN), which has already recognized internet access as a universal human right (BACCIOTTI, 2014).

This is also related to the access to justice that, since 2009, is also digital through the electronic judicial process (PJE) has made the judicial system virtual. In this way, everything is connected to social inclusion, which is the most effective for the social structure to develop in a fair perspective, where human values are highlighted and respected.

## CONCLUSION

To ensure access to justice in the dimension of social inclusion, the right to education is absolutely essential. It is the key to the entrance through which the underprivileged can ascend and reach the level of human dignity desired by all. Without education, the dream of becoming part of society and being a part of a community tends to wither until disappearing. There is no other way to face the obstacles caused by inequalities and reach access to any form of social justice.

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