



## Brazilian legal changes in favor of children, adolescents and youth, and current issues

*Mudanças legais brasileiras em prol das infâncias, adolescências e juventudes e questões atuais*

*Cambios legales brasileños a favor de niños, adolescentes y jóvenes, y cuestiones actuales*

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**Abstract:** This article provides a retrospective of the social situation and issues related to children's, adolescents', and young people's rights in Brazil from colonization to the implementation of the *Estatuto da Criança e do Adolescente* (Statute of the Child and Adolescent) and *Estatuto da Juventude* (Youth Statute), highlighting the structural inequalities left behind and the changes generated. It emphasizes the need to guarantee the continuity of these achievements considering the current imposition of the conservative movements, using the practical implementation of the *Estatuto da Juventude* (Youth Statute) as a tool to combat those point of views, in order to apply the individual rights of children, but mainly to promote autonomy and non-blaming, including regarding women's sexual and reproductive rights, and to fight the punitive logics of peripheral populations, especially males, in order to definitively elevate them to the condition of subjects of rights.

**Keywords:** Civil Rights. Public Policy. Child. Adolescent. Young.

**Resumo:** O artigo faz uma retrospectiva da situação social e de direitos de crianças, adolescentes e jovens no Brasil desde a colonização até a implementação do *Estatuto da Criança e do Adolescente* e do *Estatuto da Juventude*, apontando as desigualdades estruturais deixadas até o momento e as mudanças geradas. Ressalta a necessidade de garantir a continuidade dessas conquistas frente aos movimentos conservadores que atualmente se impõem, utilizando como instrumento de combate a implementação, na prática, do *Estatuto da Juventude*, de forma a efetivar os direitos individuais de crianças, mas principalmente, promover a autonomia e a não culpabilização, inclusive quanto aos direitos sexuais e reprodutivos femininos, e o combate à lógicas punitivistas das populações periféricas, principalmente masculinas, de forma a elevá-los, de vez, à condição de sujeitos de direitos.

**Palavras-chave:** Direitos Civis. Política Pública. Criança. Adolescente. Jovem.

**Resumen:** Este artículo ofrece una retrospectiva de la situación social y de derechos de niños, adolescentes y jóvenes en Brasil desde la colonización hasta la implementación del *Estatuto da Criança e do Adolescente* (Estatuto del Niño y del Adolescente) y del *Estatuto da Juventude*, apuntando las desigualdades estructurales que persisten y los cambios que se han generado. Resalta la necesidad de garantizar la continuidad de estos logros frente a los movimientos conservadores que actualmente se imponen, utilizando la implementación práctica del *Estatuto da Juventude* (Estatuto de la Juventud) como herramienta para combatirlos, con el fin de hacer realidad los derechos

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individuales de los niños, pero principalmente para promover la autonomía y la no culpabilización, incluso respecto de los derechos sexuales y reproductivos de las mujeres, y combatir las lógicas punitivas hacia las poblaciones periféricas, especialmente los varones, para elevarlos definitivamente a la condición de sujetos de derechos.

**Palabras-clave:** Derechos Civis. Política Públicas. Niño. Adolescente. Jóvenes.

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## Introduction

In Brazil, the trajectory of social rights and citizenship of children, adolescents and young individuals up to the implementation of ECA – *Estatuto da Criança e do Adolescente* [Statute of the Child and Adolescent] (Brasil, 1990) and EJ – *Estatuto da Juventude* [Youth Statute] (Brasil, 2013), only portrayed the dominant classes' interests.

Currently, ECA defends: “It is the duty of the family, society, and the state to ensure, with absolute priority, the right of children and adolescents to life and health” (Brasil, 1990, article 227) and EJ reads: “The provisions of this Law and the public policies for the youth are guided by the following principles of recognition: the young individual as a subject of universal, generational and singular rights” (Brasil, 2013, article 2, paragraph IV). However, the country's history has left marks of extreme inequality and social exclusion that are still observed among these groups, demanding not only their analysis, but also the radical intervention necessary to overcome them.

