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THE TREATMENT OF PEOPLE WITH DISABILITIES IN THE FACE OF CRIMINAL EXECUTION AND THE SYSTEMATIC PERPETUATION OF SERIOUS VIOLATIONS OF THE HUMAN RIGHTS OF CONVICTS[1]

O TRATAMENTO DAS PESSOAS COM DEFICIÊNCIA FRENTE À EXECUÇÃO PENAL E A PERPETUAÇÃO SISTEMÁTICA DE GRAVES VIOLAÇÕES AOS DIREITOS HUMANOS DOS APENADOS

EL TRATAMIENTO DE LAS PERSONAS CON DISCAPACIDAD ANTE LA EJECUCIÓN PENAL Y LA PERPETUACIÓN SISTEMÁTICA DE GRAVES VIOLACIONES A LOS DERECHOS HUMANOS DE CONTENIDOS

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ABSTRACT

The present article addresses the unconstitutional state of affairs to which individuals with disabilities are subjected within the Brazilian prison system. The problem involves understanding how prison facilities contribute to the perpetuation of the segregation of groups, such as people with disabilities, hindering their dignified reintegration into society. The research justification is demonstrated by the high social relevance and the legal significance of the topic at hand, due to the serious human rights violations experienced by individuals within the brazilian prison system. The objective is to assess whether the *modus operandi* of the brazilian prison system is responsible for perpetuating

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the unconstitutional state of affairs experienced by people with disabilities during and even after their incarceration. The methodology employed relies on the qualitative method through bibliographic research. The research discusses the Unconstitutional State of Affairs recognized by the Brazilian Supreme Federal Court when judging the Fundamental Precept Assertion filed under number 347, as well as principles, articles, and objectives outlined in the Resolution of November 22, 2018, from the Inter-American Court of Human Rights and, especially, in Brazilian legislation, particularly in the Federal Constitution and the Penal Execution Law. The article concludes that the Brazilian prison system is insufficient to reintegrate individuals due to inhumane treatment and the non-compliance with the set of norms to be followed, and this state is perpetuated due to the lack of interest and planning by the Public Authorities.

Keywords: Person With Disabilities. Prison System. Human Dignity. Unconstitutional State Of Affairs.

RESUMO

O presente artigo tem como tema o estado de coisas inconstitucional a que estão sujeitas as pessoas com deficiência inseridas no sistema prisional brasileiro. O problema consiste em entender a forma como os estabelecimentos prisionais contribuem para a perpetuação da segregação de grupos, como as pessoas com deficiência, de forma a obstar sua digna reintegração à sociedade. A justificativa da pesquisa é demonstrada pela alta relevância social, bem como a relevância jurídica do tema em questão, em razão das graves violações a direitos humanos às quais são submetidas as pessoas inseridas no sistema prisional brasileiro. O objetivo consiste em avaliar se o *modus operandi* do sistema carcerário brasileiro é responsável pela perpetuação do estado de coisas inconstitucional vivenciado pelas pessoas com deficiência durante o período de encarceramento e até mesmo depois dele. A metodologia utilizada vale-se do método qualitativo, por meio de pesquisa bibliográfica. A pesquisa disserta sobre o Estado de Coisas Inconstitucional reconhecido pelo Supremo Tribunal Federal ao julgar a Arguição de Preceito Fundamental autuada sob número 347, bem como princípios, artigos e objetivos previstos na Resolução de 22 de novembro de 2018, da Corte Interamericana de Direitos Humanos e, principalmente, na legislação brasileira, em especial na Constituição Federal e na Lei de Execução Penal. O artigo conclui que o sistema carcerário brasileiro tem se mostrado insuficiente para reintegrar indivíduos devido ao tratamento desumano e o descumprimento do conjunto de normas a ser seguido, sendo tal estado perpetuado devido ao desinteresse e falta de planejamento do Poder Público.

Palavras-chave: Pessoa com Deficiência. Sistema Prisional. Dignidade da Pessoa Humana. Estado de Coisas Inconstitucional.

RESUMEN

El tema de este artículo es el estado de cosas inconstitucional al que están sometidas las personas con discapacidad en el sistema penitenciario brasileño. El problema es comprender cómo las cárceles contribuyen a perpetuar la segregación de grupos, como las personas con discapacidad, para impedir su reintegración digna a la sociedad. La justificación de la investigación se demuestra por la alta relevancia social, así como jurídica, del tema en cuestión, debido a las graves violaciones de derechos humanos a las que son sometidas las personas en el sistema penitenciario brasileño. El objetivo es

evaluar si el modus operandi del sistema penitenciario brasileño es responsable de perpetuar el estado de cosas inconstitucional vivido por las personas con discapacidad durante el período de encarcelamiento e incluso después de él. La metodología utilizada utiliza el método cualitativo, a través de una investigación bibliográfica. La investigación analiza el Estado de Cosas Inconstitucional reconocido por el Supremo Tribunal Federal al juzgar el Argumento de Precepto Fundamental interpuesto bajo el número 347, así como los principios, artículos y objetivos establecidos en la Resolución de 22 de noviembre de 2018 de la Corte Interamericana. de Derechos Humanos y , principalmente en la legislación brasileña, especialmente en la Constitución Federal y la Ley de Ejecución Penal. El artículo concluye que el sistema penitenciario brasileño se ha mostrado insuficiente para reintegrar a las personas debido al trato inhumano y al incumplimiento del conjunto de reglas a seguir, perpetuándose este estado por el desinterés y la falta de planificación por parte de las Autoridades Públicas.

Palabras clave: Persona con Discapacidad. Sistema Penitenciario. Dignidad de la Persona Humana. Estado de Cosas Inconstitucional.

INTRODUCTION

The central idea of this article is to analyze the treatment of persons with disabilities in the context of criminal enforcement under the framework of the constitutional principle of human dignity. This is because the Brazilian prison system, recognized as a true *estado de coisas inconstitucional*, fosters some of the most serious existing violations of human rights.

The fundamental premise of this work lies not only in the precarious conditions to which Brazilian inmates are subjected—especially those with some form of disability—but, more importantly, in the existence of systematic marginalization, which is intensified within the prison environment, as will be demonstrated.

The issue at hand is to understand how prison facilities contribute to the perpetuation of the segregation of groups in situations of social vulnerability, such as persons with disabilities, thereby obstructing their dignified reintegration into society.

