

## HUMAN RIGHTS AND THE RIGHT TO EDUCATION: A SOCIO-ANTHROPOLOGICAL PERSPECTIVE ON DEAF LEARNERS

### DIREITOS HUMANOS E O DIREITO À EDUCAÇÃO: POR UM OLHAR SOCIOANTROPOLÓGICO DOS EDUCANDOS SURDOS

### DERECHOS HUMANOS Y EL DERECHO A LA EDUCACIÓN: PARA UNA MIRADA SOCIOANTROPOLÓGICA DE EL ESTUDIANTES SORDOS



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#### ABSTRACT

This study was developed to understand whether clinic-therapeutic conceptions still overlap the socio-anthropological perspective of deaf learners within established legal rights that ensure access to the right to education, which are achievements resulting from struggles for human rights. It briefly addresses the history of Human Rights related to the right to education, as well as analyzes legislation concerning the current conception of deafness and hearing impairment. The methodology used was a qualitative descriptive study based on a socio-historical framework. The instrument consisted of a bibliographic review of laws and authors who have contributed to the discussion of human rights in the current struggle for the recognition of deaf education that meets the needs of this group. The results highlight the need to discuss a more appropriate inclusive school model to foster the autonomy and learning of deaf students. As a contribution, this study finds that established legal rights still largely present a clinic-therapeutic character. However, it also shows advances in legislation toward a socio-anthropological view of the deaf individual, emphasizing the value of Brazilian Sign Language (Libras), thus opening space for a truly inclusive and bilingual school capable of contributing to the construction of autonomy, identity, development, and social participation, enabling individuals to be constituted as subjects of rights and active citizens.

**Keywords:** Human Rights. Deaf Education. Hearing Impairment. Right to Education.

#### RESUMO

Este trabalho foi elaborado para compreender se as concepções clinicoterápicas ainda sobrepõem a visão socioantropológica dos educandos surdos dentro dos direitos positivados, que criam acesso ao direito à educação, os quais são conquistas de lutas por direitos humanos. Fazendo uma breve abordagem sobre a história dos Direitos Humanos para o direito à educação, bem como, analisar a legislação sobre a concepção atual sobre surdo e deficiência auditiva. Utilizei como metodologia o estudo descritivo qualitativo com aporte no referencial socio-histórico. Como instrumento a revisão bibliográfica de leis e de

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autores que vêm colaborando para discussão dos direitos humanos na atual luta pelo reconhecimento de uma educação de surdo que atenda a necessidade deste grupo. Os resultados evidenciam a necessidade de dialogar sobre a escola inclusiva mais adequada para o fomento da autonomia e aprendizagem deste educando surdo. Como contribuição deste estudo, verifica que, ainda, os direitos positivados, em sua maioria, apresentam um caráter clinicoterapêutico. No entanto, mostra avanços na legislação para uma visão socioantropológica do sujeito surdo, que perpassa pela valorização da língua brasileira de sinais- Libras, abrindo espaço para uma escola inclusiva, que seja realmente bilingüe capaz de contribuir para a construção da autonomia, de sua identidade, permitindo o seu desenvolvimento e participação social para sua constituição como sujeito de direito e político.

**Palavras-chave:** Direitos Humanos. Educação de Surdo. Deficiência Auditiva. Direito à Educação.

## RESUMEN

Este trabajo fue elaborado para comprender si las concepciones clinicoterapéuticas aún se sobrepone a la perspectiva socioantropológica de los estudiantes sordos dentro de los derechos positivados, que garantizan el acceso al derecho a la educación, los cuales son conquistas derivadas de las luchas por los derechos humanos. Se realiza una breve aproximación a la historia de los Derechos Humanos en relación con el derecho a la educación, así como un análisis de la legislación sobre la concepción actual de la sordera y la deficiencia auditiva. La metodología utilizada fue un estudio descriptivo cualitativo con base en el enfoque sociohistórico. Como instrumento, se empleó la revisión bibliográfica de leyes y de autores que han contribuido al debate sobre los derechos humanos en la lucha actual por el reconocimiento de una educación para sordos que atiende las necesidades de este grupo. Los resultados evidencian la necesidad de dialogar sobre un modelo de escuela inclusiva más adecuado para fomentar la autonomía y el aprendizaje de los estudiantes sordos. Como contribución, el estudio señala que los derechos positivados aún presentan, en su mayoría, un carácter clinicoterapêutico. No obstante, también se observan avances en la legislación hacia una visión socioantropológica del sujeto sordo, destacando la valorización de la Lengua Brasileña de Señas (Libras), lo que abre espacio para una escuela inclusiva verdaderamente bilingüe, capaz de contribuir a la construcción de la autonomía, la identidad, el desarrollo y la participación social, permitiendo su constitución como sujeto de derechos y ciudadano activo.