During the colonial period, the conquest model, followed by the implementation of an extractive capitalism of natural resources, employed slavery as a source of labor, affecting almost all children and what we now call adolescents and young people. In that system, those individuals did not possess any citizenship rights, since they were enslaved and treated as property and merchandise: it is estimated that there were at least 1 million indigenous people living on the Brazilian coast at the time of the arrival of the Portuguese; some were enslaved and a large number died from diseases brought by the conquerors (Dornelles, 2018). In addition, the enslavement of more than 3 million Africans trafficked to Brazil between 1531 and 1850 was recorded (Gomes, 2021).

This represents an absolute majority of children, adolescents, and young people in situations of slavery in the occupied area of the country, a reality already portrayed at the end of the 19<sup>th</sup> century by the 1872 population census, carried out at the behest of Emperor Pedro

II, which counted that White individuals made up only 38.1% of the country's inhabitants, while the remaining population was black and mixed-race (Brazil, 1874).

Such background marks the formation of the country as a place without any civil or citizenship rights for children, adolescents, and young people. Regarding other White people, the situation followed the premise of patriarchal authority, where guardianship by the head of the family, that is, the father, was the rule: children and women were an extension of his possessions, as were unmarried adolescent and young children under his care. Marriage was authorized from the age of 14 for men and 12 for women only with paternal consent, but generally occurred among girls of 14, 15, or 16 years of age with a selected adult man or through pregnancy, as promulgated by the Afonsine Ordinances (in force from 1500 to 1521), Manueline Ordinances (from 1521 to 1603), and Philippine Ordinances (from 1603 to 1830) guided by Portugal, which defined full legal majority only at 25 years of age (Hartung, 2023).

Therefore, we observed that White children, adolescents and young individuals were educated for labor and family constitution, while the others were raised only for enslaved work, while the fact of whether they would start a family or not was disregarded. This expresses the total inexistence of notions currently in force relative to childhood, adolescence and youth.

### **Legal changes – from the notion of minor to ECA and EJ**

Following the abolition of slavery in 1888, the Proclamation of the Republic in 1889, and the formation of a National Constituent Congress, the adoption of the absolute age of majority at 21 years was maintained and adopted by the Civil Code of 1916. From then on, the country's ruling class began to concern itself with the new reality that was emerging: the presence of children, adolescents, and young people of mixed race and Black descent, now free and occupying the cities (Santos, 2008).

Such poor population, without destination, property or work, became part of the growing urban agglomerations, seeking ways to sustain themselves economically through food sales, manual labor, and other activities, often resorting to begging, and constituted the first Brazilian urban favelas; that is, families left to their own devices (Ipea, 2011). This amorphous and numerous masses began to be seen as a threat to public order, feared for their

uncontrolled behavior on the streets, the formation of gangs, and even for the fear of increased theft.

There were no schools or primary education or any structured social support (Santos, 2008). This prompted the sharpness observed in the creation of Law N<sup>o</sup> 947 of 1902, which mandated the detention of “minors” up to the age of 17 who were criminally accused and found in public places, for internment in “correctional colonies.” Similarly, following this concern, laws for the assistance and protection of minors were drafted in 1926 and compiled in 1927 in the Mello Mattos Code, the first code specifically targeting minors in Brazil. In other words, children, adolescents, and young people from the working classes began to be formally considered a risk, as they were seen as part of an exceptional situation to normality and, therefore, needed to be directed to reformatories and prisons.

[...] they live in their parents', tutor's or guardian's homes; however, they tend to react to receiving instruction or to dedicating to serious and useful work, habitually wandering through the streets and public places (Brasil, 1927, article 28-a).