In this regard, Article 10 of the *Lei de Execução Penal* establishes that assistance to prisoners and inmates is a duty of the State, aiming to prevent crime and guide the return to social life. The sole paragraph of the article, in turn, adds that such assistance extends to the released individual and that this, as provided in Article 25, consists, among other requirements, of guidance and support to reintegrate them into life in freedom, once again highlighting the term *reintegração* (Brasil, 1984).

Considering the *estado de coisas inconstitucional* recognized by the *Supremo Tribunal Federal*, the hypothesis is that the Brazilian prison system is not equipped to provide conditions for the harmonious social integration of convicts and inmates, as established by the *Lei de Execução Penal* (Law No. 7.210, of July 11, 1984).

With regard to groups in situations of social vulnerability, such as persons with disabilities, the hypothesis is that the prison system significantly contributes to the perpetuation of their segregation, hindering their full reintegration into society.

The research aims to assess whether the *modus operandi* of the Brazilian prison system is responsible for perpetuating the *estado de coisas inconstitucional* experienced especially by persons with disabilities during incarceration and even afterward, when, in theory, they should be fully reintegrated into society.

The justification for the research lies in its high social relevance, since the segregation of groups in vulnerable situations—although intensified by state omission—is, above all, a historical responsibility of society. Furthermore, the legal relevance of the topic must be emphasized, due to the serious human rights violations suffered by individuals within the Brazilian prison system.

Precisely for this reason, the *Supremo Tribunal Federal* deemed the prison situation in Brazil an "*estado de coisas inconstitucional*," which requires joint and integrated action in order to be remedied.

Moreover, this is a topic of great academic importance, due to its interdisciplinary nature as well as its originality. For this reason, the present debate is necessary, since academia—as a space for the fostering of ideas—has the potential to become a precursor of important social and legal changes concerning the topic at hand.

The theoretical framework of this research is based on the primacy of human dignity, on the full exercise of citizenship by persons with disabilities, and on the recognition of the concept of *estado de coisas inconstitucional* by the *Supremo Tribunal Federal*.

The theoretical approach is also grounded in the analysis of the social position historically occupied by persons with disabilities as victims of successive human rights violations, based on the theoretical contributions of decolonial theory.

The methodology employed is qualitative, through bibliographic research, consisting of the analysis of scholarly literature, articles, legislation, and especially the following documents: the *Constituição da República Federativa do Brasil de 1988*; Law No. 13.146, of July 6, 2015, which established the *Lei Brasileira de Inclusão da Pessoa com Deficiência* (*Estatuto da Pessoa com Deficiência*); and *Arguição de Descumprimento de Preceito Fundamental* (ADPF) 374/DF, which sought the recognition of the "*figura do 'estado de coisas inconstitucional'*" in relation to the Brazilian prison system (Brasil, 1988; Brasil, 2015a; Brasil, 2015b).

To understand the relationship between the perpetuation of the *estado de coisas inconstitucional* and the situation experienced by persons with disabilities during incarceration and

even after their release, the research explores the current legal framework, including all relevant norms and principles. In addition, it includes an analysis of the feasibility of proposed solutions, such as draft legislation.

1 PEOPLE WITH DISABILITIES AND THEIR PREROGATIVES IN THE BRAZILIAN LEGAL SYSTEM

People with disabilities currently benefit from broad protection under the Brazilian legal system, although this has not always been the case. In Brazil, the enactment of the 1988 Federal Constitution represents a historic milestone in guaranteeing legislative protection for this specific group.

This is because the original constituent deliberately included in the Brazilian Constitution provisions related to the guarantee of non-discrimination (e.g., art. 7, XXXI), as well as the promotion of accessibility (e.g., art. 227, § 2º) (Brasil, 1988).

The inclusion of these provisions in the constitutional text aligns closely with one of the foundational principles of the *República Federativa do Brasil*, set forth in Article 1, III, namely the dignity of the human person (Brasil, 1988). According to Luís Roberto Barroso (2016, p. 14), "a dignidade humana, como atualmente compreendida, se assenta sobre o pressuposto de que cada ser humano possui um valor intrínseco e desfruta de uma posição especial no universo".

Precisely for this reason, the *caput* of Article 5 of the 1988 Constitution is now interpreted not merely as a corollary of the principle of equality, but of the principle of *isonomia*. The distinction lies in the fact that *isonomia* goes beyond simply treating people and situations equally, considering their specificities.

The issue is not simply to treat everyone equally without any distinction, but rather to "treat equals equally and unequals unequally, to the extent of their inequality," as stated by Aristotle (384–322 BC).

In this regard, Sidney Pessoa Madruga da Silva (2021, p. 14) highlights that the codification of human rights—understood as rights grounded in human dignity—stems from historical processes that lead to their incorporation into legislation. However, the mere codification of rights, in isolation, is not sufficient to ensure their full effectiveness.

It is understood that, in abstract terms, legislative provisions grant citizens entitlement to rights and impose upon the State certain positive obligations, which are essential for ensuring the effectiveness of the legal system. In theory, this is how codified rights should be concretely

guaranteed—not merely in the abstract—either through their exercise by right-holders or through the implementation of public policies by the State.

With regard to people with disabilities, the author argues that the guarantee of rights is more difficult to achieve, since the legal recognition of their dignity clashes with the social, political, economic, and cultural exclusion they experience.

In this context, it is worth emphasizing that, although the historical struggles and demands of this group for equal dignity have led—and continue to lead—to the development of a comprehensive legal framework, the existing legal provisions clearly reflect the *capacitista* (ableist) society that produced them, both in terms of their normative content and their lack of effectiveness.

As Luana Adriana Araújo warns, this happens because the "extensão dos direitos e atribuição de titularidade aos que possuem deficiência é sempre feita em um contexto normativo externamente ordenado, que paradoxalmente também constrói, confirma e reitera a categoria identitária oprimida" (Araújo, 2021).

According to Fernanda Frizzo Bragato, society, to redress the historical discrimination against certain groups, invests in the construction of a broad normative framework (Bragato, 2016).

Despite this, rights and guarantees "têm se tornado meras palavras vazias: são sistematicamente violados e não há consequências graves para aqueles que se beneficiam e praticam as violações" (Bragato, 2016).

Nonetheless, even though there is a paradoxical gap between these social and legal realities—and even though the law alone is not sufficient to change the social reality of people with disabilities—it must be noted that change is not possible without the law either. In this sense, it is important to highlight the impact generated, above all, by the enactment of the *Lei Brasileira de Inclusão da Pessoa com Deficiência* (Law No. 13.146/2015), better known as the *Estatuto da Pessoa com Deficiência*.

