



THE DEFINITION OF THE HUMAN RIGHT TO SOCIOECONOMIC INCLUSION IN BRAZIL

A DEFINIÇÃO DO DIREITO HUMANO À INCLUSÃO SOCIOECONÔMICA NO BRASIL

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ABSTRACT

This work seeks to define the right to socioeconomic inclusion through the analysis of the objectives and principles present in the Brazilian Constitution, especially in art. 170, which deals with the Economic-Financial Order. Through the deductive method, the right to socioeconomic inclusion was defined as the right to social and economic inclusion. The right to socioeconomic inclusion is materialized in the preparatory or immediate constitutional conditions that allow the individual to get a job or undertake, that is, to have access to work, from which he can earn his livelihood. The right to socioeconomic inclusion, more than a beneficial right to the individual, is, in itself, a beneficial right to society, as the active individual contributes significantly to the success of social well-being. Assured this right, the individual becomes less dependent on the social protection system of the State. From a

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passive being, accused of parasitizing and victim of state alms, he becomes an active agent, contributing to social success.

Keywords: Human rights; Socioeconomic inclusion; Economic rights

RESUMO

Neste trabalho busca-se a definição do direito à inclusão socioeconômica por meio da análise dos objetivos e princípios presentes na Constituição da República Federativa do Brasil, especialmente no art. 170, que trata da Ordem Econômico-Financeira. Por meio do método dedutivo, definiu-se o direito à inclusão socioeconômica como o direito à inclusão social e econômica. Materializa-se nas condições constitucionais preparatórias ou imediatas que permitem ao indivíduo empregar-se ou empreender, ou seja, ter acesso ao trabalho, do qual possa tirar seu sustento. O direito à inclusão socioeconômica, mais que um direito benéfico ao indivíduo, é, em si, um direito benéfico à sociedade, pois o indivíduo ativo contribui significativamente para o sucesso do bem-estar social. Assegurado esse direito, o indivíduo se torna menos dependente do sistema social de proteção do Estado. De um ser passivo, acusado de parasitagem e vítima de esmolas estatais, torna-se um agente ativo, contribuinte para o sucesso social.

Palavras-chave: Direitos humanos; Inclusão socioeconômica; Direitos econômicos

Introduction

Under the aegis of the Welfare State, the State should reconcile social rights with the economic order, and work with capital, guaranteeing social rights for workers and economic opportunities for the business sector.

In Brazil, however, it is perceived that social rights lack effectiveness, often limited to programmatic norms, lacking immediate full effectiveness. As a solution to this, it is



intended to encompass the character of social inclusion, the joint realization of economic rights already affirmed, for the realization of social rights and consequent social inclusion.

Through the deductive method this work seeks to define the right to socioeconomic inclusion through the analysis of the objectives and principles present in the Brazilian Constitution, especially in art. 170, which deals with the Economic-Financial Order.

1 Objectives and principles of the Federative Republic of Brazil

According to the first article of the Constitution 1988, the Federative Republic of Brazil is formed by the indissoluble union of the States and Municipalities and the Federal District, constituting a State Democratic Law, based on: I) sovereignty; II) citizenship; III) the dignity of the human person; IV) the social values of work and free enterprise; V) political pluralism. In the sole paragraph, it is indicated that all power emanates from the people, who exercise it through elected representatives or directly, under the terms of this Constitution. (BRASIL, 2021). These foundations converge to guarantee human rights.

Sovereignty, according to Ramos (2014), has two spheres, the external and the internal. In the external sphere, it consists of independent political power in the international field. Internally, it boils down to political power held by the people, resulting in popular sovereignty. Popular sovereignty resides, for example, in universal, direct, secret and periodic suffrage, which is one of the stony clauses (art. 60, §4, II). And, citizenship (art. 1, II) is expressed by a set of rights and obligations referring to the individual's participation in the formation of the will of state power.