**Palabras clave:** Derechos Humanos. Educación de Sordos. Deficiencia Auditiva. Derecho a la Educación.

## 1 INTRODUCTION

Currently we can talk about human rights thanks to the struggles of people, groups and movements that were and still are protagonists of this process. In this scope, this work aims to articulate human rights with the right to education of deaf subjects with a qualitative methodology from a socio-historical perspective using the critical analysis of the literature review studied. With this said, analyzing the conceptions of human rights, deafness and the right to education, as well as understanding the legislation on the combination of these themes requiring spaces for new dialogues, makes this study relevant to the context of education and diversity. I believe that the type of inclusive school we currently have denies an autonomous interactional relationship of these subjects with the social, so the objective of this study is to understand if the clinicotherapeutic conceptions still overlap the socio-anthropological view of deaf students within the positive rights.

To think about the history of human rights, there is not a single way, and it is made up of a complex and diffuse character. In one of these ways, we have many philosophers who claim that rights are intrinsically linked to the way we determine what it is to be human and the implications that this carries when we question the way we see the other in this relationship. In this aspect, it is configured that human beings are possessors of rights by virtue of their human dignity, that is, by the fact that we are human and it is impossible to measure the value of each one. It is necessary to have the conviction that human beings have values, while non-humans have a price. This great distinction has also placed man a slave to man himself. The human being is unique and irreplaceable, and it is unacceptable to set a price for his life. To understand this fact, it is enough to identify those who can have access to a quality school, those who are marginalized because they are not considered fit for the needs of the capitalist market, or have their potential subjugated. In this scope, the deaf student has been harmed and suffering violations of rights that come from their quality academic training. The right to education is one of the first steps to reduce social inequality. This should be a fact, however, we still see today a specialized and cruel slavery.

## 2 DEVELOPMENT

Human dignity is not a closed concept, and can vary according to time, location of society, peoples, beliefs and values. From this come great criticisms about the concept of human dignity and, consequently, the universality of human rights because they are proper to human nature (Santos, 2006). Here we are using a Kantian concept of human dignity, which states that nothing in the world is superior or similar to it. Human dignity can take on other contexts and configurations according to the attributes that are proposed to it.

For the author Lynn Hunt (2009), in her book *"The Invention of Human Rights; a history"* - human rights have a diffuse and omnipresent history today, which requires a broader and debatable history, but self-evidence is very important for understanding it. One of the great contributions of Hunt (2009) is to make a theoretical-bibliographic approach to the documents that underpinned human rights, highlighting their relevance without ignoring that it is a risk to take them as the history of human rights for the whole world. In addition, it transits in the field of literature, through epistolary novels that influenced individual feelings, to argue the creation of new social and political concepts for the flourishing of human rights. It analyzes the Declaration of Independence of the United States (1776), the Declaration of Man and of the Citizen that gained momentum with the French Revolution of 1789 until reaching the Universal Declaration of Human Rights (UDHR) (1948). Showing that there was a certain consensus between the last two statements, despite their particularities, "although the changes in language were significant, the echo between the two documents is unequivocal" (Hunt, 2009, p.15). Although almost two centuries have passed between the contradictory actions of the French Revolution and UDHR (1948), there is in common, among other aspects, the historical contexts to which they were forged, and which placed human rights as natural, because we were born free, equal in dignity and rights.