This piece of legislation revolutionized the national legal framework by, for example, introducing changes to the *Código Civil*, particularly regarding the legal capacity framework, and by establishing the term "pessoa com deficiência" as the standard, ruling out the use of socially discriminatory expressions such as "pessoa portadora de deficiência," among others.

1.1 Law No. 13.146/2015 as a Fundamental Norm for the Protection of People with Disabilities in Brazil

Although the enactment of the 1988 Federal Constitution is considered a milestone in the protection of people with disabilities in Brazil, it is Law No. 13.146/2015 that truly deserves prominence, due to the significant progress its sanction represented.

This law was based on the text of the *Convention on the Rights of Persons with Disabilities* and its *Optional Protocol*, signed in New York on March 30, 2007. It was established with the aim of ensuring and promoting, under equal conditions, the exercise of rights and fundamental freedoms by people with disabilities, to foster their social inclusion and citizenship (Brasil, 2015).

The first innovation introduced by the law concerns the adoption of the term "pessoa com deficiência" (person with disability) as the standard to be followed. Article 2 establishes that "considera-se pessoa com deficiência aquela que tem impedimento de longo prazo de natureza física, mental, intelectual ou sensorial, o qual, em interação com uma ou mais barreiras, pode obstruir sua participação plena e efetiva na sociedade em igualdade de condições com as demais pessoas" (Brasil, 2015).

Sidney Madruga highlights that the terminology adopted by the law is free of prejudice, unlike others commonly used, such as: *pessoa portadora de deficiência*, *pessoa com necessidades especiais*, *pessoa portadora de necessidades especiais*, etc.

Silva (2021, p. 08) points out that "a deficiência é inerente à pessoa que a possui. Não se carrega, não se porta, não se leva consigo, como se fosse algo sobressalente ou um objeto." Precisely for this reason, it is incorrect to use the expression *portador*, as well as all other words and expressions that undeniably carry a pejorative tone, yet are still widely used and even appear in various legal provisions.

According to Silva (2021, p. 09), it is completely mistaken to claim that words do not serve to change reality, especially when they are easily understood and enter popular usage, potentially reinforcing prejudice and becoming offensive. This is not only about modifying vocabulary, but also about eliminating from the social sphere the prejudice historically built against people with disabilities.

As Luana Adriana Araújo warns, "desde o surgimento do modelo social de deficiência, nos anos 1970, os estudos de deficiência têm depositado uma grande confiança nos sistemas legais, deixando de problematizar o papel desempenhado pela lei na manutenção de significados anormalizados de deficiência" (Araújo, 2021).

The perpetuation of abnormalized meanings of disability referred to by the author relates precisely to the systematized discrimination established throughout history for various reasons, which are generally summarized in two issues: aesthetic standards and social role. The social role today

refers to the perceived utility of the individual within an extremely capitalist and globalized society. According to Sandra Regina Schewinsky (2004), "na nossa sociedade, em que o indivíduo 'vale' pela sua produção e riqueza, no momento em que fica impossibilitado de exercer papéis profissionais que lhe conferem o status quo, recai sobre ele a imagem de inutilidade e de menos-valia."

It is precisely for this reason that people who deviate from the social standard—such as people with disabilities—face barriers that prevent them from fully exercising their rights and, consequently, their citizenship.

These barriers can be considered abstract instruments that promote the segregation of socially unwanted groups, especially through the creation of hierarchies among human beings. This stems directly from *coloniality*, which is nothing more than a clear representation of power structures historically established because of colonialism.

According to Fernanda Frizzo Bragato:

> (...) coloniality helps to explain the depreciation of certain human beings through their discursive and practical dehumanization. The discourse of human gradation and inferiority continues to resonate precisely because it reinforces what we have been taught to believe: that there are superior peoples who speak about and on behalf of others, defining what should be seen as weaknesses, flaws, and defects to be rejected (Bragato, 2016, free translation).

The author further emphasizes that discrimination, although it dates to colonial times, persists today "porque persiste a ideia de que existem seres inferiores e descartáveis" (Bragato, 2016). Thus, it can be concluded that the historically constructed collective consciousness represents the main obstacle faced by people with disabilities in their pursuit of equality.

In addition to abstract barriers, the *Estatuto da Pessoa com Deficiência* also lists concrete and tangible obstacles imposed on people with disabilities, which pose a significant hindrance to achieving the much-desired accessibility. The barriers cited by the *Estatuto* refer to obstacles—whether physical or otherwise—that hinder or limit the social participation of people with disabilities, as well as their freedom of movement and expression. These are classified as: urbanistic barriers; architectural barriers; transportation barriers; communication and information barriers; attitudinal barriers; and technological barriers (Brasil, 2015b; Brasil, 2004).

Such barriers impose a burden on people with disabilities that prevents them from fully exercising their rights. These manifest through elements such as public spaces (*urbanistic barriers*), public and private buildings (*architectural barriers*), and public transportation (*transportation barriers*) that lack proper adaptations.

Additionally, it is important to highlight obstacles to accessing information (*communication and information barriers*), impediments to social participation (*attitudinal barriers*), as well as the difficulty or even impossibility of accessing technology (*technological barriers*) (Brasil, 2004).

The *Estatuto* represents a major advancement regarding the rights of the individuals it protects, as it is strongly grounded in constitutional principles and aims to ensure equal opportunities while repressing any form of discrimination. Among its provisions of concepts, list of rights, and definition of criminal offenses, one of its main legal impacts lies in the amendments it introduced to Articles 3 and 4 of the *Código Civil*.

From the moment the *Estatuto* came into effect, the provision of Article 6 altered the *Código Civil*, which now considers people with disabilities fully capable of exercising civil acts (Brasil, 2015). According to Erival da Silva Oliveira (2019), by enacting this change, "o legislador buscou afastar o preconceito que a palavra deficiente costuma carregar, evitando fazer sua relação com eventual incapacidade."

Based on the analysis carried out so far, it is evident that the examined law is indeed highly significant. However, it must be noted that it is primarily derived from other existing international norms and is not applied in isolation, but in conjunction with the broader set of legal norms currently in force, which will be discussed in the next section.