Ramos (2014) also teaches that the citizenship of the 1988 Constitution has several facets, namely: 1) citizenship-election, which allows the citizen-voter to vote and be voted on; 2) citizenship-inspection, which allows citizens to file a popular action (article 5, LXXIII), report irregularities or illegalities before the Federal Audit Court (article 74, §2) [...];



3) propositional citizenship, which allows citizens to initiate bills (art. 61, §2); 4) citizenship-social mediation, which allows the citizen to be elected *Justice of the Peace* (Art. 98, II).

The dignity of the human person (art. 1, III) consists of the intrinsic and distinctive quality of each human being, which protects him against all degrading treatment and hateful discrimination, as well as ensuring minimum material conditions for survival. It is an attribute that every individual has, and all public policies, public services, private activities must have as a presupposition the safeguarding of this fundamental right.

In this context, the Constitution stated that even the economic order aims to ensure a dignified existence for all. Thus, with regard to the *status* within the scope of the constitutional order, notably, if the dignity of the human person simultaneously assumes the condition of value, principle and/or rule (in addition to operating as fundamental rights).

Sarlet (2016) explains that the dignity of the human person reveals particular practical importance from the observation that it (the dignity of the human person) is both a limit and a task of state powers and of the community in general (therefore, of each and every one of them). one), a condition that also points to a parallel and connected defensive (negative) or performance (positive) dimension of dignity. Indeed, it appears that in its role as a limit, dignity implies not only that the person cannot be reduced to the condition of a mere object of the action of third parties, but also the fact that dignity constitutes the foundation and content of fundamental rights (negative) against acts that violate it or expose it to threats and risks, in the sense of subjective positions that aim at non-intervention by the State and third parties in the context of the protection of dignity.

The social values of work and free enterprise (Article 1, IV), which underlie the Brazilian economic order, and political pluralism (Article 1, IV), reflect the constituent's desire to add, as the foundation of the Republic, apparently antagonistic values (capital and



work), as well as political values of the most diverse carats, resulting in a diversified and plural society.

Based on the foundations of the Federative Republic of Brazil, the aim is to safeguard human rights. And, in the Federal Constitution itself, it was a matter of programming the objectives of the Brazilian State, linked to the same purpose, making the construction of a free, fair and solidary society as state purposes; national development; the eradication of poverty and marginalization and the reduction of social and regional inequalities; and, still, the promotion of the good of all, without prejudice of origin, race, sex, color, age and any other forms of discrimination (art. 3º) (BRASIL, 2021). Aiming, in general, for socioeconomic inclusion.

In the event of gaps in the infra-constitutional sphere, the constitutional principles, with emphasis on the fundamental principles, will be accessed for their adequate overcoming. Sarlet (2016) adds that public authorities are positively bound to take concrete steps, in the sphere of their powers and attributions, towards the achievement of the goals established by the Constitution, even though the Federal Constitution does not specify exactly how to achieve such goals. Under the penalty of misuse of purpose or total or partial omission, depending on the case, the Judiciary, within the scope of its limitations, is responsible for an inductive and/or corrective intervention.

The Brazilian State, in the current configuration, is programmed and conditioned to guide its state activities, its public policies, to obtain a free, fair and solidary society, in order to reduce poverty and social inequalities, linking all its economic activity to the social justice, as determined by the constitutionalized foundations and objectives, which began to guide especially the economic norms contained in art. 170 of the Constitution. The aim was to guarantee full national development, which will only occur with the realization of human rights already recognized in the Brazilian legal system. These, in turn, will only be



convincingly realized through the implementation of social justice in the economic order. Which, consequently, will cause true inclusion, that is, socioeconomic inclusion, which, based on the systematic interpretation of the Federal Constitution, is the general constitutional objective.

Economic principles were established, which regulate the Brazilian economic order, with the purpose of achieving the goals outlined constitutionally and internationally, which are contained in the aforementioned article 170 of Constitution. Such principles are considered as economic rights, and must be ensured for the sake of social justice.

Economic rights are a set of rules of economic content that ensure the defense and harmonized individual and collective interests, in accordance with the ideology adopted in the legal system (PETTER, 2007).

