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THE DISABLED PERSON AND THE LABOR MARKET: LEGAL TERMINOLOGY AND FORECASTS

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ABSTRACT

This article discusses the themes of disabled people and their relation with the labor market. In a first moment, there was an analysis of the terminological issue of the disabled person and, subsequently, there was a survey in respect of the laws that seek their inclusion in the labor market. Data from the Brazilian Institute of Geography and Statistics - IBGE (Instituto Brasileiro de Geografia e Estatística) were also surveyed to verify the effectiveness of current legislation on the subject. A literature research was developed, seeking doctrines and laws that allowed deepening the knowledge on the aforementioned topics.

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INTRODUCTION

It is notorious that the disabled person has been overcoming paradigms in actuality, no longer being seen as a dead weight and starting to occupy better spaces in society. Indeed, this condition has been harshly conquered from a wonderful cultural transformation, more favorable to social inclusion and acceptance of differences, as well as by means of the matrix propositions of the Brazilian Federal Constitution, in 1988, of the Statute for the Disabled Person and other sparse laws established by the bodies of the Federation. Lorentz (2016) emphasizes that the perception of society of the disabled person has changed throughout history: in the beginning, that person was treated as a hindrance to the healthy reproduction of the offspring, later as a being who should be tolerated, or repaired and, just recently, as a human being with the same right to respect and dignity that must be guaranteed to all other citizens. Bahia (2002) explains that, specifically from the advent of the Brazilian Federal Constitution, in 1988, the

society became aware of the need to constitute an accessible community in all its dimensions, allowing everyone to exercise their rights and duties with greater freedom. In 2010, the Brazilian Institute of Geography and Statistics - IBGE (*Instituto Brasileiro de Geografia e Estatística*) published the Demographic Census, in which 45.6 million people stated having some kind of disability. According to Santos (2013, p. 17), “[...] No one is exempt from becoming a disabled person”. Every day, people become part of this statistic due to domestic, occupational, traffic accidents, or other reason. This article arose from reflections from the classes of the subject Human Development and its Interfaces in Contemporary Society, of the *Strictu Sensu* Postgraduate Program in Sociocultural Practices and Social Development, of the University of Cruz Alta - UNICRUZ (Cruz Alta-RS, Brazil), which, among other themes, presented issues relating to disabled people and their social inclusion. To initiate the study, a brief survey was prepared regarding the terminology “disabled person”, as well as a data survey regarding the number of disabled people in Brazil. Subsequently, the Brazilian Federal Constitution and the laws concerning the inclusion of disabled people in the labor market were presented, as well as an information survey to verify the following research question: Are the existing laws

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effectively promoting the inclusion of disabled people in the labor market? For this, a bibliographic research was organized, particularly with the consultation of printed works, the Constitution and laws in force on the aforementioned themes.

Definitions and Information on the Disabled Population:

Decree 3,298, of 20 December 1999, states on the National Policy for the integration of disabled people, consolidating the standards of protection in this area. This document brings in its text the definition of disability, dividing it in the following way:

Art. 3 For the effects of this Decree, one shall consider

- I - disability - any loss or abnormality of a psychological, physiological or anatomical structure or function which causes inability for the performance of activity within the standard considered normal for a human being;
- II - permanent disability - one that occurred or stabilized over a sufficient period of time not to allow recovery or probability to change, despite new treatments; and
- III - inability - an effective and accentuated reduced capacity of social integration, with the need for equipment, adaptations, or special resources through which the person with a disability can receive or transmit information necessary to his/her personal well-being and the performance of function or activity to be exercised (BRAZIL, 1999).

For legal purposes, a person is considered disabled if fulfilling any of the following categories:

- 1 - Physical disability: complete or partial alteration of one or more segments of the human body;
- 2 - Hearing impairment: partial or total bilateral loss of 41 decibels (dB) or more;
- 3 - Visual impairment: divided into blindness (visual acuity equal to or less than 0.05 in the better eye, with the best optical correction) and low vision (visual acuity between 0.3 and 0.05 in the better eye);
- 4 - Mental disability: intellectual functioning significantly below the average;
- 5 - Multiple disabilities: association of two or more disabilities (BRAZIL, 1999).

Sasaki (2014, n.p.) highlights, with respect to the term to refer to people who fit into one of the aforementioned categories of disabilities, that “[...] there was never nor there will be a single correct expression, definitely valid at all times and spaces. Every moment uses words whose meanings are compatible with the values prevailing in the period.” In the past, the term used in the laws and institutions was, among other things, “the invalid people”, assigning individuals who did not have any value, seen as socially useless, a dead weight for society and a burden for the family, considered someone who had no professional value (SASSAKI, 2014).

In this sense, Lorentz (2016, p. 166) explains that: Regarding the terminological question, throughout history, the expressions often used to describe and define disabled people were as derogatory and heavy as possible, becoming more human and mild with the passage of the elimination phase for the assistance phase, for the integration and then for the current phase of inclusion.

