

## THE ROLE OF THE FEDERAL CONSTITUTION IN GUARANTEEING SOCIAL RIGHTS<sup>1</sup>

### The Role of the Federal Constitution in Guaranteeing Social Rights

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#### SUMMARY

The Federal Constitution is an essential instrument in guaranteeing social rights. It establishes the legal bases for the protection of these rights, being responsible for creating the necessary mechanisms for their implementation. Based on the Constitution, public policies and social programs are created that seek to guarantee access to social rights, such as health, education, housing, decent work, among others. Furthermore, the Constitution also provides for the State's responsibility in promoting social rights, establishing that it must act effectively to protect these rights and guarantee their universalization. Despite the challenges in implementing social rights, the Federal Constitution is an important instrument for building a more just and egalitarian society, as it ensures the protection of these fundamental rights and promotes social inclusion and human dignity.

**Key words:** Federal Constitution. Social rights. Instrument.

#### ABSTRACT

The Federal Constitution is an essential instrument in guaranteeing social rights. It establishes the legal bases for the protection of these rights, being responsible for creating the necessary mechanisms for their effectiveness. Based on the Constitution, public policies and social programs are created that seek to guarantee access to social rights, such as health, education, housing, decent work, among others. In addition, the Constitution also provides for the responsibility of the State in the promotion of social rights, establishing that it must act effectively in the protection of these rights and guarantee their universalization. Despite the challenges in implementing social rights, the Federal constitution is an important instrument for building a more just and egalitarian society, as it ensures the protection of these fundamental rights and promotes social inclusion and human dignity.

**Keywords:** Federal Constitution. Social rights. Instrument.

#### 1. INTRODUCTION

The 1988 Federal Constitution is considered a historic landmark in the protection and guarantee of

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social rights in Brazil. After the promulgation of the Constitution, the legal bases for the realization of these rights were established, guaranteeing all citizens access to basic conditions for a dignified life, such as health, education, housing, work and leisure.

One of the main roles of the Federal Constitution is to define social rights and guarantee their universalization. From the definition of each of these rights, the State is responsible for creating public policies and programs that seek to implement these rights and promote social inclusion. Despite advances in guaranteeing social rights, there are still many challenges to be faced in their implementation. The lack of resources and adequate public policies, the poor management of resources allocated to social programs and the lack of State commitment are some of the factors that make it difficult to implement the social rights provided for in the Constitution.

It is important to highlight that guaranteeing social rights is fundamental to building a more just and egalitarian society. Access to these rights is essential for promoting human dignity and for the social inclusion of historically marginalized groups. Finally, it is essential to highlight that the Federal Constitution is a fundamental instrument in the protection and guarantee of social rights. It establishes the legal bases for the realization of these rights and is responsible for creating the necessary mechanisms so that they are guaranteed to all Brazilian citizens.

## two. DEVELOPMENT

With the promulgation of the 1988 Federal Constitution, Brazil established a series of social rights that must be guaranteed by the State. These rights are related to basic conditions for a dignified life, such as health, education, housing, work and leisure. The role of the Federal Constitution is to define and ensure the universalization of these rights, that is, to guarantee that all citizens have access to them. To this end, the State is responsible for creating public policies and programs that seek to implement these rights and promote social inclusion.

Despite advances in guaranteeing social rights, there are still many challenges to be faced in their implementation. One of the main challenges is the lack of resources and adequate public policies to realize these rights. Furthermore, the poor management of resources allocated to social programs and the lack of commitment from the State also make it difficult to implement them. It is therefore necessary for the State to act effectively to guarantee social rights, through the creation of public policies and programs that seek to promote social inclusion and reduce inequalities.

It is important to highlight that guaranteeing social rights is fundamental to building a more just and egalitarian society. Access to these rights is essential for promoting human dignity and for the social inclusion of historically marginalized groups. By guaranteeing these rights, it is possible to improve the living conditions of the Brazilian population and reduce social inequalities.