1.2 The Legal and Supralegal Framework for the Protection of People with Disabilities

It is indisputable that people with disabilities are broadly protected by the Brazilian legal system. This is because, in addition to the *Constituição Federal* and the *Estatuto da Pessoa com Deficiência*, the following legal instruments are also in force: *Lei n. 7.853/89*; *Lei n. 8.213/91*; *Decreto n. 3.691/2000*; *Decreto n. 3.956/2001*; *Decreto n. 5.296/2004*; *Decreto n. 5.626/2005*; *Decreto n. 6.949/2009*; and *Decreto n. 9.522/2018* (Brasil, 1989; Brasil, 1991; Brasil, 2000; Brasil, 2001; Brasil, 2004; Brasil, 2005; Brasil, 2009; Brasil, 2018).

Lei n. 7.853/89 addresses support for people with disabilities, their social integration, the creation of the *Coordenadoria Nacional para Integração da Pessoa Portadora de Deficiência* (Corde), the establishment of judicial protection for collective or diffuse interests of this group, defines crimes, and provides other provisions (Brasil, 1989).

Lei n. 8.213/91, in Article 93, establishes that companies with 100 (one hundred) or more employees must allocate 2% to 5% of their job positions to rehabilitated beneficiaries or qualified people with disabilities (Brasil, 1991).

Decreto n. 3.691/2000 regulates *Lei n. 8.899/94*, which addresses the transport of people with disabilities in the interstate collective transport system. It mandates the reservation of two seats for people with disabilities and allows them to access free transportation if they demonstrate financial hardship (Brasil, 2000).

Decreto n. 3.956/2001 promulgates the *Convenção Interamericana*, an international document aimed at preventing and eliminating all forms of discrimination against people with disabilities and ensuring their full inclusion in society. It includes definitions of disability and discrimination for clarification purposes (Brasil, 2001).

Decreto n. 5.626/2005 regulates *Lei n. 10.436/2002*, which addresses the *Língua Brasileira de Sinais* (Libras), and Article 18 of *Lei n. 10.098/2000*, establishing, for instance, Libras as a mandatory subject in the school curriculum (Brasil, 2005).

Decreto n. 5.296/2004 regulates *Leis n. 10.048/2000* and *10.098/2000*, establishing general rules and basic criteria to promote accessibility for people with disabilities or reduced mobility (Brasil, 2004).

Decreto n. 6.949/2009 promulgates the *Convenção Internacional sobre os Direitos das Pessoas com Deficiência* and its Optional Protocol, which served as the foundation for the current *Estatuto da Pessoa com Deficiência* (Brasil, 2009).

Decreto n. 9.522/2018, in turn, promulgates the *Tratado de Marraquexe para Facilitar o Acesso a Obras Publicadas às Pessoas Cegas, com Deficiência Visual ou com Outras Dificuldades para Ter Acesso ao Texto Impresso* (Brasil, 2018).

The international treaties mentioned above were incorporated into the Brazilian legal system in accordance with the approval quorum established in Article 5, §3 of the *Constituição Federal*, thus granting them constitutional amendment status.

The laws and decrees form part of the national legal framework for the protection of people with disabilities, which may also be referred to as the *bloco de constitucionalidade*. According to Padilha (2019, p. 130), the Brazilian *bloco de constitucionalidade* consists of the set of constitutional rules, principles, values, ADCT provisions, Constitutional Amendments, and international treaties with constitutional status that serve as parameters for constitutional review.

Thus, a much broader standard of review is established nationally, as norms endowed with constitutional character—though not necessarily included in the main body of the *Constituição Federal*—are interpreted systematically, that is, in conjunction with one another.

At the international level, Silva (2021, p. 61) highlights that “a Convenção sobre os Direitos das Pessoas com Deficiência constitui-se no mais abrangente e significativo documento internacional

dedicado exclusivamente às pessoas com deficiência." This humanized and socialized perspective is precisely what is missing from the national legislative framework. The latter limits itself to enacting rights, guarantees, and obligations, without addressing the origins of the violations it aims to prevent, nor effectively repressing such violations.

Given all of the above, the question arises: how is it that, despite the existence of broad legal and even constitutional protection—at both the national and international levels—people with disabilities still are not fully integrated into Brazilian society?

1.3 The (In)Dignity of People with Disabilities

All sources consulted and used in the development of this study were analyzed through a constitutional lens. This is because the *Constituição Federal de 1988*, as the supreme law, serves as the foundation of validity for all other norms within the Brazilian legal system (Brasil, 1988).

The constitutional text was pivotal in addressing discrimination against people with disabilities, ensuring their right to health care, access to public assistance, protection and guarantee of their rights, reserved positions in public jobs, and specialized educational services. In other words, it marked a legislative effort to achieve substantive equality, which ultimately led to the enactment of the *Estatuto da Pessoa com Deficiência*, *Lei n. 13.146 de 2015* (Brasil, 1988; Brasil, 2015a).

This statute inherited from the Constitution the intent to ensure dignity for people with disabilities. It introduced a more inclusive concept, defining disability as conditions that may obstruct an individual's full and effective participation in society on an equal basis with others (Brasil, 2015a).

In this sense, the debate surrounding the concept of accessibility is introduced. According to Silva (2021, p. 63), a truly accessible society must ensure not only physical accessibility but also the guarantee of political, social, economic, and cultural rights for people with disabilities. The author further argues that an inclusive society is one that provides the same opportunities for everyone to enjoy, under real and equal conditions, both material and immaterial goods and rights, according to their needs.

The notion of accessibility is therefore closely linked to the concepts of isonomy and, consequently, dignity. The kind of access being discussed and pursued goes far beyond what engineering and architecture can offer. Physical accessibility alone is insufficient. People with disabilities dream of, deserve, and are entitled to much more.

However, the main barrier they face is precisely the one that hinders the realization of legally established rights and guarantees. Socially, people with disabilities remain somewhat invisible, which prevents them from fully enjoying their social and political rights, as well as their individual

guarantees. Despite legal and constitutional provisions regarding isonomy, what is still observed in society is the absence of an isonomic reality.

From the perspective of Ferdinand Lassalle (2006), it can be concluded that the national legal framework, in this scenario, appears to be nothing more than a mere piece of paper, incapable by itself of changing the reality faced by people with disabilities. These individuals are subjected to a diminished form of citizenship, which clearly violates the principle of human dignity, as it deprives them of the full exercise of the prerogatives inherent to a true rights-bearing subject.