From the beginning of the 20th century, until around 1960, the most used terms began to be “inept” and “incapable”. Between 1960 and 1980, the used terms were “defective”, “disabled” and “exceptional”; in the 1980’s, the expression “person with disability” began to be used. From 1988 to 1993, “disabled person”; during the 1990’s, the expression was changed to “person with special needs”. Finally, from the Salamanca Declaration, in 1994, the term “disabled person” came back as the preferred. According to information from the last Demographic Census conducted by the IBGE in 2010, 45.6 million Brazilians, equivalent to 23.9% of the population, reported having some type of disability (visual, hearing, intellectual and motor). Visual impairment was the main disability, declared by 35.7 million people. Of this number, more than 6.5 million reported having severe difficulties; around 6 million reported having difficulties to see; and more than 506 thousand are blind. Secondly, motor impairment appeared; more than 13.2 million people reported having some problem. Among them, approximately 4.4 million people declared the severe motor disability; and 3.6 million people had great difficulty in locomotion. Hearing impairment, in turn, was declared by 9.7 million people; of these, 344.2 thousand people are deaf; and 1.7 million people have great difficulty to hear. At last, 2.6 million Brazilians declared having intellectual disabilities. Considering such data and foregoing considerations, the State and the society must seek to build a free, fair and supportive society, developing policies in favor of minorities, based on the constitutional principle of equality, which is based on the fact that this precept consists of treating equals equally and unequally the unequal, in fair measure of its inequality.

Labor Market for Disabled People: The milestone of human rights was the Universal Declaration proclaimed by the National Assembly of the United Nations, in Paris, on 10 December 1948, document that established, in an unprecedented way, a reference in terms of dignity and protection of human beings, and should reach all nations, regardless of gender, ethnicity, skin color, religious confessions or social and economic conditions. One of the fundamental rights laid down in the Universal Declaration of Human Rights is the right to work, as expressed in Article 23:

Art. 23.

- 1. Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment.
- 2. Everyone, without any discrimination, has the right to equal pay for equal work.
- 3. Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection (UN, 1948).

The International Covenant on Economic, Social and Cultural Rights, in turn, conferred normative enforceability for the Universal Declaration of 1948, as provided for in its Article 6:

Article 6

- 1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to

the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programs, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual (OAS, 1966).

Both the Declaration as the International Covenant affected the Brazilian legal system. In 1988, with the promulgation of the Federal Constitution, the work, along with the sovereignty, citizenship, dignity of the human person and political pluralism, were defined as foundations of the Democratic State of Law.

Article 6 of the Federal Constitution, in the same way, establishes that the right to work is one of the social rights. Later, in Article 170, the work is defined as one of the foundations of economic order, as follows:

Art. 170. The economic order, based on the valorization of human labor and free initiative, is intended to safeguard everyone a dignified existence, according to the dictates of social justice, observing the following principles:

[...] VIII - search for full employment (BRAZIL, 1988).

Ratifying the right to work as an essential right, in Title VIII of the Constitution of Brazil defines the work as the primacy of social order, whose goal are the social welfare and justice.

For Silva (2013, p. 70), the social interaction of people, training and educational, academic and professional level, their independence and even their health and self-esteem stand out especially in the labor market.

One of the principles laid down in the Federal Constitution (BRAZIL, 1988) is the principle of equality, which stipulates that everyone is legally equal, has the right to life, liberty, equality, safety and property safeguarded.

However, when analyzing the inclusion of disabled people in the labor market, according to the IBGE, in Brazil, approximately 24% of the population has some kind of disability and, of these, less than 1% is in the formal labor market.

About the theme, in 1991, Law 8213 instituted quotas for hiring disabled people, whose Article 93 provides the following:

Article 93. A company with 100 (one hundred) or more employees has the obligation to fill from 2% (two percent) to 5% (five percent) of its positions with rehabilitated or disabled people, qualified, in the following proportion:

- I - up to 200 employees: 2%;
- II - from 201 to 500: 3%;
- III - from 501 to 1,000: 4%;
- IV - from 1,001 onwards: 5% (BRAZIL, 1991).

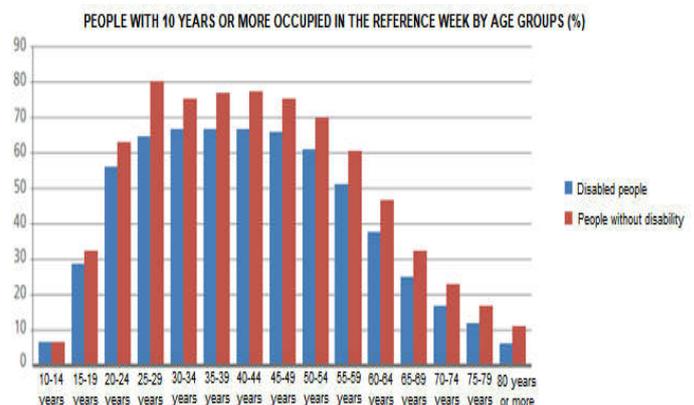
To ensure and promote equal conditions, the exercise of rights and freedoms for the disabled person, aiming at his/her social inclusion and citizenship, in addition, Law 13146, of 2015, was established, entitled as Brazilian Law for Inclusion of Disabled People (Disabled Person Statute). One highlights that this Statute established the right to work:

Art. 34. A disabled person has the right to work freely and acceptably in an accessible and inclusive environment, on an equal basis with other people.