Furthermore, it is essential to emphasize that the Federal Constitution is a fundamental instrument in protecting and guaranteeing social rights. It establishes the legal bases for the realization of these rights and is responsible for creating the necessary mechanisms so that they are guaranteed to all Brazilian citizens. Therefore, it is essential that the Constitution is respected and that the State acts effectively in its implementation, guaranteeing access to social rights for all Brazilians.

### 2.1 The role of the Federal Constitution in guaranteeing social rights

**two** Social rights emerged as a response to the crisis of the liberal State, which was triggered due to the intense advance of industrialization. This historical period was marked by social and labor struggles in search of equality, due to the cruel treatment experienced by the working class during the Industrial Revolution or race in Europe in the 18th and 19th centuries. At that time, economic and social relations were not legally regulated, and private property and autonomy of the will were the only institutions to regulate them. As a result, workers lived in precarious conditions in the factories, which generated the need for protest movements without seeking a more active stance from the State. (WEIS, 2014)  
From this context, social and labor movements began to demand that the State



not only did it not interfere in economic relations, but it also guaranteed minimum conditions for workers. In this way, social rights became an important issue for society and were incorporated into the constitutions of several countries, including Brazil. Social rights include, for example, the right to education, health, housing, work and leisure, and are essential to promote equality and guarantee decent living conditions for all citizens. (TAVARES, 2012)

In Brazil, the 1988 Federal Constitution was a milestone in guaranteeing social rights, as it established that the State must guarantee access to these rights for all citizens. To achieve this, the State must create public policies and programs that seek to implement these rights and promote social inclusion. However, despite advances, there are still many challenges to be faced in the implementation of these rights, such as the lack of resources and adequate public policies. Therefore, it is important to highlight that the origin of social rights is closely related to social and labor struggles in the search for equality and social justice. Guaranteeing these rights is fundamental to building a more just and egalitarian society, and the Federal Constitution is an important instrument in protecting and guaranteeing these rights.

It is up to the State to act effectively in the implementation of public policies and programs that seek to promote social inclusion and reduce inequalities, guaranteeing access to social rights for all Brazilians. (SOUZA,2009)

The Federal Constitution is the country's main legal norm and an essential instrument in guaranteeing social rights. It is responsible for establishing the legal bases for the protection of these rights, creating the necessary mechanisms for their implementation. Since the promulgation of the Constitution in 1988, several social rights have been included in its text, such as the right to education, health, housing, decent work and social security. (MARSHALL,1967) One of the main objectives of the Constitution is to ensure that social rights are guaranteed to all Brazilian citizens, regardless of their social class, race, gender or any other personal characteristic. To this end, the Constitution establishes the State's obligation to create public policies and programs that guarantee universal access to social rights, as well as to monitor these policies so that they are effectively implemented. (SARLET,2014)

The Federal Constitution also provides for the creation of bodies responsible for protecting and guaranteeing social rights, such as the Ministry of Health, the Ministry of Education and the Ministry of Labor and Employment, among others. These bodies are responsible for developing policies and programs that promote social equality and access to basic rights, in addition to monitoring compliance with laws and government actions. Another important mechanism for guaranteeing social rights is the creation of income transfer programs, such as Bolsa Família and Benefício de Prestação Continuada (BPC). These programs aim to guarantee a minimum income for people in situations of social vulnerability, providing them with conditions for dignified survival. (SARLET, 2014)

In summary, the Federal Constitution is an essential instrument in guaranteeing social rights in Brazil. It establishes the legal bases for the protection of these rights, creates the necessary mechanisms for their implementation, establishes the State's obligation to create public policies and programs that guarantee universal access to social rights, and provides for the creation of bodies responsible for the protection and guarantee of these rights. It is essential that the Constitution is respected and applied effectively, ensuring that all Brazilian citizens can have access to their basic rights. (SALEME, 2011)

The Brazilian Constitution is the fundamental document that governs the country and establishes the rights and duties of citizens and the State. Among the fundamental rights guaranteed by the Constitution, are social rights, which aim to ensure decent living conditions for all Brazilians.