The author shows that it was a process of construction that demanded an inner awareness on the part of the individual and that this required the transformation of thought, social structure, politics and culture. According to Hunt:

Human rights are not just a doctrine formulated in documents: they are based on a disposition towards other people, a set of convictions about what people are like and how they distinguish right and wrong in the secular world (Hunt, 2009, p. 25).

Hunt (2009) argues that even though the Declaration of Human Rights (1948) was an advance, due to the way society was structured at the time, there were exclusions for some people. This was true for women, slaves, children, and people considered "abnormal." For these people, "natural, equal, and universal human rights" were not possible because of the way they were perceived by the others who proposed the declaration. They were considered incapable of having a "moral autonomy".

Human rights remain subject to discussion because our perception of who has rights and what those rights are constantly changes according to the very historicity of human life. The struggle for human rights is "ongoing" (Hunt, 2009). The Declaration of Human Rights should be seen as the beginning of the journey. Each generation embodies the law of the other generation, not in a linear way, but in a way that writes the history of human rights itself

in a dialectical way.

The Universal Declaration did not simply reaffirm eighteenth-century notions of individual rights, such as equality before the law, freedom of speech, freedom of religion, the right to participate in government, the protection of private property, and the rejection of torture and cruel punishment. It also expressly forbade slavery and provided for universal and equal suffrage by secret ballot. In addition, it required freedom of movement, the right to a nationality, the right to marry and, most controversially, the right to social security; the right to work, with equal pay for equal work, on the basis of a living wage; the right to rest and leisure; and the **right to education**, which should be free at the elementary levels (Hunt, 2009, p. 206 – *emphasis mine*).

It was from it that education as a right emerged. The Universal Declaration of Human Rights configured and still is a reference for different generations and dimensions of Human Rights. Such as the generation of civil and political rights, the generation of economic, social and cultural rights in the nineteenth century until the middle of the twentieth century (which had its rise against exclusionary capitalism) and the generation of the collective rights of humanity. Undoubtedly, it is a human "invention" that deserves to have its relevance recognized. Therefore, we need to *(re)invent human rights*, based on what we perceive and define what it is *to be human* today and also, as a continuous process, built by political struggles. According to Herrera Flores (2008), it is a cultural convention in a tense field, they are processes of openness that are built from the claims and demands of the subjective and objective human needs for human dignity. A critical stance is needed in relation to human rights, so that it is not a legacy only for a specific people, group or class. May their ideals of liberty, equality and fraternity be influenced not only by empathy, but beyond. May it be seen with solidarity and otherness, that the consequences of this Declaration truly reach everyone, respecting the principles of equality and difference (Santos, 2006). Where the continuity of the history of human rights does not allow exclusion and human suffering, for lack of recognizing oneself in the other.

Based on these assumptions, nowadays, there are several dialogues about being deaf and hearing impaired. We have movements that emphasize the importance of a socio-anthropological view of deafness, which defends the bilingual school <sup>[1]</sup>, as well as the defenders of the clinical-therapeutic view, who can defend oralism <sup>[2]</sup>. In this context, Bourdieu (2010) uses *cultural capital* to explain how culture, in a society divided into classes, is transformed into a kind of currency that the dominant classes use to accentuate "inequalities". Culture becomes an instrument of domination. In addition, the ruling class imposes on the dominated classes its own culture, giving it an unquestionable value, making them a unique and correct model of culture. For example, we have the education of the deaf totally

influenced by a dominant culture of oralism, which is based on the reproduction of the audist culture, denying any deaf culture. According to Lopes,

The struggles for the recognition of sign language in schools, for the recognition of the deaf community and for the end of oralist practices in working with deaf subjects occupied the educational scenario with more academic, social and political expression only from the end of the eighties and the beginning of the nineties of the twentieth century. p. 25).

Without the participation of the deaf, there was the Milan Congress in 1880, in which the method of oralism was considered the only form of teaching methodology for the deaf. A setback in the education of these subjects. An imposition of the dominant Audist culture, which bases its culture on the act of listening, on the culture of the dominated, the deaf. Bourdieu (2010), perceiving this dynamic of symbolic power, defined it as *arbitrary dominant cultural*, which is nothing more than one culture imposing itself on another. These relationships are constantly changing, both due to technological advances and how society perceives and relates to people who have these attributes. It all depends on which reference is given to the question. In line with Lopes' idea, we have that:

As previously developed, while the first (*being deaf*) implies the presence of sets of cultural practices that start from deaf referents of ways of being, the second (*hearing impaired*) implies the presence of sets of practices, also cultural, but that start from hearing referents of ways of being. There is a significant distance between these two sets of practices (Lopes, 2012, p. 243).