Regarding the intrinsic link between social and economic rights contained in constitutional norms, Silva (2019) explains that Economic law has an institutional dimension, while social rights constitute forms of personal protection. Economic law is the right to carry out a certain economic policy, or it is the legal discipline of activities developed in the markets, aiming to organize them under the dominant inspiration of social interest.

Social rights discipline personal or group subjective situations of a concrete nature. In a certain sense, it can be admitted that economic rights will constitute presuppositions for the existence of social rights, because, without an economic policy oriented towards state intervention and participation in the economy, the necessary premises for the emergence of a democratic regime of content will not be composed. tutelage of the weak and the most numerous.

Differentiating itself from the other traditional legal disciplines, because, by relativizing the borders between public and private law, it proposes to meet the challenges



of complex contemporary societies, always marked by the simultaneity of the examination of individual interest and the collective interest, in all aspects of life.

Petter (2007) concludes that through Economic Law, the forms of behavior to be observed by economic agents and by the State are established, which, although not qualified as an economic agent itself, is considered a subject of economic law, since it has the prerogative to intervene in the economic domain and is responsible for issuing the norms that materialize economic policy. The forms of behavior established by economic law are aimed at achieving the objectives listed in art. 170 of the Constitution.

He systematizes the subjects that participate in economic policy: a) the State, which is not the economic agent itself, but is considered as such in view of its interventionist power. It is responsible for issuing the norms that materialize economic policy and its prerogative to intervene in the economic domain; b) individuals, who are economic agents by reason of their work and their condition as consumers of goods and services; c) companies, which are economic agents as production units of goods and services and also as consumers; d) the collectivity, which represents the indeterminable or indeterminate subjects of rights, holders of homogeneous diffuse, collective and individual interests; e) also mentions international or community bodies, associations, communities, the mass and even generic entities such as the consumer, the investor, the producer, which also constitute categories that can appear as subjects of the legal relationship of economic right.

In his turn, Silva (2019) states that ensuring a dignified existence in the dictates of social justice is not an easy task in the capitalist system, given its highly individual character. Social justice is only achieved through the effective distribution of wealth, which, for the author, does not occur, since what is seen is the concentration of capital and national income, which results from the private appropriation of the means of production, not providing real social justice, as there are still broad layers of the needy population alongside



the “fortunate minority”. It declares that a system of social justice will be one that in each one must be able to dispose of the material means to live comfortably according to the requirements of his physical, spiritual and political nature. It does not accept deep inequalities, absolute poverty and misery.

However, the Constitution is incisive in granting the economic order submission to the dictates of social justice, in order to ensure a dignified existence for all, assuming the economic principles the character of "humanization", determining a mechanism of socioeconomic order in favor of implementation of what the constitutional legal system proposes.

The economic order aims to guarantee everyone a dignified existence, balancing individual interests with the collective ones, based on the dictates of social justice, which, for the purposes of economic order, are fundamental needs, both physical and spiritual, moral and even artistic.

The insertion of *social justice* as the end of the economic order must be seen as the recognition that everyone is facing a common destiny, in an inescapable community enterprise, where coexistence must be seen from the front or it will stun us from behind. In other words, social justice concerns a kind of collective dignity. The term 'social justice' used in constitutional discourse has the effect of highlighting 'distributive justice'.

The concentration of social justice for each and for all is the same engine of development, a primordial vocation of the economic order, its finality, the obligatory destination of every exegetical task that crosses its corners.

The economic order has as its objective the satisfaction of the needs of the collectivity, whose understanding demands an equitable distribution of wealth, that is, social justice. Through this condition of life for people. Development, which is not measured solely



on the basis of economic growth, is closely related to the dignity of the human person, since through it better working and housing conditions are provided, in short, better conditions for a dignified life (PETTER, 2007).