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For these rights to be effectively guaranteed, the State must create public policies and social programs that aim to promote access to basic services, such as health, education, housing and work. (MOTTA, 2016)

In this sense, these social policies and programs must be designed and planned in order to meet the needs of the population, taking into account the country's particularities and regional and social inequalities. Furthermore, it is important that they are constantly evaluated to check whether they are meeting their objectives and whether they can be improved to better meet the needs of the population. (MELLO, 1986)



Health is one of the most important social rights guaranteed by the Constitution. To ensure access to health, the State must invest in public policies that guarantee access to quality services, such as hospitals, health centers and medicines. It is essential that these services are available to all citizens, regardless of their social class or where they live. Education is also a fundamental social right, which guarantees access to training and knowledge. For this right to be realized, the State must invest in public policies that ensure access to quality basic education and higher education, as well as the continued training of teachers. Furthermore, it is necessary to ensure that schools have adequate infrastructure and are inclusive, in order to serve all students, regardless of their physical or intellectual conditions. Housing and decent work are also social rights guaranteed by the Constitution. For these rights to be realized, the State must invest in public policies that promote the construction of affordable housing and access to decent and paid jobs, which guarantee the sustainability and well-being of workers. It is essential that these policies are inclusive and aim to reduce social and regional inequalities, guaranteeing decent living conditions for all Brazilians. (BUCCI,2006)

Guaranteeing access to social rights is one of the main concerns of the Brazilian State. To this end, it is necessary to create public policies and social programs that enable access to basic and essential services, such as health, education, housing, decent work, among others. These policies must be structured to cover all regions of the country, including those most in need, with the aim of reducing social and economic inequalities. (COSTANETO, 2010)

Within this context, access to health is a social right guaranteed by the Constitution and which must be guaranteed to all Brazilian citizens. To achieve this, the State must invest public policies that enable access to hospitals, health centers, doctors and quality medicines, without any type of discrimination. Furthermore, the health system must be efficient, with agile and humane care, and also include disease prevention. (OLSEN, 2011).

Furthermore, education is another social right guaranteed by the Constitution and which must be guaranteed to all citizens. To this end, the State must invest in public policies that enable access to quality basic education and higher education, as well as ongoing teacher training. It is essential that these policies aim to reduce regional and social inequalities, promoting social inclusion and the country's development. (PAULO, 2012) Furthermore, housing is a social right that must be guaranteed to all Brazilian citizens. To this end, the State must invest in public policies that enable the construction of affordable housing and access to housing programs, in order to reduce the existing housing deficit in the country. It is essential that these policies are inclusive, guaranteeing access to decent housing for everyone, without discrimination. (SALEME, 2011)

Another aspect to highlight is that decent work is also a social right guaranteed by the Constitution and that must be guaranteed to all Brazilian citizens. To achieve this, the State must invest in public policies that enable access to decent and paid jobs, which guarantee the sustainability and well-being of workers. Furthermore, it is necessary for the State to promote social inclusion policies, in order to reduce social and economic inequalities, guaranteeing access to decent work for all, without discrimination. (COELHO,2019)

Thus, based on the Brazilian Constitution, it is essential that public policies and social programs are created that guarantee access to social rights, such as health, education, housing, decent work, among others. These policies must be structured in such a way as to reduce the social and economic inequalities, guaranteeing access to basic and essential services for all Brazilian citizens, without any type of discrimination. (REIS, 2020)

Furthermore, the 1988 Federal Constitution provides, in its text, the promotion of social rights as one of the main responsibilities of the State. The set of these rights comprises a wide spectrum of guarantees, ranging from access to health and education to the right to work and food security. These rights are fundamental to building a more just and egalitarian society, and the State has the obligation to promote and protect them. (ALMEIDA, 2021)