As a constitutional principle set forth in Article 1, III, of the *Constituição Federal de 1988*, human dignity should be respected in all areas of society—and especially in those where the notions of society and citizenship are most fragile, such as in prisons (Brasil, 1988).

In this context, ensuring dignity for all, including socially excluded groups, requires bridging the gap between social and legal realities.

This gap exists because both the Brazilian and international legal systems are founded on the premise of the universality of human rights, granting all individuals the same legal status without exception. However, this principle is often challenged by the "real world, marked on a large scale by asymmetrical and unjust power relations rooted in historical dehumanizing discourses" (Bragato, 2016).

Furthermore, it is essential to consider that, according to Débora Diniz, Lívia Barbosa, and Wederson Rufino dos Santos, ensuring a dignified life does not simply mean "the provision of goods and medical services, but also requires the elimination of barriers and the guarantee of a socially accessible environment for bodies with physical, intellectual, or sensory impairments" (Diniz; Barbosa; Santos, 2009).

In other words, the true guarantee of a dignified life for marginalized individuals is directly linked to overcoming all existing barriers, whether tangible or intangible.

However, the logic of coloniality hinders this dismantling of barriers, as it enables the selective violation of human rights, especially in invisible settings such as correctional facilities.

The debate surrounding the daily challenges faced by people with disabilities in societies that continue to disregard the legal provisions mentioned above points to a clear form of social segregation. This segregation becomes even more pronounced when analyzed through the lens of the prison system, which is precisely the focus of this article.

2 THE BRAZILIAN PRISON SYSTEM AND THE DEHUMANIZATION OF INCARCERATED INDIVIDUALS

The Brazilian prison system is a multifaceted subject, frequently analyzed and debated—especially following the adoption of human dignity as one of the foundational principles of the *República Federativa do Brasil*, as expressly stated in Article 1 of the 1988 *Constituição Federal*.

Among the many issues within the prison system, overcrowding stands out as the ignition point for several others. According to data from the *Conselho Nacional do Ministério Público* (CNMP), there are 1,450 prison facilities in Brazil, with a total capacity for 511,679 detainees. However, the actual incarcerated population stands at 687,603, resulting in an occupancy rate of 134.38% (Conselho Nacional do Ministério Público, 2022).

The vulnerability of the Brazilian prison system—exposed by this overcrowding—acts as a catalyst for human rights violations, as it fosters riots, rebellions, and clashes among criminal factions. These situations lead to various forms of violence and clearly reflect the inefficiency and failure of the State in fulfilling one of the central objectives of criminal sanctions: the resocialization of inmates (Pereira, 2017).

As a result, this issue becomes an area in which measures are often adopted—particularly by the Judiciary—with the aim of ensuring that prison conditions align with the principle of human dignity. Therefore, there is a direct relationship with the constitutional principle of isonomy.

In this light, an analysis of the problem through the lens of isonomy leads to the conclusion that the Brazilian prison system demands the application of equitable and preventive treatment against discrimination and, consequently, the promotion of more humane conditions within the prison environment. This is because, under precarious conditions, prisons—as argued by Eugenio Raul Zaffaroni (2001)—become institutions that act as true agents of deterioration, resulting in a pathological process characterized primarily by regression.

Based on these considerations, the explicit constitutional prohibition of inhuman or degrading treatment in the *Constituição da República Federativa do Brasil de 1988* is both justified and understandable, given the historical trajectory of the Brazilian prison system toward the dehumanization of the individual.

2.1 The Reintegration of the Inmate into Social Life as an Objective of Penal Execution

The *Lei de Execução Penal* of 1984, even though enacted prior to the promulgation of the 1988 *Constituição Federal*, already established the objectives of prevention, punishment, and the resocialization of the detainee.

In this context, the research identified the need to distinguish between the terms *ressocialização* and *reintegração*. For a more humane approach, *reintegração* is the more appropriate

term, since it "presupposes communication between the inmate and society, causing not the transformation of the inmate, but the transformation of society, so that it recognizes the problems of incarceration as its own" (Depiere, 2015, p. 53).

In contrast, as also observed by Vanessa Cristina Depiere (2015), *ressocialização* directs the inmate toward passivity, imposing upon them the characterization of "bad" and upon society the characterization of "good," which consequently requires the former to be readjusted to the latter.

The *Lei de Execução Penal* technically uses a term closer to *reintegração*, establishing in its Article 1 that one of its objectives is to provide conditions for harmonious social integration (Brasil, 1984). Thus, the penalties imposed should be guided by humanistic principles that aim at the reintegration of the sentenced individual into social life (Sarue, 2020).

Along the same lines, Article 10 of the same legal text establishes state duty to provide assistance aimed at preventing crime and guiding the return to social coexistence (Brasil, 1984). Therefore, according to Rodrigo Felberg (2015), there is no incompatibility in providing the inmate with humane conditions, environment, and means for personal development, aiming at the ultimate goal of crime prevention.

Thus, as established both by the *Lei de Execução Penal* and the *Constituição da República Federativa do Brasil*, penalties must ensure conditions for inmates that are sufficient for their reintegration into social life.

2.2 Unconstitutional State of Affairs

The so-called *Estado de Coisas Inconstitucional* (Unconstitutional State of Affairs) originated in Colombia through the Colombian Constitutional Court and can "be understood as a legal technique or mechanism created and employed by a constitutional court" (Pereira, 2017). Through this legal mechanism, the Constitutional Court recognizes and declares an unconstitutional situation based on the massive violation of fundamental rights, whether by commissive acts or omissions of different state authorities. These violations are aggravated by the persistent negligence of these authorities and can only be altered through structural changes in the performance of public power (Campos, 2015).

According to Garavito (2009, p. 435), the declaration of the *Estado de Coisas Inconstitucional* arises from cases in which there is: the allegation of numerous people reporting violations of their rights; the involvement of different state entities due to their responsibilities; the implication of complex orders, i.e., judicial determinations to the referred state entities for joint and coordinated action to protect the affected population, not only those who brought the claims.

Thus, the following are identified as prerequisites for the declaration of the *Estado de Coisas Inconstitucional*:

> [...] (i) a context of widespread, continuous, and systemic violations of fundamental rights affecting a significant number of individuals; (ii) the prolonged omission, inertia, and/or persistent and repeated inability of public authorities to change the scenario of ongoing violations in order to guarantee the rights enshrined in law; and (iii) a set of unconstitutional (and unconventional) transgressions that demand the involvement not of a single body, but of a plurality of authorities ("structural transformations"), from which the adoption of a complex and coordinated set of actions is required (Pereira, 2017, p. 178, free translation).