In view of such importance of economic rights, the economic rights expressed in article 170 of the Constitution are now explored:

TITLE VII

Economic and Financial Order

CHAPTER I

GENERAL PRINCIPLES OF ECONOMIC ACTIVITY

Art. 170. The economic order, founded on valuing human work and free enterprise, it aims to ensure a dignified existence for all, in accordance with the dictates of social justice, observing the following principles:

I – national sovereignty;

II – private property;

III – social function of the property;

IV – free competition;

V – consumer protection;

VI – defense of the environment, including through differentiated treatment according to the environmental impact of products and services and their preparation and delivery processes;

VII – reduction of regional and social inequalities;

VIII – search for full employment;

IX – favored treatment for small companies incorporated under Brazilian law and having their headquarters and administration in the



country.

Sole paragraph. The free exercise of any economic activity is guaranteed to all, regardless of authorization from public bodies, except in the cases provided for by law. (BRASIL, 2021).

Following the Constitution:

a) *Principle of national sovereignty*, which is characterized as an attribute of the State, that is, the economic policies to be adopted must lead the State to establish a position of sovereignty that is interdependent with other countries, importing, therefore, in the possibility of self-determination of its economic policy (PETTER, 2007).

Sovereignty, in this context, refers, according to Silva (2019) to national economic sovereignty. In this perspective, the Constitution created fundamental legal conditions for the adoption of *centered, national and popular development*, which, not being synonymous with isolation or economic autarkization, makes it possible to march towards a developed economic system, in which the local bourgeoisie and their State have mastery over the reproduction of the workforce, the centralization of surplus production, the market and the ability to compete in the world market, natural resources, and, finally, technology.

b) *Principle of private property*, which ensures the use, enjoyment and disposal of one's own goods. But its destiny, too, is to ensure a collective utility, not to be confused with the selfish property of the 18th and 19th centuries, which was used only for the satisfaction of the owner's personal interests, without any contribution to the well-being of the collectivity (PETTER, 2007).

Private property, listed as a fundamental right and as a principle of the economic order, is characterized as an instrument that is also intended for the acquisition of goods



essential for survival. Likewise, it ensures that people acquire wealth for their own benefit and is therefore closely related to the right to freedom.

c) *Principle of the social function of property*, a fundamental right, as provided for in article five, item XXIII, and a principle of economic order. It constitutes the constitutional foundation of the social function of the company and of the social function of the contract. It is understood as the owner's duty not to exercise his right to the detriment of others, as well as his obligation to enjoy it in favor of the community. Through this social function, it is sought to reconcile the individual benefit with the collective. In this aspect, active postures are required from the owner. Private property fulfills its social function when, in addition to providing opportunities for the realization of human dignity, it also contributes to national development and to the reduction of poverty and social inequalities.

Silva (2019) adds that this principle “transforms capitalist property without socializing it”, through the duty that property begins to assume, to meet the ends of the economic order, ensuring everyone a dignified existence, according to the dictates of social justice.

d) *Principle of free competition*, which, according to Petter (2007) aims to guarantee economic agents the opportunity to compete in the market in a fair way, that is, the idea of conquering the market and profitability must be anchored in legal grounds - lawful economic (eg innovation, opportunity, efficiency) and not arising from cases of abuse of economic power (eg, adoption of anti-competitive or anti-competitive practices, among others). In this context, the State assumes the task of establishing a set of rules with a view to guaranteeing competition between companies, avoiding abusive practices.

The Constitution declares that the economic order is founded on *the valorization of human work* and private initiative. What does this mean? In the first place, I must say



precisely that the Constitution enshrines a market economy, of a capitalist nature, since *private initiative* is a basic principle of the capitalist order. Second, it means that, although capitalist, the economic order gives priority to the values of human labor over all other values of the market economy. Although it is a declaration of principle, this priority has the sense of guiding the intervention of the State, in the economy, in order to enforce the social values of work that, along with the private initiative, constitute the foundation not only of the economic order, but also of but of the Federative Republic of Brazil itself (art. 1, IV).

In this sense, free enterprise is intertwined with the valorization of human work, foreseen as a foundation of the Brazilian Federative Republic. The valorization of human work and free enterprise reveal that the 1988 Constitution provides for a modern capitalist Brazilian society, in which the conciliation and composition between the interests of the holders of capital and work are needs to be made possible by the action of the State.