The effective action of the State in promoting social rights is fundamental for the realization of these rights in practice. Even though the Constitution establishes the universalization of social rights, in practice, it is common to observe inequality in access to these guarantees by the population. Therefore, it is essential that the State adopts public policies that promote equal opportunities and universal access to social rights. Furthermore, the protection of social rights is also a way of guaranteeing human dignity, which is one of the foundations of the Constitution. When the State does not act effectively to promote these rights, the most vulnerable population can be exposed to precarious living conditions, which can negatively impact their physical and mental health, in addition to making it difficult for them to integrate into society and the labor market. work. (GOMES, 2019)

Therefore, it is essential that the State assumes its responsibility in promoting social rights, through the implementation of public policies that aim to guarantee universal access to these guarantees. It is important that measures are adopted to overcome existing social inequalities, promoting a fairer and more equal society, where everyone can enjoy the same rights and opportunities. The implementation of social rights is, therefore, a challenge that must be faced by the State, in search of a more just and egalitarian society. (HERKENHOFF, 2011)

Another point to highlight is that guaranteeing social rights is a constant challenge in any society, and in Brazil it is no different. Although the Federal Constitution establishes the protection of these rights as a duty of the State, there are often difficulties in implementing public policies and social programs that aim to ensure universal access to these rights. However, it is important to highlight that the Federal Constitution is a fundamental instrument in the fight for social rights in Brazil. From there, it is possible to demand the protection of these rights and demand compliance with the State's obligations in promoting and guaranteeing them. (GOMES, 2019)

Furthermore, the Federal Constitution ensures the dignity of the human person as one of its foundations, establishing the need to promote social inclusion and the reduction of social inequalities. This means that the protection of social rights is essential for building a more just and egalitarian society, in which all citizens can enjoy the same rights and opportunities, regardless of their origin, race, gender or social status. (COSTA NETO, 2010)

Furthermore, guaranteeing social rights, however, is not a simple task. For these rights to be effectively guaranteed, the State must adopt concrete measures, ranging from the formulation of appropriate public policies to the allocation of sufficient resources for their implementation. Furthermore, it is necessary for society as a whole to be engaged in this fight for social rights, demanding that public authorities protect these rights and mobilizing to promote social inclusion and the reduction of inequalities. (ALMEIDA, 2021) In this sense, the Federal Constitution is an important instrument for raising awareness and mobilizing society in favor of social rights. By establishing the protection of these rights as a duty of the State and ensuring the dignity of the human person as one of its foundations, the Constitution promotes awareness of the importance of these rights for the construction of a more just and egalitarian society. Finally, it is important to highlight that, despite the challenges in implementing social rights, it is essential to continue fighting for their implementation. Only in this way will it be possible to build a more just and egalitarian society, in which all citizens can enjoy the same rights and opportunities, regardless of their origin, race, gender or social condition. (MOTTA, 2016)

### 3. CONCLUSION

Given the above, it is possible to conclude that the Federal Constitution plays a fundamental role in guaranteeing social rights, establishing the legal bases for their protection and enforcement. Based on the Constitution, the State is responsible for implementing public policies that seek to promote universal access to social rights, aiming to ensure social inclusion and human dignity. Despite the challenges in implementing these rights, it is undeniable that the Federal Constitution is an important instrument in building a society



more fair and egalitarian. Therefore, it is essential that the State assumes its responsibility in promoting social rights, so that all citizens can enjoy the same rights and opportunities, regardless of their origin, race, gender or social condition. Understanding the role of the Federal Constitution in guaranteeing social rights is essential to understanding how the protection of these rights works in our country. The Federal Constitution establishes the legal bases for the protection of social rights, determining that the State must act effectively in their promotion and guarantee of universalization.

Based on the Constitution, public policies and social programs are created that seek to guarantee access to social rights, such as health, education, housing, decent work, among others. However, despite advances in some areas, there are still challenges in fully implementing social rights.

