

# THE GOOD INTENTION AND THE HARD TRUTH OF BASIC INCOME IN BRAZIL

**The reason why *Bolsa Família* should not be considered as a basic income program**

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## INTRODUCTION

Brazil is one of the few countries in the world that has legislation on the Basic Income Guarantee (BIG). This highlights the country in discussions on the subject, in such a way that it led BIEN to conduct its 2010 meeting in Brazil, a fact so far unheard of in the Latin American continent.

Unfortunately, what is stated in the legal text, regularly drawn up and approved by the appropriate governmental instances, is not consistent with reality. The editing and publication of the Federal Law nº 10.835, of January 8, 2004, (BIG Law) was useful only to create the impression that Brazil is at the forefront of the discussions on BIG. In practice, however, the situation is quite different.

On January 9, 2004, that is, exactly one day after the enactment of the BIG Law, Brazil enacted the Federal Law nº 10.836, to establish the *Bolsa Família* Program (*Bolsa Família*). The regulation of which was published in the same year, by Federal Decree nº 5.209 on September 17.

The most respected and greatest enthusiast of the BIG in Brazil, Hon. Senator Eduardo Matarazzo Suplicy (co-Chairman of honor of this BIEN), has spoken at the

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Senate by the possibility of *Bolsa Família* progressing to the BIG<sup>2</sup>, and has even indicated that *Bolsa Família* could be considered as an application of the BIG Law<sup>3</sup>.

The purpose of this paper is to present concrete evidence to define the clear differences between BIG and *Bolsa Família*, both from a legal standpoint, as from the point of view of their consequences, and to affirm the legal and practical impossibility of the *Bolsa Família* and BIG converging, since they take off from opposite points and lead diametrically opposed paths.

To this end, we shall analyze the two laws on which each one of these institutes is based, comparing the normative elements with the theoretical concepts of BIG. After the legal differentiation of the two institutes, we shall discuss the consequences of the applications of the Federal Government's program and of the Pilot Project on basic income which is an initiative of the NGO ReCivitas - *Instituto pela Revitalização da Cidadania* in the district of Quatinga Velho, in the city of Mogi das Cruzes, State of São Paulo, Brazil (BIG-QV).

There are no doubts that the government's *Bolsa Família* presents important and beneficial results in the quest to combat poverty. It is not the intention of this work to praise, but neither to attack the merits that the Brazilian government deserves for this initiative.

The interest is to set, clearly and objectively, the impropriety of *Bolsa Família* being considered as something remotely similar to the BIG, and the risks that this fallacy can cause, with the pretensions of BIG in Brazil.

It will also not be the object of this work to identify all the results obtained by each of these institutes, but only to emphasize the capacity of social transformation of BIG,

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<sup>2</sup> Excerpt from the Senate's official site, visited on 28/07/2012, with a linked article dated 10/06/2010: "Senator Eduardo Suplicy (PT-SP) expressed this Wednesday (6) his expectations that the *Bolsa-Família* Program, one the responsible for the good evaluation of the government of president Luiz Inácio Lula da Silva, progress towards the Citizen's Basic Income (*Renda Básica de Cidadania*)". (<http://www12.senado.gov.br/noticias/materias/2010/10/06/suplicy-espera-evolucao-do-bolsa-familia-para-renda-basica-de-cidadania>)

<sup>3</sup> Excerpt from the site Blog do Suplicy, visited on 28/07/2012, with the article "Street people, social laws and basic income" (*Povos da rua, leis sociais e renda básica*), published on 05/01/2010: "The first paragraph of the BIG Law provides that its implementation shall be carried out in phases, to the discretion of the Executive Power, giving priority to those in greater need. The *Bolsa Família*, which benefits today one fourth of the Brazilians, is the first step towards extending the BIG to all people". (<http://mtv.uol.com.br/blogdosuplicy/blog/blog-do-suplicy-povos-da-rua-leis-sociais-e-renda-b%C3%A1sica>)

and the consequent of transforming into citizens mere beneficiaries, assisted individuals. This is the greatest and most important manner to counter these two institutes, and the reason for which it is necessary to firmly reject the evolutionary or comparative interests between both. *Bolsa Família* is not able to achieve the results of BIG, and the reason for this, as it shall be the objective of this study to demonstrate, is elementary, from the beginning.