Free enterprise alongside with the valorization of human work is considered as the foundation of the economic order. It comprises the right that everyone has to enter the job market at their own risk, freedom to engage in economic activity without being restricted by the State. It is linked to the liberal conception of man, showing his individuality. Therefore, it is also a foundation that necessarily leads to the free choice of work which, in turn, constitutes one of the fundamental expressions of human freedom (PETTER, 2007).

It is also important to note that, by art. 173, §4, the “law shall repress the abuse of economic power aimed at the domination of markets, the elimination of competition and the arbitrary increase of profits.” (BRASIL, 2021). In order to protect free competition, abuse of economic power will be repressed.

e) *Consumer protection principle*, which aims to seek balance between companies operating in the market, and between these and consumers. Focused especially on consumer



vulnerability, state interference is required as a way of overcoming this reality. In the Constitution, consumer protection was established as a fundamental right (art. 5, XXXII), and consumer protection was elevated to the status of a principle of the economic order. For Silva (2019) this legitimizes all measures of state intervention necessary to ensure the protection provided.

f) *Principle of protecting the environment*, with a view to avoiding harmful and degrading practices to the environment, which can lead to the annihilation of ecosystems. Petter (2007) emphasizes that the defense of the environment is, without a doubt, one of the most crucial problems of the modern era. The levels of economic development, accompanied by the adoption of practices that despise the preservation of the environment, have led to a gradual deterioration of the environment, to the point of endangering the very survival of ecosystems.

It is necessary to encourage sustainable consumption and sustainable development companies, that is, practices that respect the environment and that privilege the quality of life.

According to Silva (2019), the protection provided to the environment has a high level among the principles of the economic order. It conditions the productive activity to respect the environment and allows the Public Power to intervene drastically, if necessary, so that the economic exploitation preserves the ecology.

To meet such demand, in addition to full legislative protection, the State must adhere to international pacts and treaties that also aim to protect this 3rd generation fundamental right, in order to avoid harm to the community. Since the pacts and treaties must be interpreted together with art. 1, III, which enshrines the principle of human dignity as the foundation of the Republic; as well as with art. 3, II, which provides for national development



as a fundamental objective of the Republic.

In the Constitution, the legal provision of an ecologically balanced environment was inserted as a right guaranteed to all, its ownership being undefined, as it has a collective character. Becoming a diffuse right, essential for a healthy quality of life, and trans-individual, for transcending the individual, transforming the right to the environment into an unavailable right, breaking with the limit of the sphere of individual rights and obligations, deserving protection of the public power. together with the whole community.

In the context of the economic order, this principle matches the environmental principle of sustainable development, since the favoring of economic, social and political development must be aligned with the maintenance of a healthy quality of life, avoiding disorderly progress and damages. to the environment. In this perspective, it meets the needs of present generations, without compromising future generations to meet their own generations. It is development aligned with environmental preservation, respecting the limitations of natural resources.

g) *Principle of reducing regional and social inequalities*, which, in addition to being a principle of economic order, is also a fundamental objective of the Republic, and must be pursued by the economic policy adopted. It represents the search for greater equality between the different regions. One of the mechanisms used to reduce regional inequalities provided for in the Constitution are tax and budgetary incentives (articles 43 and 165, §1 of the Constitution). Silva (2019) complements that social rights and social security mechanisms are preordained in the sense of seeking a system that provides greater equalization of social conditions, and, on the other hand, we consign, elsewhere, to the constitutional concern with the solution of regional inequalities, providing for tax (Special Fund) and budgetary mechanisms to do so (regionalization, arts. 43 and 165, §1).



Along these lines, the Brazilian economy is geared towards providing regional equality through budgetary incentives.

h) *Principle of the search for full employment*, which, given the analysis of constitutional norms, aims to provide work to all those who are in a position to carry out a productive activity. It is about the full employment of the capable workforce. It thus harmonizes with the rule that the economic order is founded on the valorization of human work and income in proportion to their position in the economic order. (SILVA, 2019)

The work must be at the base of the economic system, and should be treated as the main factor of production, therefore, participating in the product of wealth and income. The search for full employment brings enormous benefits to the capitalist system itself, because, as is well known, up to a certain level of income, almost all remuneration “returns” to the market in the form of consumption of goods and services, which is essential to the market. internal.

i) *Principle of favored treatment for small companies* incorporated under Brazilian law and having their headquarters and administration in the country. Its goal is to encourage its development by simplifying *administrative, tax, social security and credit obligations, or by eliminating or reducing them by law*. Micro-enterprises will have to be given more favorable treatment than small businesses. To these, a more favored treatment than to companies in general.