In Brazilian territory, the recognition of the Unconstitutional State of Affairs in Brazilian prisons occurred due to ADPF 347 MC/DF, which requested the acknowledgment of such a legal mechanism, as well as the adoption of structural measures in response to the various human rights violations suffered by inmates, resulting from a series of actions and omissions by state entities.

Consequently, with the recognition of the Unconstitutional State of Affairs of Brazilian prisons, the Supreme Federal Court, in its ruling, understood that the advanced stage of dehumanization of the individual promoted by the prison system cannot be attributed to a single branch of government, but is therefore distributed among the Legislative, Executive, and Judiciary Powers at all levels (Pereira, 2017).

Based on the decision of the Supreme Federal Court, grounded in articles 9.3 of the International Covenant on Civil and Political Rights and 7.5 of the American Convention on Human Rights, judges and courts were mandated to carry out custody hearings (Brasil, 2015a).

Custody hearings aim to verify the legality of the arrest in flagrante delicto and to consider the measures to be taken in the specific case, since the individual's deprivation of liberty, as a precautionary measure, should be used only as a last resort, given that the constitutional principle of presumption of innocence prevails in Brazilian law.

According to Eugenio Pacelli (2016, p. 548), the purpose of such hearings “is to verify possible illegalities related to the arrest itself or to the treatment suffered by the detainee while in police custody,” as well as to enable the accused’s first statement about the event, resulting in the maintenance of the arrest, its release, or even its replacement by other precautionary measures (Oliveira, 2016).

Since the mandatory implementation of custody hearings, according to data from the National Justice Council (CNJ), 1,396,392 hearings have been held, resulting in 3,698 house arrests, 556,532 releases granted, 836,069 preventive arrests, 57,307 sentences for community service, and 104,072 reports of torture and mistreatment (Conselho Nacional de Justiça, 2023).

In 2023 alone, up to October 18, 287,686 hearings were held, resulting in 1,084 house arrests, 113,101 releases granted, 173,454 preventive arrests, 11,314 sentences for community service, and 24,136 reports of torture and mistreatment (CNJ, 2023).

Despite the Supreme Federal Court's recognition of the Unconstitutional State of Affairs, no important precautionary measures were granted to immediately change the inhumane conditions of the Brazilian prison system. However, some measures adopted, such as the implementation of custody hearings, have generated positive effects, considering the reduction in the number of people arrested in flagrante delicto, increased adoption of other precautionary measures, and the exposure of the large volume of previously underreported cases of torture and mistreatment (Pereira, 2017).

Thus, due to the noncompliance with constitutional principles and legal determinations already mentioned, coupled with the normalization of prison precarity, the ruling of the Arguição de Descumprimento de Preceito Fundamental (ADPF) 347 MC/DF recognized the unconstitutional state of affairs of national prison establishments.

This state of affairs confirms that the penitentiary system segregates vulnerable groups in society, among which are people with disabilities, with no evidence that this segregation aims at reintegration of inmates into society but rather at their definitive exclusion.

3 THE PRISON REALITY OFFERED TO PRISONERS WITH DISABILITIES

In a recent speech, Supreme Federal Court (STF) Minister Luís Roberto Barroso (2023) stated that when it is said there is an "estado de coisas inconstitucional" in the Brazilian penitentiary system, "quer-se dizer que não é uma falha pontual e sim uma massiva violação de um conjunto de direitos e cuja superação exige um esforço coletivo e prolongado."

The term "massiva violação de direitos" assumes that not even the most basic rights, which minimally guarantee a dignified life to human beings, such as food and hygiene, are ensured in the Brazilian prison system.

According to Barroso (2023), it is necessary to emphasize that "o preso foi condenado à privação de liberdade. Ele não foi condenado a passar fome, ele não foi condenado a ser violentado, ele não foi condenado a viver em um ambiente fétido." In other words, the imposition of a custodial sentence authorizes the State to restrict the fundamental right of the inmate to freedom of movement but does not legitimize violating other rights inherent to human beings and corollaries of a manifestly dignified life.

Precisely for this reason, the Federal Constitution provides in its article 5°, XLVII, that in Brazil the application of the death penalty is prohibited, except in the case of declared war; perpetual

penalties; forced labor; banishment; and cruel punishments (Brasil, 1988). In this sense, it can be considered that the reality experienced by incarcerated people in Brazil constitutes a true affront to constitutional provisions that clearly prohibit cruelty and arbitrary violations of rights.

It also represents an evident affront to the very objectives of punishment, inscribed in article 10 of the Lei de Execução Penal, according to which "a assistência ao preso e ao internado é dever do Estado, objetivando prevenir o crime e orientar o retorno à convivência em sociedade" (Brasil, 1984).

More than merely punishing the transgression committed, the sentence should have as its main objective enabling the offender to return to social life. Barroso (2023) highlights that people who enter the penitentiary system are individuals who at some point came into conflict with the law, and precisely for this reason, the system should help them find themselves again, not lose themselves definitively.

The study of data related to the Brazilian prison population profile, provided by the Conselho Nacional do Ministério Público, reveals social vulnerability as one of the main common characteristics among inmates.

Social vulnerability, beyond financial issues, mainly concerns the lack of educational and professional qualifications. Precisely for this reason, one of the main ways to reduce prison sentences in Brazil — that is, to obtain gradual sentence remission — is through studying and working within the penitentiary environment.

Such sentence remission represents a practical application of the social reintegration objective attributed to criminal sanctions. This is because study and work enable inmates to develop activities that are socially considered lawful and remunerated, which perhaps were not accessible to them before incarceration.

In general, the Brazilian prison environment, as currently established, relegates inmates to the challenge of surviving under undignified conditions and, consequently, fosters criminal recidivism, turning crime into an endless vicious cycle, precisely because the effectiveness of projects aimed at resocialization is manifestly insignificant.

In this context, one questions: how does the Brazilian prison system intend to resocialize people while treating them in an inhumane way? And further: how is it possible to resocialize someone who, even before incarceration, was not fully socialized?

3.1 Alternatives for Serving Custodial Sentences by Persons with Disabilities

Regarding persons with disabilities, a clear social segregation is observed, which is not limited to the mere existence of physical barriers. In fact, it goes much further, relegating these individuals to the exercise of a mitigated citizenship, which directly impacts the main principle enunciated by the Constitution of the Federative Republic of Brazil, namely the dignity of the human person.