This new law defined the age of criminal responsibility as 18 years, assigning to “minors” found in situations of vagrancy, delinquency, or public abandonment the destination of institutions specially created to receive them. With the exception of the prohibition of child labor before the age of 12 and the excessive use of physical punishment (both poorly monitored) (Brazil, 1927), the punitive logic towards children and adolescents was implemented for the culturally poor population, a logic that persists to this day. In practice, it considered that poor families, who did not keep their children at home, left them in an atypical situation, seen as irregular and therefore at the mercy of state intervention.

This logic solidified with the Minors' Code instituted in 1979 by the military government of President João Batista Figueiredo, which established Law No. 6,697 (Brazil, 1979). This occurred just three years after the creation of the Foundation for the Well-being of Minors (FEBEM, Brazilian Portuguese acronym for Fundação para o Bem-Estar do Menor). FEBEM was configured as a “total institution” (Goffman, 1987) for the internment of children and adolescents isolated from the community. It presented a penitentiary-like structure and organization, which, despite the internal provision of schooling, followed a penal logic that persisted in the principles of Brazilian law until its overturning with the promulgation of the new Constitution in 1988 and the ECA – Statute of the Child and Adolescent in 1990.

As a result of the political democratization process and the demands for social change from the organized popular movement, the 1988 Federal Constitution became the first law to radically change the status of children and adolescents in Brazil, enshrining a Doctrine of Integral Protection (Leite, 2006), which establishes:

It is the duty of the family, society, and the State to ensure, with absolute priority, the right of children and adolescents to life, health, food, education, leisure, professional training, culture, dignity, respect, freedom, and family and community life, as well as to protect them from all forms of neglect, discrimination, exploitation, violence, cruelty, and oppression (Brasil, 1988, article 227).

This Constitution established the welfare state and the need for social equalization, that is, the state's responsibility as a promoter not only of social organization but also of the population's quality of life, through the provision of essential services such as health, education, security, housing, and social security, and by reducing social inequalities, as implemented in European countries after World War II (Draibe & Riesgo, 2011).

In response to this shift in the logic of the state's role, the ECA (Statute of Children and Adolescents) was implemented in 1990, becoming the first Brazilian legislation to describe in detail the status of children and adolescents as subjects of citizenship rights. It aimed at explicitly guiding the obligation of the state and society to provide them with well-being, integrity, care, housing, food, education, leisure, the right to culture, and full respect (Dias, 2011).

Therefore, the ECA promoted a revolution in Brazil in the achievement and implementation of public policies. These range from the quantity and improvement of facilities for daycare centers and public schools, as well as mandatory, balanced, and free meals in such institutions, the right to school transportation, and incentives for the implementation of family economic support policies, such as the Bolsa Família Program. It also supported legal arguments for demanding improvements in sanitation and housing in the country. This has led to visible social improvements in the conditions of families and children and adolescents, as well as in the social infrastructure of water and electricity in the 1990s and 2000s, although this is not a problem that has yet been solved. Similarly, it has considerably increased the schooling of the Brazilian population, which now has the first generations of adolescents and young people with complete secondary education, and has also encouraged the expansion of higher education in the country.

On the other hand, specific problems started to be addressed with the creation of Child and Adolescent Protection Councils in all municipalities of the country, as well as Children's Rights Councils at the municipal, state, and federal levels. The main focus was, and still is, the reduction of violence against children and adolescents, which is observed in alarming numbers regarding both physical and sexual violence, generally within the family, effectively intervening in the state regarding child custody, with increased penalties for aggressors and even loss of custody in the most serious cases.

Continuing this legal protection framework, in 2013, the Youth Statute (EJ) was established through Federal Law N° 12,852 (Brazil, 2013). This statute, seeking to specifically address the problems faced by adolescents and young people aged 15 to 29, confirms the importance of continuing to promote well-being beyond the age range covered by the ECA (Statute of Children and Adolescents), emphasizing the obligation of the state and society to promote well-being, integral development, encouragement of their social and political participation and autonomy, and their right to education and professional training. It also seeks to address the main vulnerability factors affecting this population, promoting "safe living, a culture of peace, solidarity and non-discrimination" (Brazil, 2013, article 2, paragraph 7), as well as the right to diversity of "I - ethnicity, race, skin color, culture, origin, age and sex; II - sexual orientation, language or religion; III - opinion, disability and social or economic condition" (article 2) and health – highlighting actions regarding "[...] the consumption of alcohol, tobacco and other drugs, sexual and reproductive health, with a focus on gender and sexual and reproductive rights".