The conclusion is imperative, since it is assumed that the favored treatment is due, among other reasons, to the comparative disadvantages that minors have in relation to others.

There is, therefore, a differentiated treatment for small companies, with the purpose of encouraging them, because contributing to full employment. Even the issue of



better distribution of capital in the social fabric is strengthened when small businesses are fostered (PETTER, 2007).

j) *Principle of free exercise of any economic activity*, arising from the principle of freedom of initiative. According to Silva (2019) it involves freedom of industry and commerce or freedom of company and freedom of contract. It cannot mean more than freedom to develop the company within the framework established by the public power, and, therefore, the possibility of enjoying the facilities and the need to submit to the limitations imposed by it. It is legitimate insofar as it is exercised in the interests of social justice. It will be illegitimate, as long as it is exercised with the objective of pure profit and personal fulfillment of the entrepreneur.

The express mention of the free exercise of any economic activity, typical characteristic of capitalist societies, has the objective of reiterating the need to remove obstacles and obstacles that hinder the development of economic activity (PETTER, 2007).

The State, in this context, has the following limitations: the State may, under the terms of the law, discipline the exercise of this right, either to demand: a) authorization for the exercise of a certain economic activity; b) intervene directly in the economic activity of production or sale of certain goods and services, in cases of relevant collective interest (art. 173, *caput*, of the CF); c) edit public policy rules (art. 174) establishing inspection rules; d) punishing acts committed against the economic and financial order and against the popular economy (§5 of art. 173) and repressing the abuse of economic power aimed at dominating markets, eliminating competition and arbitrary increase in profits (§ 4 of article 173 of the Constitution).

For Piovesan (2015), the 1988 constitutional affirmation extended the tasks of the State, incorporating economic and social purposes, considered by us, semantically, as



socioeconomic duties, binding on the instances of legal regulations. They make the policy stop being carried out in a free and constitutionally unbound way. The domains of politics begin to suffer limits, but also impositions, through a binding material project.

This is especially true of collective interests, since all programmatic norms have the common objective of national development based on effective socioeconomic inclusion.

2 A proposal for defining the human right to socioeconomic inclusion in Brazil

In order to explain the right to socioeconomic inclusion, it was first demonstrated that economic rights are described in article 170 of the Constitution. Social rights are guaranteed in article 6 of the Constitution, of which the following stand out: to education, health, food, work, housing, transportation, leisure, security, social security, maternity and childhood protection, and assistance to the destitute.

It is pointed out, according to the systematic and sociological interpretation of the Constitution, that there is no way to have an economic order without the occurrence of the social order, and vice versa. There is a relationship between such systems by virtue of article 170 of the Federal Constitution, when it determines that the economic order aims to ensure a dignified existence for all, in accordance with the dictates of social justice.

The correlation between the social and economic order takes place through the need to implement the objectives of the Federative Republic of Brazil, that is, building a free, fair and solidary society, guaranteeing national development, eradicating poverty and marginalization. , reducing social and regional inequalities, and promoting the good of all, without prejudice of origin, race, sex, color, age and any other forms of discrimination. All are the foundation for the right to socioeconomic inclusion, as they encompass social and economic rights.



Brazil favored the search for the Welfare State. An explicit provision of social justice was made in the Federal Constitution of 1988, and, in conjunction with article 193, confirmed that the social order is based on the primacy of work and social well-being and justice as its objectives.

The logical consequence is the duty of the Brazilian State to ensure the realization of fundamental rights constitutionally guaranteed in favor of social justice, using public government policies. And, in a way, this occurs when the State promotes public policies of inclusion, such as Bolsa Família and the minimum income.