However, according to the principle of equality and the principle of difference of Santos (2006), it is the subject of the discourse who must empower and recognize himself. It is a debate with a productive tension, which makes us resignify the other and ourselves. Starting from the fact that the struggle for human rights aims at the dignity of human life, thus, guided by the socio-historical and cultural framework, to briefly analyze the positive rights that evidence this constant struggle for recognition and rights.

The 1975 Declaration of the Rights of the Disabled Person, promoted by the United Nations - UN - despite being a great advance, was shown in its arguments as a kind of concession. In 1981, the same institution promotes the International Year of Persons with Disabilities, which culminated in 1982 the World Program of Action on Persons with Disabilities, it is considered by many authors as a textual milestone that puts the issue of the human rights of people with disabilities on the agenda in an inclusive perspective because it wants to promote paths and not just grant them. This program talks about equal opportunity to have access and participate in society more effectively. Thus taking the focus off the

dominant view that was had: the medical approach to disability, where rehabilitation was seen as salvationist. The problem with the medical view was to absolutize rehabilitation as the only possible path. In this aspect of rehabilitation, of being framed by the norm, that is, "curing" the abnormality, the analysis of the clinical-therapeutic definition of deafness, makes us think that if it were only the issue of hearing, the human rights of the hearing person would be fully respected and enforced. Next, the UN organizes a text on December 14, 1990, Resolution No. 45/1991, which demanded a change in perception about disability, all of this forged by struggles of various social groups that experienced exclusion due to lack of objective and subjective material conditions, which society was organized, it was a change of paradigms: from perception to action.

The Vienna Declaration (1993), according to Lindgren Alves (1995), had as one of its milestones the reaffirmation that all human rights and fundamental freedoms are universal. It can be inferred from this statement that the inclusion, without restrictions, of the person with disabilities, in its item 63:

6. Rights of Persons with Disabilities 63. The World Conference on Human Rights reaffirms that all human rights and fundamental freedoms are universal in them, and therefore include without reservation persons with disabilities. All people are born equal with the same rights to life and well-being, to education and work, to live independently and to actively participate in all aspects of life in society. Thus, any direct discrimination or other negative discriminatory treatment of a person with a disability constitutes a violation of his or her rights. The World Conference on Human Rights calls on Governments, where necessary, to adopt or adapt existing legislation to ensure access to these and other rights for persons with disabilities (UN, 1993).

This declaration, according to Alves (1995), had relevant characteristics about the universality and indivisibility of human rights. He put on the agenda the right to solidarity and peace, the right to development and environmental rights, as well as Human Rights in Brazilian policies. Item 64 states that the place of the person with disabilities is everywhere. Item 65 makes evident the promotion of equal opportunities for all. Knowing that for this, a change in thinking about humanistic education would be necessary, in its item 78, it states the importance of education in human rights for a culture of peace and development.

64. Persons with disabilities must have a place everywhere. Equal opportunities for people with disabilities should be guaranteed through the elimination of all socially imposed barriers, whether physical, financial, social or psychological, which exclude or limit their full participation in life in society (UN, 1993).

This declaration became a milestone that put Human Rights on the world stage again, the Vienna Declaration gave rise to the Salamanca Declaration of 1994, which highlights the

concept of education for all and respect for differences. It also contributes to the appreciation of what the Brazilian Federal Constitution of 1988 already stated in its Chapter III, Articles 205, 206 and 208. Who say that education is a right of all and a duty of the State, specifying and detailing this right.