## 1. Basic Concepts and BIG Law.

There is no room, neither is it the focus of this paper, to deal in depth with this which is the reason for this congress and of many and respectable words and studies. But in order for the logical development of this paper to be possible, only the fundamental and defining elements of BIG shall be presented.

We shall also analyze the regulatory structure that created the right to BIG in Brazil, by means of Law nº 10.835, of January 8, 2004, in its entirety.

### 1.1. Basic Concepts.

In a brief concept, BIG is an income paid by to a political community to all of its members, on an individual basis, without resources control or demand for return (VANDERBORGHT & VAN PARIJS, 2005, p. 6).

It can also be understood as:

*Renda Básica de Cidadania* (Eng.: *basic income guarantee*; dt. *Bedingungsloses Grundeinkomen*; fr. *Allocacion universalee*) comprises income transfers made without any kind of discrimination or condition for the holders of the inalienable right to receive it; its value should correspond to the amount necessary to maintain vital necessities, in a reduced sense, and the necessary to pursue a dignified life, in a strong sense. (Org.: MEREGE, 2011, p. 210).

In these two brief passages it is possible to identify common elements in both statements, as they address key points to conceptualize a BIG program, namely: **(i)** transfer of income, **(ii)** unconditional, **(iii)** universal<sup>4</sup>.

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<sup>4</sup> Related to the political community inserted in the program. There may be geographical delimitations, even a refusal by a member of the community, but there is no discrimination among the individuals who comprise the political community being considered.

There are deeper elements in a more accurate conceptualization that will even discuss the restriction of the amount transferred in BIG as simply income, by understanding that the value in the BIG is higher, is capital, taken not only in its economic meaning, but also cultural and, above all, social (AUGUSTO PEREIRA DOS SANTOS & BRANCAGLIONE, 2011, p. 11). However, without the presence of one of the highlighted elements, the program does not consist in BIG.

As with any concept, it is a theoretical evolution with grounds on studies, thoughts, conclusions, all shaped by time and by practice, each of these elements having reason and motive to comprise the concept of BIG. From the proposal of Thomas Paine in the French Parliament in 1795 to the present days, this concept has clearly evolved, but there is no way to reduce or change this nucleus without de-characterizing it.

## **1.2. The BIG Law.**

The few words that shall be used to deal with Law n° 10.835/2004 do not come from a choice of this paper, but from an official choice of the Legislative Power. The law is concise and the legislative technique it uses is not too efficient. It leaves to a decree all the definitions necessary for its application.

It is so concise that its full transcription is possible:

Article 1. As from 2005, the basic citizenship income is established, which shall consist in the right of all Brazilians resident in the country and foreigners resident for at least 5 (five) years in Brazil, regardless of their socio-economic condition, to annually receive a monetary benefit.

§ 1. The scope mentioned in the caput of this article must be achieved in stages, at the discretion of the Executive Power, giving priority to the segments of the population in greater need.

§ 2. The payment of the benefit must be of equal value for everyone, and enough to meet the minimum expenses of each person with food, education and health, considering for such the level of development of the country and the budget possibilities.

§ 3. The payment of this benefit may be made in equal and monthly installments.

§ 4. The monetary benefit provided for in the caput of this article will be considered as non-taxable income for purposes of the Individuals' Income Tax.

Article 2. The Executive Power shall define the value of the benefit, in strict compliance with the provisions of articles 16 and 17 of Complementary Law n° 101, of May 4, 2000 - Fiscal Responsibility Law.

Article 3. The Executive shall specify, in the forth in the General Budget of the Union for the financial year of 2005, budget sufficient to implement the first phase of the project, subject to the provisions of article 2 of this Law.

Article 4. As from the fiscal year 2005, the bills related to multi-annual plans and to the budget guidelines shall specify the cancellations and transfers of expenses, as well as other measures deemed necessary to implement the Program.

Article 5. This Act shall come into force on the date of its publication.