Thus, the EJ, even though conceived with less substance than the ECA, focuses on the main factors of morbidity and mortality in the Brazilian adolescent and young adult population: violence and substance use, which primarily victimize males; unplanned pregnancy, which affects females; and sexual exposure, which affects both genders and is currently responsible for the majority of HIV and syphilis cases. Furthermore, by highlighting ethnic, racial, disability, sexual orientation, gender, and domestic and sexual violence against women, it intersects gender, race, and class vulnerabilities from the perspective of the intersectionality of people's experiences (Crenshaw, 2002).

The situation of non-compliance with rights is also clearly expressed in the large number of incarcerated adolescents in the country, exceeding 10,000 in situations of

socio-educational measures alone after judicialization of their offenses (Rodrigues, 2025). This population is driven to marginality by their situation of marginalization and poverty, which primarily and historically affects the Black and mixed-race population, still marginalized.

In this sense, it provides an argument for the modernization of institutional conduct towards equality, equity, and respect for the diverse adolescent and youth groups existing in Brazil, considering their realities, although this implementation, in practice, is still in its initial stages. The EJ's guidance to establish Youth Councils and a National Youth System (SINAJUVE) (Brazil, 2013), which would allow for the creation of actions and the monitoring of their impact, remains largely on paper.

### **Conceptual and Legal Changes – from patriarchal authority to ECA**

Changes in Brazilian legal frameworks have, over time, incorporated social perceptions of childhood, a concept that, according to Ariès (1981), dates back to European Modernity, but which was introduced in Brazil only gradually among the dominant classes, starting in the late 19<sup>th</sup> century and especially in the early 20<sup>th</sup> century through primers and childcare guidelines (Costa et al., 2017). This definition of being a child as someone specific who goes through a phase of life that should be playful and involve learning (through tutors or schools) provokes the manufacture in the country and importation of European toys to the families of the Brazilian elites (Mefano, 2005), therefore White children. However, this conception does not benefit the masses, as we have already mentioned.

The incorporation of childhood as a specific period in life did not immediately alter legal issues throughout the 19<sup>th</sup> and great part of the 20<sup>th</sup> centuries, since fate, daily routines and childcare were exclusively determined by parents or family members, within the Roman law conception of patriarchal authority. While an organization and ideological model of the dominant class, the patriarchal authority model continued to be followed by poor White, Black and mixed race individuals, thus incorporating a strongly hierarchical component inside families and a discursive and behavioral education severely vertical in the treatment of children, adolescents, and young people.

The arrival of the perception of adolescence as a specific period did not alter this picture; adolescence began to be discussed as a specific period much more recently in

Europe, at the turn of the 19<sup>th</sup> to the 20<sup>th</sup> century, driven by socioeconomic transformations in industrialization that required an improvement in the workforce, the physical training of bodies for work, and the extension of the school period (Silva & Lopes, 2009).

Such adolescence concept started to be defended by the Psychology of Education and the Social Psychology (Bock, 2007), confronting widely spread family costumes. In Brazil, this is mainly evident in the practice of marrying off teenage girls, since, even during the *Estado Novo* (New State) period in the 1930s, despite attempts at female emancipation through the right to vote and labor laws, the pro-natalist logic of authorizing marriages and encouraging motherhood persisted. Such practice was maintained by upholding the 1916 Civil Code, which allowed girls to marry after the age of 14 (Brazil, 2016; Lima, 2020), and Decree N<sup>o</sup> 20,291 of 1932, which prohibited any practice to prevent conception or interrupt pregnancy.