It is thought that the right to inclusion is a fundamental right, based on article 3, items I and III, of the Constitution, in which it is explicitly stated that the objective of the Federative Republic of Brazil is “to eradicate poverty and marginalization and to reduce the social and regional inequalities” (BRASIL, 2021), in an attempt to bring about a free, fair and solidary society.

To this end, one can take advantage of Sen's (2000) warning, according to whom inclusion depends on development, which requires removing the main sources of deprivation of liberty, which are poverty and tyranny, lack of economic opportunities and destitution. systematic social welfare, neglect of public services, and intolerance or excessive interference by repressive states.

In his opinion, the absence of substantive freedoms is directly related to economic poverty, which robs people of the freedom to satisfy hunger, to obtain satisfactory nutrition or medicine for treatable diseases, the opportunity to dress or live properly, to have access to treated water or basic sanitation. In other cases, deprivation of liberty is closely linked to a lack of public services and social assistance, such as the absence of epidemiological programs, a well-planned system of medical care and education, or effective institutions for



peacekeeping and of the local order.

In this sense, it is necessary to analyze the term social exclusion, which, according to a study by Cambi and Lima (2014), comprises not only the lack of resources for a dignified survival, but also the process of distancing from the productive system, and less qualified population contingents, relating social exclusion to social deprivation and the absence of voice and power in society.

For them, it is a set of interconnected social phenomena, such as unemployment, marginality, discrimination, poverty, loss of social identity and weakening of social bonds. (CAMBI and LIMA, 2014).

For Sen (2000), freedom is only achieved through development, promoted through the realization of different types of rights and the opportunity for personal empowerment. As political liberties, which help to promote economic security, economic facilities in the form of opportunities for participation in trade and production that can help generate individual abundance, as well as public resources for social services, social opportunities that in the form of education and health services facilitate economic participation.

These kinds of freedoms complement each other in order to increase human capacity. In the context under study, these are social and economic rights, therefore, interconnected.

For semantic purposes, it is proposed that the correlation between economic opportunity and social rights be called the “right to socioeconomic inclusion”.

The right to socioeconomic inclusion is the right to social and economic inclusion. The first has already been extensively studied by several authors. As for the second, it is about



creating opportunities or means for the individual to instrumentalize his dignified life. A life that enjoys the benefits of the social contract, is self-determining and independent. A life in which he contributes to social improvement, a life in which he contributes financially to the maintenance of life in society. It encompasses the right to enjoy the benefits of social welfare, preserving self-esteem and the pride of their professional contribution to the payment of collective benefits, which they enjoy directly or not.

The right to socioeconomic inclusion is materialized in the preparatory or immediate constitutional conditions that allow the individual to get a job or undertake, that is, to have access to work, from which he can earn his livelihood. The right to socioeconomic inclusion, more than a beneficial right to the individual, is, in itself, a beneficial right to society, as the active individual contributes significantly to the success of social well-being. Assured this right, the individual becomes less dependent on the social protection system of the State. From a passive being, accused of parasitizing and victim of state alms, he becomes an active agent, contributing to social success.

The context can be observed, for example, from the study of the economic law of the social function of property, which encompasses more than the social function of individual property, also reaching the collective guarantees for the social function of the company that derives from this economic right.

The principle of the social function of the company – here understood as organized economic activity, not exclusively the business society – is based on the social function of private property, together with the economic order based on the valorization of human and in free initiative, articles 5, item XXIII, and 170, item III, of the Constitution of the Federative Republic of Brazil of 1988, respectively. In short, ensuring a dignified life through the economy itself.



All individuals are guaranteed the right to private property, through which the free exercise of business economic activities is carried out. However, the Constitution itself imposes a limitation on this right, as the property must harmoniously serve not only private interests, but also collective ones, thus fulfilling its social function.

Then there is a right and duty in relation to the exercise of private property, with no absolute freedom in the right to property and, therefore, in the exercise of business activities. There are interests beyond profit, the immediate object of *shareholders* (businessmen or partners), and mediate interests that include *stakeholders* (interested parties): employees, tax authorities and the community.