Article 1 of the Law already closes those mentioned essential elements. It determines it is the right of every Brazilian to receive an income, regardless of his socio-economic condition. The principles of being unconditional and universality are, therefore, respected.

The need to institute this right in stages, as determined by paragraph 1, is a consequence of the budget limitation and of the need for planning. As possible as it may be to organize the public budget for the payment of income to all Brazilians at the outset, this may bring some practical and political problems.

Even if there is a bad dimensioning and forwarding of the public resources to several policies and expenses far less important than the granting of BIG, it is justifiable that the State needs time to adjust its expenses, so that it may direct them to this purpose without a rush that may prejudice the planning already carried out. Aside from this, to execute a high cost program demands an even greater political cost, which was never an interest in the country.

But to define steps and to determine the development of the process of universalization by income steps is not conditioning the right in itself. The right is unconditional, even if time is required to allow everyone to enjoy it.

In addition to indicating minimum guidelines for the right created, with the purpose of seeking to supply the basic necessities of health, education and food, or of creating a tax incentive for the received income, the Law does anything else.

It is left to a decree to state the value of the income to be paid, the steps to be taken, the effective date on which the right shall be granted. And such decree has, to date, never been drafted, rendering the right to a basic income in Brazil in forgotten words in one of the 12,696 laws already enacted in the country, and nothing more. Even with an express command from the Law to the Executive Power, to set aside in the 2005 budget sufficient resources to comply with the first phase of the universalization of this right.

## **2. The *Bolsa Família* Law.**

*Bolsa Família* was established by Law nº 10.836 of August 9, 2004, and consists in a program of direct transfer of income, according to the performance, by families, of the conditions imposed by the Federal Government.

From reading the intricate Law and its regulations, the Federal Decree nº 5.209/2004, it is possible to identify its focus on the family unit<sup>5</sup>, and to define various types of benefits granted per person, namely:

1. The basic benefit, exclusively dedicated to families who are in a situation of extreme poverty.
2. The variable benefit, with a focus on families who are in poverty or extreme poverty, and have among them: (i) pregnant women; (ii) nursing women; (iii) children between zero and twelve years old; or (iv) adolescents up to 15 years old. The benefit shall only be calculated in accordance with the number of family members, up to 5 (five).
3. The variable benefit for families with adolescents between 16 and 17 years old.
4. The benefit to overcome extreme poverty for families with children between zero and six years old and a monthly family income (already considering any government benefits) of less than R\$70.00.

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<sup>5</sup> In accordance with the Law, article 2, § 1, item I – family, the nuclear unit, occasionally expanded by other individuals that are connected to it by being relatives or by affinity, that forms a domestic group, living under the same roof and that supports itself with the contribution of its members.

According to the Law, the value of the basic benefit (n° 1) is of R\$58.00, and it is granted to families with a *per capita* monthly income of up to R\$60.00. Families with a *per capita* monthly income of up to R\$120.00, are left with the variable benefit, the value of which shall depend on the family fitting the benefit presented in item 2 (R\$18.00) or in item 3 (R\$30.00).

But reading the decree, one is surprised to find different values. The basic benefit is now R\$70.00, the variable benefit presented in item 2 is R\$32.00, to a limit of R\$160.00. The variable benefit of item 3, on the other hand, is R\$38.00, to a limit of R\$76.00.

The benefit of extreme poverty for families with infants has no values defined by Law, which causes the Decree the obligation of giving it a complement. Thus, the Decree determines that the value of the benefit, in this case, will be the result of following arithmetic calculation:

$$B = (S \times F) - R\$70.01$$

Where:

B = Benefit

S = Sum of the family income

F = number of family members

The table below, from the website of the Ministry for Social Development and Hunger Alleviation<sup>6</sup>, may facilitate the understanding of the value of the granted benefits:

Families with monthly family *per capita* income of up to R\$70.00:

Number of pregnant women, nursing children and adolescents up to 15 years old	Number of women, and adolescents between 16 and 17 years old	Type of benefit	Value of benefit
0	0	Basic	R\$70.00