The social segregation imposed on this group of people becomes even more pronounced when analyzed from the prison perspective, since, as recognized by ADPF 347 MC/DF, the penitentiary establishments themselves already segregate vulnerable groups of society, keeping them permanently separated, given that the conditions therein do not demonstrate a search for their integration into society (Brasil, 2015b).

According to data provided by the Conselho Nacional do Ministério Público, referring to the year 2022, the Brazilian prison system houses approximately 644,480 inmates, among whom 12,723 have some type of disability, whether physical or mental, representing approximately 1.97% of the total (Conselho Nacional do Ministério Público, 2022).

The Lei de Execução Penal, as well as the entire legal-penal framework, aims at the punishment and prevention of crime, as well as the reintegration of the sentenced individual into society.

In this interim, one of the main principles established by the Brazilian Democratic State of Law must be highlighted, known as *ne bis in idem*. According to André Estefam (2022, p. 180), "o princípio do ne bis in idem veda a dupla incriminação. Por isso, ninguém pode ser processado ou condenado mais de uma vez pelo mesmo fato."

This principle objectively ensures that a person cannot be punished more than once for the same fact, aiming to guarantee a just punishment. Its applicability also extends to the sentencing process, preventing sentence increases derived from the recognition of qualifying circumstances that correspond to elements of the criminal type, for example.

In this regard, it is worth highlighting the Resolution of November 22, 2018, by the Inter-American Court of Human Rights, which prohibited the admission of new prisoners into the Instituto Penal Plácido de Sá Carvalho, in the Bangu Penitentiary Complex, located in the West Zone of Rio de Janeiro, due to overcrowding and blatant violations of the fundamental rights of inmates detained there (Corte Interamericana de Direitos Humanos, 2018).

As a way to mitigate the referred situation, the Court determined that the sentences of the inmates should be counted double, except for those who committed crimes against life, against physical integrity, or sexual crimes (Corte Interamericana de Direitos Humanos, 2018).

The double counting of the sentence due to the conditions of the prison environment can be considered intrinsically linked to the prohibition of *bis in idem*, since the prison conditions themselves already configure a kind of double punishment, which is manifestly contrary to the principle established.

Following the central idea of the mentioned principle, linked to the decision of the Inter-American Court of Human Rights, in 2021, the Superior Court of Justice confirmed a monocratic decision issued by Minister Reynaldo Soares da Fonseca, which granted a habeas corpus order so that the sentence of an inmate held at the Instituto Penal Plácido de Sá Carvalho could be counted double (Brasil, 2021).

One of the main controversies faced by the decision was the determination of the date that should be considered as the start of the sentence computation and, consequently, its double counting.

On the one hand, the Court of Justice of Rio de Janeiro understood that the starting point should be the notification date of the country regarding the resolution, since the latter does not have a specific forecast; after the monocratic decision, the Public Ministry of Rio de Janeiro argued that the decision of the Inter-American Court of Human Rights has a "nature of a provisional precautionary measure," consequently preventing its retroactive effect (Brasil, 2021).

The monocratic decision and the ruling issued by the Fifth Panel of the STJ invoked human rights principles and international law foundations, highlighting the need for individual protection as well as recognizing Brazil's submission to international norms, since it is a signatory country of the Pact of San José, Costa Rica.

This submission was used as the basis by Minister Reynaldo Soares da Fonseca both in his monocratic decision and in his vote, as follows:

> As of Decree No. 4.463, issued in November 2002, Brazil submitted itself to the contentious jurisdiction of the Inter-American Court of Human Rights (IACtHR) and began to appear as the respondent in international claims, which resulted in obligations to implement domestic adjustments to ensure its norms would conform to the American Convention on Human Rights (Brasil, 2021, Free translation).

In his vote, the Minister stated that the country's submission to the jurisdiction of the Inter-American Court of Human Rights "expands the range of people's rights and the dialogue with the international community. Thus, Brazilian jurisdiction, by relying on international cooperation, can broaden the effectiveness of human rights" (Brasil, 2021). Finally, he concluded:

> In the same vein, public authorities - including the judiciary - must exercise the control of conventionality, taking into account the effects of international legal provisions and adapting their internal structures to ensure full compliance with their obligations before the

> international community, given that signatory States are guardians of human rights protection and must apply the interpretation most favorable to the individual (Brasil, 2021, Free translation).

This ruling holds a historic character, both in the defense of human rights and in guaranteeing the humanization of the incarcerated individual, but especially since the protagonist is an organ of the Brazilian Judiciary. The reasoning employed, particularly the invocation of fundamental human rights principles as well as the necessity of utilizing international law, aligns with the evident omission and lack of coercion by the Brazilian State – more specifically, by the executive and legislative branches—regarding the regulation of the criminal justice sphere.

As already stated, there are norms and principles within Brazilian law aimed at a just and effective punishment, seeking the reintegration of the individual into society, the prevention of new crimes, and the protection of human rights, ensuring that inmates' physical and moral integrity is respected.

However, according to data from the Public Prosecutor's Office and the National Council of Justice, the Brazilian prison system is in a flagrant state of degradation and neglect. Thus, imprisonment ends up having as its sole objective the segregation of the individual from society, contradicting all legislation drafted to prevent such an outcome.

The degrading conditions to which the individual is subjected upon entry into the Brazilian prison system are exacerbated for those with disabilities, since overcrowding and the lack of minimum conditions to ensure physical and moral protection are aggravated by their specific condition.

As previously stated, the precarious conditions of the Brazilian penitentiary system have the potential to constitute double punishment, in violation of the principle of *ne bis in idem*. In this regard, Bill No. 5,372/2016, authored by Congressman Carlos Bezerra of PMDB/MT, was drafted, which has the following summary:

> Amends Article 126 of Law No. 7,210, of July 11, 1984 (Law of Criminal Enforcement), to allow convicted persons with disabilities to reduce part of their sentence time when serving it in a correctional facility lacking accessibility, and provides other measures (Brasil, 2016, Free translation).

It is known that the *Lei de Execução Penal* has as its objectives: punishment, the prevention of new crimes, and the reintegration of the individual. In this sense, aiming at effective legal compliance, the previously mentioned Bill proposes sentence remission when the prison facility lacks

accessibility. It is based on the idea that subjecting a person with a disability to an already dilapidated location, which is not equipped to ensure the sentence is served under equal conditions compared to others, is intrinsically linked to the concept of double punishment already explained.