1. The legal entities of public, private or of any nature are obliged to guarantee accessible and inclusive work environments.
2. The disabled person has the right, on an equal basis with other people, to fair and favorable work conditions, including equal remuneration for work of equal value.
3. One shall forbid restrictions to the work of disabled people and any discrimination based on their condition, including recruitment, selection, hiring, admission, admission and periodic examinations, permanence in employment, professional advancement and professional rehabilitation, as well as requirement of full fitness.
4. The disabled person has the right to participate in and access courses, training, continuing education, career plans, promotions, bonuses and professional incentives offered by the employer, on an equal basis with other employees.
5. Access to training and training courses is guaranteed to disabled workers (BRAZIL, 2015).

Furthermore, in the context of public service exams, Law 8112, of 1990, has ensured the inclusion of disabled people for jobs whose tasks are compatible with their disability. These candidates have 20% of the vacancies reserved. The IBGE, in 2010, to verify the inclusion of disabled people in the labor market, considered the rate of activity of these people, having observed the following (Table 1 and Table 2):

Table 1. People with 10 years or more occupied in the reference week by age groups (%)



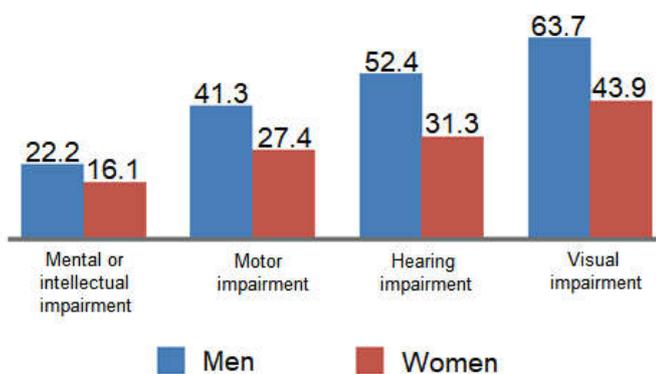
Source: IBGE, 2010.

Therefore, according to the IBGE (2010), regarding sex, the occupancy rate of men with some kind of disability was 60.3%, while, for women, it was 41.7%. In relation to the type of disability, the occupancy rate was as follows (most restrictive to least restrictive):

1st place: mental and intellectual impairment - men 22.1% and women 16.1%;
 2nd place: motor impairment - men 41.3% and women 27.4%;
 3rd place: hearing impairment - men 52.4% and women 31.3%;
 4th place: visual impairment - men 63.7% and women 43.9% (IBGE, 2010).

Of the disabled population, approximately 40% of men and approximately 59% of women are outside the labor market. Moreover, some disabilities end up restricting the insertion in the labor market more than others do, with mental and intellectual impairment as the most restrictive and visual impairment as the least restrictive.

ACTIVITY RATE OF THE POPULATION WITH 10 YEARS OR MORE WITH AT LEAST ONE DISABILITY, BY SEX AND TYPE OF DISABILITY (%)



Fonte: IBGE, 2010.

Table 2. Activity rate of the population with 10 years or more with at least one disability, by sex and type of disability (%)

Methodological Procedures

This article was developed based on the literature review, defined as:

[...] the one that develops from the available information, due to previous researches in printed documents, such as books, articles, theses, etc. It uses data or theoretical categories already worked out by other researchers and duly recorded. The texts become sources of topics to be researched. The researcher works from the contributions of authors of analytical studies present in the texts (SEVERINO, 2007, p. 122). The research was essentially guided by the teachings shared within the subject Human Development and its Interfaces in Contemporary Society, of the PPG in Sociocultural Practices and Social Development, and by consulting the books of legal doctrine, the Constitution and the laws, in order to enlarge the knowledge about the theme proposed for the study.

Final Thoughts

The present study allowed deepening the knowledge regarding the insertion of disabled people in social and workspaces, enabling understanding the origin and the changes that its terminology has suffered over the last few decades.

In addition, the bibliographic research showed a maturation of the thinking of society in respect of the disabled person, once it began to worry more significantly with the theme of social inclusion. Another important point to note is that, even though there are laws with the purpose of providing the inclusion of these people in the labor market, there is much to overcome. The numbers presented by IBGE, although they date from eight years ago, show that a large number of disabled people are still not part of the labor market. Therefore, it is necessary to try to identify if there are gaps in existing legislation, or what causes them not to reach their expected effectiveness, since there is still a low percentage of disabled people in the labor market, a situation that could be the object of study in another opportunity.

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