<sup>6</sup> Site of the Ministry, visited on 28/07/2012:  
<http://www.mds.gov.br/falemds/perguntas-frequentes/bolsa-familia/beneficios/beneficiario/beneficio-valor>

1	0	Basic + 1 variable	R\$102.00
2	0	Basic + 2 variables	R\$134.00
3	0	Basic + 3 variables	R\$166.00
4	0	Basic + 4 variables	R\$198.00
5	0	Basic + 5 variables	R\$230.00
0	1	Basic + 1 BVJ	R\$108.00
1	1	Basic + 1 variable + 1 BVJ	R\$140.00
2	1	Basic + 2 variables + 1 BVJ	R\$172.00
3	1	Basic + 3 variables + 1 BVJ	R\$204.00
4	1	Basic + 4 variables + 1 BVJ	R\$236.00
5	1	Basic + 5 variables + 1 BVJ	R\$268.00
0	2	Basic + 2 BVJ	R\$146.00
1	2	Basic + 1 variable + 2 BVJ	R\$178.00
2	2	Basic + 2 variables + 2 BVJ	R\$210.00
3	2	Basic + 3 variables + 2 BVJ	R\$242.00
4	2	Basic + 4 variables + 2 BVJ	R\$274.00
5	2	Basic + 5 variables + 2 BVJ	R\$306.00

Families with monthly family per capita income of R\$70.00 to R\$140.00:

<b>Number of pregnant women, nursing women, children and adolescents up to 15 years old</b>	<b>Number of adolescents between 16 and 17 years old</b>	<b>Type of benefit</b>	<b>Value of benefit</b>
0	0	You do not receive basic benefit	-
1	0	1 variable	R\$32.00



2	0	2 variables	R\$64.00
3	0	3 variables	R\$96.00
4	0	4 variables	R\$128.00
5	0	5 variables	R\$160.00
0	1	1 BVJ	R\$38.00
1	1	1 + 1 variable BVJ	R\$70.00
2	1	2 variables + 1 BVJ	R\$102.00
3	1	3 variables + 1 BVJ	R\$134.00
4	1	4 variables + 1 BVJ	R\$166.00
5	1	5 variables + 1 BVJ	R\$198.00
0	2	2 BVJ	R\$76.00
1	2	1 variable + 2 BVJ	R\$108.00
2	2	2 variables + 2 BVJ	R\$140.00
3	2	3 variables + 2 BVJ	R\$172.00
4	2	4 variables + 2 BVJ	R\$204.00
5	2	5 variables + 2 BVJ	R\$236.00

The difference between amounts in the Law and the Decree is possible due to the peculiar legal permission, found in article 2, § 6, which allows changes in the values by the Executive Power, i.e., by Decree. Thus, to know the updated value of the benefits, it will not be the Law the determinant set of rules, but the Decree, which was amended in 2007, 2008, 2009 and has its last text defined by Decree nº 7.447, of 2011.

Article 3 of the Law defines the "granting of the benefits shall depend on the compliance, as applicable, of conditions related to prenatal exams, nutritional supervision, health monitoring, and to school attendance of 85% (... ). "

The Decree details such conditions as the duty of giving a compensation for the benefit, the school attendance of the children and adolescents at school age at a percentage already defined by Law, the compliance with the vaccination calendar for children between 0 and six years old, and the pre- and post-natal schedule for pregnant and nursing women.

The legal expression "as applicable" seems to open space for the basic benefit to be conditioned only by income, since the families with children to be monitored in respect of nutrition, health and school attendance will be entitled to the variable benefit.

According to the official understanding, expressly defined by the Decree, in its article 27, the conditions imposed for receiving the benefits "represent compensations that must be complied with by the families for the maintenance of benefits" and aims to "encourage families to exercise their right of access to public policies" and to "identify the social vulnerabilities that affect or prevent the access of families beneficiary of public services". However, official data was not found to demonstrate that *Bolsa Família* increased the number of people seeking public policies for education and health.

In order to monitor the effective compliance with the conditions, the Law created a follow-up system, comprising the Ministry of Health, the Ministry of Education, the Ministry for Social Development and Hunger Alleviation, as well as the State and Municipality agencies that have technical conditions to assist in the inspection of the compliance with the compensations.