The 1999 Guatemala Convention, the so-called Inter-American Convention for the Elimination of All Forms of Discrimination Against Persons with Disabilities, with Brazil as a signatory, which creates Decree 3.956/2001 agreeing with deliberate actions in this convention, opened space for other proposals that contributed to the base text in favor of persons with disabilities. It fosters in inclusive public policies Decree No. 3,298/99 CONADE - National Council for the Rights of Persons with Disabilities, and registers in Decree No. 5,926/04, article 3, the first item that defines *disability* as: "any loss or abnormality of a psychological, physiological or anatomical structure or function that generates incapacity to perform an activity, within the standard considered normal for human beings". In its second item, it defines *permanent disability* as "that which has occurred or stabilized for a period of time sufficient to not allow recovery or to have a probability of changing, despite new treatments". In its third item, *it defines disability* as "an effective and marked reduction in the capacity for social integration, with the need for equipment, adaptations, means or special resources so that the person with disabilities can receive or transmit information necessary for their well-being and the performance of the function or activity to be performed". (BRAZIL, 2004). This same decree, in article 4, item II, was amended in 2005, now providing:

According to Decree 5.626, of December 22, 2005, Art. 2:

[...] a deaf person is considered to be one who, due to hearing loss, understands and interacts with the world through visual experiences, manifesting their culture mainly through the use of the Brazilian Sign Language - Libras. Sole Paragraph. Hearing impairment is considered to be bilateral, partial or total, loss of forty-one decibels (dB) or more, measured by audiogram at the frequencies of 500Hz, 1,000Hz, 2,000Hz and 3,000Hz (Brazil, 2005).

We can analyze that in these positive rights, the definition of disability is perceived by loss, abnormality, incapacity, placing the definition of hearing impairment on the same level as clinicotherapy, with a medicalized view that seeks a standard of normality.

In the Libras Law, we can understand a significant advance in its 22 years of existence. This Decree No. 5,626/05, which regulates Law No. 10,436/02 - Libras Law and in its article 2, presents a more socio-anthropological conception of deafness, by emphasizing the cultural identities of these subjects from the communicative and linguistic action through Libras and by the way it relates to the world through visual experiences. The approval of Libras (Brazilian

Sign Language) in 2002, as the official Brazilian language, thus having two legally recognized languages, the Portuguese language and the Brazilian sign language - Libras, was and is a historical reference in positive law for the deaf person and the community in which he or she is inserted.

According to Lopes (2012), from this instrument it is possible to resignify the deaf subject in other social spheres, in addition to the corrective views for such normality. In 2006, the UN General Assembly, based on the International Convention on the Rights of Persons with Disabilities, which had as its motto "*Nothing about us, Without us*", in its article 2, builds legal advances for the disabled person. The rights to health, inclusive education, transportation, leisure, culture, habilitation, rehabilitation, work and professional training are established. He is seen, legally, as a subject of law, encompassing both conceptions, both clinicotherapeutic and socio-anthropological (Santos, 2017, Silva & Pedroza, 2023). An advance for dialogues and the various ways of recognizing people with disabilities.

Article 1 - The purpose of this Convention is to promote, protect and ensure the full and equitable enjoyment of all human rights and fundamental freedoms by all persons with disabilities and to promote respect for their inherent dignity. People with disabilities are those who have physical, intellectual or sensory impairments, which, in interaction with various barriers, can obstruct their full and effective participation in society with other people (CORDE, 2008).

According to the IBGE (2010 Census), 23.90% of the total Brazilian population, that is, 45,606,048 Brazilians are people with disabilities. In the 2022 Census, it increased to 18.6 million people with disabilities, which corresponds to 8.9% of the Brazilian population aged 2 years and over. According to the IBGE (2022 Census), the number of deaf people in Brazil exceeds 10 million. It points out that despite the law that determines the use of Libras, these subjects still face great difficulties in accessing basic day-to-day services, provided by public and private agencies.

In the Federal District, according to CODEPLAN (2018), hearing impairment has an incidence rate of 0.9% of the total population, and the percentage of people with some disability has the highest rate in low-income (5.5%) and middle-income (5.3%) Administrative Regions (RAs), compared to high-income (3.2%) and upper-middle-income (4.7%) ARs. Thus, it can be inferred that people with disabilities are in greater numbers in low-income areas.