Therefore, the Brazilian population kept a high rate of adolescent fertility and consensual marriages or unions (more common among the poor population) and, consequently, a lack of schooling for girls. Most boys also did not study, as they were directed towards manual labor for the subsistence of their families in more rural areas and/or urban jobs, when they belonged to the minority who lived in the city.

This reality only started to change with the great rural-urban migration occurred in the 1980s in the country, which inverted the population distribution, leading most Brazilians to seek residence in the periphery of large cities seeking jobs in the automobile industry, for example (Taschner & Bogus, 1986). Such migratory situation, despite the decline in the offer of jobs in said factories, consolidated the current situation in Brazil, that is, capital cities with millions of inhabitants with deprived peripheries where the population live in poor life conditions and precarious public services.

Therefore, the changes promoted by ECA and EJ regarding public services available for communities, qualitatively still do not reach most of the Brazilian childhood, adolescence and youth in their socioeconomic inequalities and regional and local diversities. Regions such as the North, Northeast and Center-West of the country, which do not shelter many industries, remain marginalized and experience slower socioeconomic development (Cesar, 2020). Similarly, the socioeconomic disparity between the center and periphery is observed in the wealthier regions of the Southeast and South of the country.

For this reason, regarding restrictive legislation, social reality implies that more than 1.7 million children and adolescents between the ages of 5 and 17 are still in situations of child labor (Abrinq Foundation, 2022). This is the main reason for the lack of social advancement of children, adolescents and young people, since the lack of education impacts their future job opportunities.

As regards girls, unplanned pregnancy is the main issue affecting their schooling levels and social advancement. This results in over 145 thousand cases of delivery in the country per year and over 17,000 abortion cases, over 95% of them resulting from unplanned pregnancy (Brasil, 2025).

Therefore, the implementation of sexual and reproductive rights in Brazil, which have gained more space since the UN Population and Development Conventions, held in Cairo in 1994, and the UN Women, in Beijing in 1995, played a relevant legal role. All regulations issued by the Ministry of Health for the Brazilian Unified Health System (SUS), following the conferences, were standardized in a way that guarantees the sexual and reproductive rights of children, adolescents, and young people.

As the individual citizenship status granted by the ECA and EJ supersedes the right entirely based on patriarchal authority in favor of the perception of the personal well-being of children and adolescents as subjects of rights, the focus has shifted to protecting the problems that most affect their integrity in the area of children's sexuality, namely, sexual violence. It is important to emphasize that despite the large number of reports still observed in the country, around 35,000 cases, there is already a social consensus and among families that this constitutes an extremely serious crime, leading to an increase in notifications and reports (Brasil, 2025).

However, with regard to adolescent girls, the disrespect for their sexual and reproductive rights stems from the failure to meet their preventive needs, since most pregnancies result from consensual relationships with other adolescents due to the very emergence of desire for sexual practices characteristic of that age. In this sense, it is considered that the habits left by the culture of patriarchal authority among the majority of the population still make access to health, contraceptive prevention, and protection against STIs a taboo, especially in public health services, which directly affects the most vulnerable classes. This occurs despite the Ministry of Health having explicitly stated the individual

right to autonomy and confidentiality in receiving such assistance since 2007 (Brazil, 2007), in various documents (Figueiredo, 2021).

Adolescents have the right to reproductive planning services without discrimination of any kind, with guaranteed privacy, confidentiality, and informed consent. Health services must guarantee this care even before the onset of sexual and reproductive activity, to help them deal with their sexuality in a positive and responsible way, encouraging preventive and self-care behaviors (Brasil, 2017c, p. 152).

Unfortunately, parents, educators, and healthcare professionals perpetuate a "minorist" and patriarchal logic regarding female sexuality, leaving girls to live in risky situations by having to conceal their socially unacceptable sexual practices. In this sense, it is considered that, despite advances in legislation, the cultural and conservative discourse still prevents the full exercise of sexual and reproductive rights by the adolescent and young adult population.