The law also creates a complex structure for payment of the benefits, manners of administration of the benefits shared between municipalities, states and the Union, as well as indexes to calculate the results of this decentralized management.

### **3. The differences between *Bolsa Família* and BIG.**

The reading of *Bolsa Família* Law and its comparison to essential elements of BIG leaves no doubt as to the impossibility of reconciling the two institutes.

*Bolsa Família* has its merits in facing one of the most pressing issues in Brazil, the unequal income distribution. However, it cannot be understood as an application of Law

n° 10.835/2004, which established the right to a BIG in Brazil and carries a few weaknesses that, BIG, precisely, seek to remedy.

Initially, from a fundamental legal logic, it is impossible to determine that *Bolsa Família* Program is an application of Law n° 10.835/2004, simply because it was instituted by a different law, Law n° 10.836/2004. The fundamentals of validity are different. *Bolsa Família* program has all of its actions, structures, commands, rules, defined by one single law, the n° 10.836/2004. As seen, the BIG Law has different commands and definitions, it being impossible to respect both through one single act, and one same time.

It is also not technically correct to defend that there is a possibility of convergence between the two laws. They are born with opposite determinations, and based on antagonistic concepts.

The BIG Law in Brazil followed the most basic fundamentals of a BIG and is determined to be an income unconditionally granted. *Bolsa Família*, on the other hand, is as conditioned as it can be. Again, by a logical analysis, something that has conditions can never be understood as unconditional.

The Brazilian government chose to adopt the conditioned structure for *Bolsa Família*. It therefore shares different concepts from those studied and defended by BIG theory, which were, indeed, fundamental for the enacting of another law in the country, which was never implemented.

It is well defined in the normative structure of *Bolsa Família* that the transfer of income is not its only goal. The Brazilian government believes it should demand compensations for the granting of a benefit, to achieve the goal of teaching poor Brazilians that they have right of access to public policies, that are available for them to access.

Without entering the merits of this understanding, in a country with such serious and known problems of lack of infrastructure and bad quality in the public services provided, this is a matter of principle. The Government start from the principle that compensations are required for the socio-economic development of the country. It is not possible to believe that one of the elements that structure the whole scheme of the program will, simply, be removed, in a change of direction from *Bolsa Família* to the theory of BIG. But being or not possible, the fact of the matter is that, today, we do have several conditions to be fulfilled.

And the presence of conditionalities has far deeper impacts than mere theoretical formalities. The difference between BIG and *Bolsa Família* is much more than its legal basis.

The creation of compensations generates a hierarchical relationship between those involved. The beneficiary and the benefactor are not equal. The one who receives the benefit must prove that he has complied with the obligations, always very well inspected by who provided the benefit. There is no right, but benefit. And this dichotomy creates submission, the duty to fulfill obligations to receive a response.

Even if we deal with the basic benefit of *Bolsa Família*, and exclude all the conditions related to education and health, there remains the condition of being poor. The requirement to find a level of extreme poverty will always be a condition for the program. And it is exactly the worst of them all.

To define a program by the income is to create a limit for protection. The individual is benefited if he is poor enough, and if do remains so. Here we find an important issue of identity, pride, which are tossed aside in a structure that obliges one to prove poverty and labels it with this valued weight.

It is far more different than the steps presented by BIG Law. Although questionable, this procedure cannot be treated as the same as the conditionality here presented. Mainly because, once our income level is accessed by the procedure, you will receive the income as long as you live, even though you change levels. The initiation of the procedure by lower levels of income does not mean that the individual that starts receiving the income will have its right taken if he goes to a different level of income, because the question here is of organization, but never of condition.

If the profound impact on self-esteem was not enough, the income condition annuls the entrepreneurship of the beneficiary. One who is interested in growing should risk losing the certainty of the grant in exchange for the uncertainty of work, which may no longer exist a few months after the hiring. There is no safety net, only the grant which shall continue as long as the economic precariousness continues. There is no incentive to search for employment when the only safety currently existing in the life of that family is sentenced to death if they increases they income.