With this, we have a significant number of people who live in D, who self-declared themselves as one of the options in relation to "listening". Therefore, severe hearing impairment and/or deafness, according to how we analyzed the possible definitions above,

need an affirmative public policy for these people. Based on this analysis, the right to education for this population, it is essential to have human rights as a reference as a foundation for new advances.

If we consider ourselves deaf, it does not mean that we have paranoia. It means that we are being the other with our otherness. We are the deaf, the unanimous people gathered in the self-presence of sign language, of language that evokes a difference from other peoples, of visual culture, of the way of being. We are alterities proven by experience, other alterities. We are deaf! (Perlin <sup>[3]</sup>, 2003, p. 92).

In view of this, these subjects can self-declare themselves deaf users of Libras, as well as hearing impaired. In line with the book "The Convention on the Rights of Persons with Disabilities Commented" (CORDE; SEDH, 2008), which adds to the motto of the 2006 convention, "Nothing About Persons with Disabilities without Persons with Disabilities!", we have that the definition of being deaf and/or hearing impaired is beyond dichotomies. According to Skliar (1999):

Deafness is currently configured as a territory of representations that cannot be easily delimited or distributed in opposing conceptual models, such as clinical or socio-anthropological. It is, in other words, an irregular territory through which asymmetrical discourses and practices transit in terms of the power/knowledge relations that determine them. Moving from the naturalization of medicine to the curiosity of ethnography [...] And the central issue seems to me to be, instead, to move from ethnographic curiosity to the political recognition of deafness as a difference (Skliar, 1999, p. 10).

Starting from this author and the extremely relevant contributions of Perlin (2003), the articulation between human rights and the education of the deaf is in a dialectical tension (Santos, 2006), which aims at the relations between the subject and the object, realizing that culture is for human nature, and vice versa, thus breaking with old paradigms, which studied man separated from his culture, and try to respond to the challenges of inequalities and exclusions that the crisis of Modernity presents. Informing that the inclusive school <sup>[4]</sup> for these subjects of rights should value the deaf culture <sup>[5]</sup> and its implications for social participation. Currently, the socio-anthropological and biopsychosocial vision has been showing advances towards the right to education of these subjects of rights, also with the approval of the Statute of Persons with Disabilities, Law No. 13,146/2015, known as the Brazilian Law of Inclusion - (LBI). From effective actions and positive rights, we can have a new vision of these subjects of rights for political subjects (Freire, 2023). The problem or obstacle is not found in the person or in his disability, but evokes that the disability assumes a social construct that leads to marginalization and, consequently, exclusion. Evidencing that the social structure and its

networks must create spaces for dialogue and actions to contemplate the different human diversities.

### 3 CONCLUSIONS

The history of human rights should be perceived as an advance for the good of humanity and a social and human construct. We cannot attribute its creation only to the West or the East, because we know that the history of humanity itself has had neither as the center of all human production. In fact, the Declaration of Human Rights (1948) must have its importance recognized, for being a human production made from struggles aimed at human dignity, for being courageous in the face of the demand of the time and its contributions to the present day. We know the cruelty that men are capable of, and their creation serves to show that it is possible to build a better future for all humanity

As a contribution of this study, we found that legislation according to its distancing or approximation of conceptions about human rights can have a clinical-therapeutic and socio-anthropological character on deafness. This actively influences the social conditions and access to the right for these deaf students. For this, it is essential to recognize the autonomy and capacity for emancipation of the subjects involved through alterity to overcome the hegemonic domination of cultures considered as dominant cultural capitals (Bourdieu, 2010). Having the right to education goes through the process of resignifying this education itself. Including discussing what kind of inclusive school should be built for the demands and expectations of these subjects. The definition of deaf and hearing impaired depends on the contour of the gaze we give. However, it is up to the subject himself to define himself. The different definitions for these terms are found in a discourse that demands an epistemic rupture in order not to be just an exchange of terms, it must go through the recognition of the difference that constitutes multifaceted subjects and possessors of rights. Seeking a school that meets the objective and subjective needs, that promotes independence for the social transformation of these deaf students is to promote human rights and their ramifications in various social, cultural and economic spaces, it is to move towards the construction of a more just society.

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