The text approved by the Committee for the Defense of the Rights of Persons with Disabilities of the Chamber of Deputies also introduced the possibility of house arrest under an open regime for persons with disabilities. This bill is currently under review by the Committee on Public Security and Combating Organized Crime.

Along similar lines, there is Bill No. 4,008/2019, authored by Senator Mara Gabrilli of PSDB/SP, currently awaiting the assignment of a rapporteur, which establishes that "*a pessoa com deficiência cumprirá pena em estabelecimento penal adaptado à sua condição peculiar*" (Brasil, 2019). This bill provides for the creation of facilities adapted to the conditions of convicted individuals with disabilities, and aims to ensure that funding for the adaptation of prison units is supplied by the *Fundo Penitenciário Nacional – Fupen* (Brasil, 2019).

Both bills share the same goal: to promote fair punishment and effectively reintegrate the individual into society, without violating their physical and moral integrity or characterizing the sentence as a form of double punishment—thus preventing the further segregation of persons with disabilities from society.

However, despite the existence of a broad array of norms and principles aimed at humanizing inmates, protecting human rights, and reintegrating individuals into society, a critical issue remains—namely, legislative omission, exemplified by the stagnation of bills concerning the rights of persons with disabilities.

Beyond the existence of the referred extensive legal framework and its evident lack of enforcement, it is also worth mentioning the publication of a booklet by SENAPPEN (*Secretaria Nacional de Políticas Penais*) in partnership with the United Nations Development Programme (UNDP), which outlines procedures for the custody of persons with disabilities in the prison system (Brasil, 2022).

This booklet is grounded in the guarantee of human rights, the principles of equality and non-discrimination, and considers the specificities of persons with disabilities, as does Technical Note No. 83 from the *Departamento Penitenciário Nacional* (DEPEN).

The aforementioned note is based on "*a necessidade de cumprimento de procedimentos apropriados e de rotinas transformadoras do sistema prisional em ambientes adequados para o processo de ressocialização e de trabalho para a (re)integração do cidadão preso à sociedade*" (Brasil, 2020).

It establishes that inmates with some form of disability should initially undergo a screening process that leads to their placement in accessible cells or cells with reasonable accommodation (Brasil, 2020). However, according to Júlia Ferraresi Tietz (2021), an environment marked by physical and social violence and the scarcity of basic supplies is incapable of offering all that is proposed, failing to adequately care not only for inmates with disabilities but for the prison population.

Although the issuance of the technical norm in question is commendable, it is concluded that simply adapting cells is insufficient to meet all the mobility and communication needs of inmates with disabilities.

Furthermore, it is concluded that granting inmates with disabilities the possibility of reducing their sentence time when serving it in facilities without accessibility – or even allowing them to serve it under house arrest – may socially create the illusion of impunity and, in addition, shift the State's duty to provide appropriate environments.

It is also worth emphasizing that adapting existing prison facilities is extremely difficult to accomplish, mainly due to overcrowding, which is already a prevailing issue. In this sense, the proposal of Bill No. 4,008/2019 appears more reasonable, as it is based on the creation of facilities fully adapted to the conditions of inmates with disabilities.

One could also consider the possibility of building a prison unit capable of receiving both people with disabilities and those without, to avoid the segregation of the former from the latter.

The entire discussion presented here reveals a reality that is difficult to achieve, since the situation of people with disabilities is, to a certain extent, rendered invisible even when they are free—let alone when they are confined in what is considered the pinnacle of social segregation.

4 CONCLUSION

It is therefore concluded that the Brazilian prison system is incapable of rehabilitating individuals while treating them in an inhumane manner and disregarding legal provisions. Moreover, such a situation cannot be remedied without the joint efforts of the officials responsible for the Public Authority, precisely because the massive violation of human rights – representative of the *estado de coisas inconstitucional* – is the responsibility of the system, according to the Brazilian Federal Supreme Court (STF).

As already stated, one of the main objectives of penal execution is to reintegrate the convicted individual into society. For this reason, the system includes mechanisms such as sentence

reduction through education and labor, and the possibility of regime progression—from the most to the least severe.

It becomes evident that the lack of governmental initiative hinders not only the provision of decent living conditions within prison facilities but also the availability of the very means for social reintegration. The justifications presented almost always boil down to a lack of resources. However, the State's inertia can be held accountable for the absence of planning and even for a lack of genuine interest in solving a problem whose roots run much deeper.

An analysis of the profile of incarcerated individuals in Brazil shows that most of them were not fully socialized even before being imprisoned. In the case of people with disabilities, for example, we speak of an experience of mitigated citizenship, since socially, these individuals face daily barriers that prevent them from moving freely, studying, and working under the same conditions as others, among other things.

Once placed in the prison environment, these barriers are evidently amplified, preventing access even to the most basic rights of survival inherent to the dignity of the human person. It is clear, therefore, that the lack of adaptation in prison units constitutes a form of violence against the very existence of the inmate with a disability, as the lack of accessibility entails deprivation of liberty combined with restrictions on mobility and socialization.

Prison, therefore, exacerbates the marginalization experienced by people with disabilities, hindering not only the full exercise of citizenship but, more importantly, the realization of the right to a dignified life, which is inherent to the human person, regardless of whether it is codified.

According to Debora Diniz, Lívia Barbosa, and Wederson Rufino dos Santos, "*a desvantagem social vivenciada pelas pessoas com deficiência não é uma sentença da natureza, mas o resultado de um movimento discursivo da cultura da normalidade, que descreve os impedimentos corporais como abjetos à vida social*." (Diniz; Barbosa; Santos, 2009).

Thus, the barriers imposed on people with disabilities do not stem from their own existence; rather, they originate from discriminatory social constructions that propel and justify their exclusion process as a logical consequence of coloniality.

Precisely for this reason, it is concluded that the struggle of this social group for the guarantee of rights must not aim solely at the drafting of new laws, but rather at the reformulation of the prevailing social model, since the maintenance of the *status quo* is one of the main obstacles to recognizing disability as a matter of justice, human rights, and the promotion of equality.

Finally, it is concluded that the treatment of people with disabilities by society—and more critically, within the context of the Brazilian penal execution system—constitutes a true affront to

their very existence. This affront has repercussions not only during the period of incarceration but especially afterward, when, in theory, they should be fully reintegrated into the social environment—a space to which they have historically never been properly integrated.

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