Another element resulting from the conditions is the further marginalization of the poorest segment of the country. Due to the demands of income proof, registration and

even the necessity of having a family, its scope of action excludes individuals in a condition of extreme and absolute poverty.

The number of homeless people in Brazil may reach 1% of its population<sup>7</sup>, that is, almost two million individuals who are in a state of absolute abandonment. Obviously the conditions imposed make it impossible for this huge and most sensitive contingent of excluded people to have access to *Bolsa Família*. The Brazilian reality is much worse than the conditions of *Bolsa Família* suppose it to be.

BIG, by not attaching a condition to any bureaucratic assumption, defines the reason for receiving it by the condition of being a citizen. It is constituted by something connected to the essence of this institute and not as some kind of reward, for having fulfilled this or that duty.

Breaking this element of reward, BIG presents itself as something detached from any social and psychological weight. The citizen will not find himself in a situation in which the State appears as a father figure, rewarding the child for something done, but as an equal who receives a right he is entitled to, by their very condition. The basic income becomes, in this manner, a profound tool for civic education.

This horizontal relationship has consequences even greater than income redistribution itself. It creates the distribution of capital. Here the view is shared that BIG is more than the distribution of an income, it is capable of producing much more significant values. It produces cultural richness, social wealth, by allowing the individual to feel included, perhaps for the first time in his life, as part of a society rather than of a marginalized group. It allows him to acknowledge the fact that he has rights much more efficiently than obligating him to vaccinate his child. You teach of right by giving rights, not demanding conducts.

The income marginalization has a significant weight in the citizen's self-esteem and the perception of his capacity. The act of receiving an income because it is your right, simply, without something being asked from you in return, presents an enormous valuable load in a pedagogical process of constitution of citizenship.

It brings into the society marginalized individuals, inserting them permanently as part of a whole, as citizens. The difference of a benefit of the poor individual and a right of the citizen is much greater than the impact of these words. It is perceived by the

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<sup>7</sup> IBGE, 2010 census.

individual, who has in BIG the entrance door for the concept of citizenship, a place that should not have any exit doors.

The learning, especially in respect of civic and economic education, does not occur behind school desks, but inside the *ethos* of human relations, that neither the centralized and castrating discipline of the most indoctrinating institutions is able to completely destroy. The process of production of meaning is constituted in relations of freedom of the knowing being, to form his judgments as from the reality he lives in and in a dialoguing process (FREIRE, 1996). There is no dialogue in a hierarchical, vertical, structure, but only in a space of equality.

This perception was confirmed by independent studies in the BIG project in Brazil, carried out by ReCivitas in Quatinga Velho since 2008. Mathias Rudolph (2010) obtained this exact consequence as one of the results of his research. The residents of Quatinga Velho noticed that the existence of the BIG project improved the level of participation by the residents of the community. That is, what it was a disperse group became a community.

Many are the examples of the project, even if it is a small scale initiative, attending almost 90 people. They are examples collected by ReCivitas itself and confirmed in field analysis and by the independent study of Mathias Rudolph, which prove the bonding capacity of BIG and its capacity of becoming and a safety net for those involved. The certainty of BIG, regardless of the family's socioeconomic status or of the ability to comply with conditions allowed those involved to develop and implement plans.

There are cases such as the mother who was able to set BIG aside for the development and growth of her small daughter, without compromising the household expenses. Such as the two young men who were able to buy a motorbike together to move around between the farms where they work.

The example of the woman who discovered she had chronic health problems and was able to go to the doctor and buy medicines for her monthly treatment. The mother who could save her son from pneumonia, with the purchase of medicines. The mother who buys her medicine in installments from the city pharmacist, who knows about her right and about the certainty of the BIG, in the same way as the local grocery owner.

The families who were able to feed their children with meat and fruit, to give them school supplies, clothing. The mothers who had better pregnancies with babies born without malnutrition, which used to be so frequent. The child who can read today for

having glasses. The families who built their houses, vegetable gardens, cages, chicken coops. Who paid their debts with banks.