In addition to this faulty focus on juvenile sexuality, there is a lack of structured and regular sexual education in Brazilian schools. In Europe, countries like Portugal, France, England, Germany, the Netherlands and Sweden, among others, have included sexual education in their curricula. In Latin America, it has been implemented in a structured way in Argentina (Rodrigues Neto, 2022). However, in Brazil, attempts to implement systematic sexual education in schools have been vetoed, resulting in its inclusion only as "cross-curricular themes" across various subjects, without a defined workload or responsible professional.

Currently, worsening this situation, ongoing attempts by more conservative sectors in national politics to regress have pushed through bills that oppose the effective implementation of sex education, as well as attempts to ban the discussion of gender and sexual diversity in schools. This resulted in the removal of the terms 'sexuality', 'sexual and reproductive rights', and 'gender' from the BNCC - National Common Curriculum Base revised in 2017 (Brasil, 2017a), which replaced the LDB - Law of Guidelines and Bases of Education of 1996 that explicitly included them (Brasil, 1996). This occurs despite the Supreme Federal Court's ruling that assigns to schools the role of addressing sexuality and gender as a way to fulfill the constitutional rights of children, adolescents, and young people (Brasil, 2024) and has vetoed any local initiative to legislate in order to prohibit this content (Hernandez, 2017).

Despite such disputes and resulting setbacks, policies and laws related to sexual and reproductive rights, including LGBT rights – which include lesbians, gays, bisexual and

transsexual individuals and travestis’ – and those of children, adolescents and young adults have advanced (Figueiredo, 2022), occupying more progressive places and spaces, although there is still a long way to go before they are implemented at a national level and reach the entire population of the country.

Legally, Brazil already authorizes the civil registration of intersex individuals born as “gender-neutral,” without requiring parental determination of sex/gender, allowing for clarification based on the gender identity expressed by the child during childhood and adolescence (Brazil, 2025); children and adolescents with gender incongruence can also have their school records include their chosen gender name (Brazil, 2017b), and parents can request authorization from the courts to legally change the name on the birth certificate (for young people over 18, the individual can request this at a registry office). Furthermore, in Brazil, homophobia has been equated to the crime of racism by the Supreme Federal Court (Brazil, 2019), promoting the repression of aggression or prejudice against homosexual and bisexual adolescents and young people.

### **Final Considerations**

Brazil has historically made progress in securing rights related to childhood, adolescence, and youth, considering its 500-year history and its extremely violent and neglectful past regarding the human rights of most of these groups.

The 1988 Federal Constitution, established in pursuit of national development under a democratic and sovereign Welfare State, recorded numerous achievements for children, adolescents, and young people, advancing in the improvement of their living conditions, both collectively socioeconomically and in the protection and guarantee of rights at the individual level. These achievements are expressed in the ECA – *Statute of the Child and Adolescent*, which is not only a paradigmatic landmark, but also as an instrument that has driven restructuring public policies in the country over the last 35 years.

The situation of children and adolescents has improved; however, the continuity in these actions is still very necessary due to the internal inequalities observed in the vast national territory and between the segregated social classes in the localities, in order to reach everyone. At the adolescent and youth levels, efforts are still needed for the effective implementation of all the civil rights of this public, which includes, as a highlight, sexual and

reproductive rights and the fight against punitivism, as indicated by the Youth Statute (still not implemented in practice) for those who are in a situation of social marginalization, integrating them as citizens with rights.

To continue moving forward, we are now having to deal with reactionary forces that were hidden in the post-dictatorship period and are gaining more social and political ground. Strategies to block thoughts and behaviors that disrespect the rights of children, adolescents, and young people, as well as attempts at control in favor of a conservative approach inspired by authoritarian, classist, and patriarchal power models, need to be better discussed and developed by all those who defend the human rights of all, and especially of the people who make up the future generations that will take over this country.

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