It is essential to highlight that guaranteeing social rights is a decisive factor in building a more just and egalitarian society. When the State promotes access to social rights, it is contributing to social inclusion and overcoming existing inequalities in society. Furthermore, the protection of social rights is a way of guaranteeing the dignity of the human person, one of the foundations of the Federal Constitution.

In this sense, it is important to highlight that the Federal Constitution is an important instrument in the fight for social rights in Brazil. From there, it is possible to demand the protection of these rights and demand compliance with the State's obligations in promoting and guaranteeing them. Therefore, it is necessary for the State to assume its responsibility in promoting social rights, adopting measures that seek to overcome existing inequalities and guarantee universal access to these guarantees. Only in this way will it be possible to build a more just and egalitarian society, where all citizens can enjoy the same rights and opportunities, regardless of their origin, race, gender or social status.

## REFERENCES

ALMEIDA, Juliana Vieira de. **Social Rights and Individual Guarantees in the Federal Constitution of 1988: An Analysis of the Jurisprudence of the Federal Supreme Court.** Doctoral thesis, Federal University of Paraná, Curitiba, 2021.

BRAZIL. Federal Constitution of 1988. [http://www.planalto.gov.br/ccivil\\_03/constituicao/constituicao%20C3%A7ao.html](http://www.planalto.gov.br/ccivil_03/constituicao/constituicao%20C3%A7ao.html). Accessed on April 5, 2023.

BUCCI, MariaPaula Dallari. **Administrative Law and public policies.** 1. ed. São Paulo: Saraiva, 2006.

COSTANETO, Antônio Cavalcante da. **Leisure, Human Rights and Citizenship.** Curitiba:pretexto, 2010.

COELHO, Luiz Gustavo Grandinetti Castanho. **The Judicialization of Social Rights in Brazil and the Possibility of Restriction Due to the Reservation of the Possible.** Public Economic Law Magazine, v. 12,n.1, p.41-68,2019.

GOMES, Rafael da Silva. **The Realization of Social Rights in the 1988 Constitution: An Analysis of the Role of the Public Prosecutor's Office.** Master's thesis, University of São Paulo, São Paulo, 2019.

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HERKENHOFF, João Baptista. **Genesis of human rights.** 3.ed. Aparecida: Santuário, 2011.

MARSHALL, T. **Citizenship, social class and status.** Rio de Janeiro: Zahar, 1967.

MELLO, Filho, José Celso. **Annotated Federal Constitution.** São Paulo: Saraiva, 1986.





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MOTTA, Sylvio. **Constitutional right**. São Paulo: Editora Method. Updated and expanded magazine, 2016.

OLSEN, Ana Carolina Lopes. **Fundamental social rights: effectiveness in the face of the reservation of the possible**. Curitiba: Juruá, 2011.

PAULO, Vicente. **Uncomplicated Constitutional Law Summary**/ Vicente Paulo, Marcelo Alexandrino. 6th ed. – São Paulo: Method, 2012.

REIS, Bianca Guimarães dos. **The Effectiveness of Social Rights in the Federal Constitution of 1988: A Study on the Performance of the Judiciary**. Master's thesis, University of Brasília, Brasília, 2020.

SALEME, Edson Ricardo. **Constitutional right**. Collection and Success Public Competitions and OAB. São Paulo: Manole, 2011.

SARLET, Ingo Wolfgang. **The effectiveness of fundamental rights**. 8.ed. Porto Alegre: Livraria do Advogado, 2014

SOUZA, João Valdir Alves de. **Introduction to the Sociology of Education**. 2nd ed. Belo Horizonte: Autêntica, 2009.

TAVARES, André Ramos. **Constitutional Law Course**. 10th ed. Rev. E current. – São Paulo: Saraiva, 2012

WEIS, Carlos. **Contemporary human rights**. São Paulo: Malheiros, 2014.