The difference, therefore, between a conditioned program and the unconditional citizen's income goes far beyond normative structures or different theoretical conditions. The non-conditionality allows a result that was not only not reached by a program with conditions, but even prejudiced.

The lack of conditions of BIG is also capable of hosting one of the most dear concepts to law, freedom. The granting of an unconditional income, of a capital in all its aspects, including economic, has the power to remove the weight of the individual's work as the only condition of subsistence, and the need to be subjugate to any condition for any job.

BIG, as a guaranteed right in a free and perennial manner has the potentiality to be an instrument of removal of the coercive weight of the structure of the current employment relationship. With the perception of a minimum income, there is no longer the almost slave-like dependence of the hired employee, who no longer needs to submit to any activity, in an economical arbitrariness, to see his income secured, with the purpose of guaranteeing his subsistence. It presents itself, therefore, as an indistinct safety net protection.

The individual, therefore, shall have the freedom to endeavor as he wishes his vocation and interest, and will not be penalized for his entrepreneurship with the loss of what gives him this freedom of choice. According to Da Silva (2006) it is the duty of the State to remove the weight and the economic barriers from the development of the personality of the individual:

#### Freedom and Liberation

The historical aspect indicates that freedom is, in short, a **dynamic process of liberation of man from the various obstacles that are placed before the realization of his personality:** natural, economic, social and political obstacles. Today, it is the function of the state to promote the liberation of the man from all these obstacles, and it is here that authority (power) and freedom connect. Garcia-Pelayo said it well when he wrote that historical experience has shown that the state is not the only one who oppresses the development of personality; that it is the only entity that imposes coercive relations of coexistence, and that the same liberal freedoms are constrained in their achievement by situations and extra-state powers. Such powers may be of very different natures; for example, racial, ecclesiastic,

etc., and variable according to countries; but in general and common way the economic powers are highlighted. **It is from these powers, or rather, from the economic pressures of these powers, that we must first release the groups to which we refer, as are they, because it is them, and not the State, that seem to be the immediate obstacle for the development of their personalities.** (DA SILVA. 2006.p.233/234. Our emphasis).

*Bolsa Família* cannot present such results, as it creates a situation of submission, subordination and perennial economic necessity. There is no liberation of a beneficiary. In a conditioned program this economic pressure is not removed, but fed by the same State who has the duty to suppress it. In fact, there is no way to achieve freedom with the demand of compensations.

#### **4. Legal implications to the differences between *Bolsa Família* and BIG**

As discussed, the concepts of *Bolsa Família* and BIG are distinct in essence, theory, legal grounds and thus in the results obtained. This distinction implies the impossibility of understanding the *Bolsa Família* as a form of application of Law nº 10.835.

There is no other possibility that to accept the fact that the BIG Law in Brazil is routinely ignored. The right granted by this Act is impossible to be exercised only by its rules and depend on a rule that never came.

In a Democratic State governed by the rule of Law, it is inconceivable that any Power act in disobedience with mandatory legal commands. The Law requires the draft of a decree and demanded his edition before 2005, to allow the first stage of implementation of BIG to be established in that year. BIG Law is sufficiently clear to determine the obligation of the Executive Power to include in 2005 budget sufficient resources to do so.

The omission of the Executive against its duty has severe consequences, which deserve to be treated in greater depth, but for the purposes of this paper, is enough to say that is configured as the single element of impediment of the enjoyment by Brazilians of their legal right to BIG.



In response to the Principle of Legality, a milestone of a Democratic State governed by the rule of Law, the Executive is conditioned, without any exception, to act in accordance with the Law.

It is worth noting that the Law does not present an option, simply creating an institute that could, when desirable and appropriate, be effected by the Executive. Rather, the Law is explicit in imposing the fulfillment of its institute from the year of 2005, a clear bond to the Executive, that could not do otherwise than to regulate the BIG and give it, therefore, effectiveness.

Any disregard to any statute breaks with the fiber that connects the modern State. Regardless of the consequences of disrespect for the law, the act itself is inconceivable, it is a formal fault, that is independent of its the substance to be taken as serious.

In this case, the act becomes even more severe by the substance of the rule violated. By not effecting a right as BIG is to breake, by an omission reaffirmed daily, with a right based on human dignity, and an instrument capable of giving the individual the minimum subsistence in a humane and truly effective, respectful, free manner, as a citizen must be treated.

One of the pillars of the principle of human dignity is embodied in the provision of a vital minimum subsistence, a key to protect the lives of citizens and their inclusion in society:

Therefore, we can conceptualize human dignity as the ethical postulate that, incorporated into the legal system, embodies the principle by which human beings, whether in their relations with their fellows, whether in its relations with the State, must be taken as an end in itself, and not as a mean, what makes a dignitary of absolute value, of what comes to live a legal regime that has a negative and a positive feature. The first requires the State the duty to respect their physical, mental and social safety (**understood as freedom to self-determination and, with others, participate in the determination of the community in which it belongs**). The second requires the State to provide the minimal materials premises for the preservation of life and inclusion in society and the protection of private relationships, which emphasize their vulnerability (eg., Labor relations, consumption, etc.). (NUNES JUNIOR, 2010. p. 114).

BIG aims at the realization of this fundamental right to a dignified life, element of this Governmental duty to provide to all an vital and minimum subsistence, so as to not only allow the mere physical survival, but life that respects basic standards of dignity.

That is, to the State not only is imposed a constraint, it is not merely a negative right but a duty to endeavor to that any person, with respect to the principle of equality, have enough financial conditions to live with dignity:

Thinking on the human being as only being endowed with an absolute value, non-relative, the theory of the minimum subsistence requires the material preservation of the human being, assuring him the minimum conditions for the preservation of life and integration into society, as a question of public policies to be developed by state governance. (NUNES JUNIOR. 2010. p. 70.)

A falta de aplicabilidade, portanto, da Lei da BIG é ato que infringe, de uma só vez, a Legalidade, a Igualdade e a dignidade da pessoa humana, situação que não pode ser escondida sob o pretexto de ser o Bolsa Família um primeiro passo da BIG no Brasil.

The lack of applicability, therefore, of BIG Law is an act that violates, at once, the legality, equality and human dignity, a situation that cannot be hidden under the guise of *Bolsa Familia* being the first step of BIG in Brazil

## CONCLUSION

Any condition is a factor of discrimination. Discrimination is more than the exclusion of some, is to make everyone unequal, whether to those who were blessed with the choice factor given by the Government, or to those who were not so lucky and suffered the burden of segregation. And when the line between the beneficiaries is the poverty, the stamp that marks the one comes with all the taint, rancidity, of being poor. Of having to declare themselves, officially, as such. And as such, receive a benefit. A helping hand.

The State, therefore, requires that the individual presents himself as the outcast of society what society made of him, and to keep this condition of exclusion, under penalty

of losing the rent granted. One who has benefited has the certainty that is not equal to others. Inequality is recorded in official government document.

Have the conditionality for an objective, expressly defined by Decree regulating the benefit of *Bolsa Família*, and to encourage citizens to exercise their rights of accessing public policy is to make clear their need for tutoring. Besides the economic tutelage, with the granting of an aid, it is clear the position of inferiority in which the State puts the individual. The relation individual / State cannot be taken as a parental relationship. The State is not the great father to define the path, to give pocket money to the son who did their lessons well.

The law creates so many conditions, so many exceptions, that makes individuals from the same family to be treated unequally. The benefit given to the family takes into account the number of family members. But the structure and legislative technique used, led to the point of taking into account one, but not the other. In a family of six, one knows that is not part of the equation of the State.

But when it comes to BIG, there is no help. There is a right. Law that does not discriminate, do not choose to whom will be conceded a grace. This result implies a factor much greater than the income distribution. It implies in a pedagogical action of equality.

A conditional program, even if only by income, requires the individual to put as an excluded, as social outcast. A BIG, as unconditional, bring this individual to the same level as any one, removing the psychological restraints of economic exclusion. We are much more than our purchase condition. We are citizens, and as such, have equal rights. A BIG, therefore, is a right, equal for all, which has among its most important results the education of equality.

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