The conflicting principles of private property, which guarantee individual private rights, and the principle of social function, which aims to ensure collective interests, are reconciled. For this, it is reiterated, a requirement was imposed on the very guarantee of private property, which is the fulfillment of its social function.

Fabio Ulhoa Coelho (2018) conceptualizes the corporate social function in the sense that it is fulfilled when the company generates jobs, taxes, distribution of wealth, contributing to the economic, social and cultural development of the place where it operates. With the adoption of sustainable business practices, aiming to protect the environment and fulfill their duties towards their employees in decent work. In other words, it fulfills its social function by strictly complying with legislation relevant to its economic activities and all the facets that it involves. Adds Zanoti (2009) that it means that the pursuit of profit does not give permission to despise the appreciation of the dignity of the human person, represented, in short, by the due respect for the well-being of employees and the surrounding community; for the permanent optimization of the quality of its goods or services; for loyalty to the State and suppliers, and for the preservation of the environment. The need for concern with the social is confirmed in the Chapter that deals with the "Economic Order", in Art. 170, of the



Constitution.

As written in the article 170, “[t]he economic order, founded on the valorization of human work and free initiative, has the purpose of ensuring to all dignified existence, according to the dictates of social justice [...]” (BRASIL, 2021). For such ideas to be made viable, it is essential that the principles established in the same Article 170 are observed.

With this, the administrator receives a difficult mission, to reconcile economic and social interests, through an ethical posture in decision-making, which Zanoti (2009) well scored in the sense of respecting the social well-being of employees, as well as the community itself. where it is inserted. This dualism must be the fundamental problem that every company, with an ethical posture, needs to manage.

Coelho (2018) contextualizes the social scenario that a company can involve, in addition to the interests of entrepreneurs, partners of the business society and investors, namely, the interests of workers, focusing on the preservation of their jobs, with work dignity and salary improvement, of consumers, of the tax authorities, as well as the collective or diffuse meta-individual interests of the collectivity – the local, regional, national and global economy, which is the commitment to development.

For Massoli (2015), the social function of the company would be a natural result of its own development, with the generation of jobs, payment of taxes, circulation of wealth, among others. Adding that the corporate social function is materialized with compliance with the rules of Consumer Law, Competition Law and Labor Law.

Requião (2019) explains that the company ends up assuming “[...] severe and serious duties towards the community in which it operates. Managers must reconcile multiple and different interests, of which profit is the main one, but not the only one.” And, it concludes that every company must behave as a responsible part of the social aggregate in



which it operates.

The company – again understood as an organized economic activity – is the key to achieving the desired socioeconomic inclusion, since, by giving effect to the economic right of the social function of property, it guarantees the realization of numerous social rights, such as those reported. previously.

Therefore, companies, in the established economic order (capitalism), assume an indispensable role. It is not only up to them to distribute wealth, but also to comply with specific public policies, which have the role of pluralizing the business environment and, above all, socioeconomically including individuals through decent work, complying with the norms of the ILO, Constitution and CLT.

The State regulates social inclusion, however, it is in the private sector that the most complete form of inclusion takes place – social and economic inclusion. The company has collective duties, such as, for example, guaranteeing decent work through the application of constitutional labor guarantees, a situation in which all facets of society win. Social balance derives from economic development and real socioeconomic inclusion, through coherent public policies.

It is difficult to separate social rights from economic rights, and objectives with this dimension must be included in government agendas, so that constitutional promises can be fully guaranteed. In this sense, explains Piovesan (2015), that due to the indivisibility of human rights, the violation of economic, social and cultural rights leads to the violation of civil and political rights, since economic and social vulnerability leads to the vulnerability of civil rights and politicians. There is interconnection between all rights.

Conclusion



The Brazilian State is programmed, conditioned to guide its state activities, its public policies, to obtain a free, fair and solidary society, attacking poverty and social inequalities by linking all economic activity to social justice, in order to guarantee full national development, as proposed based on the effectiveness of socioeconomic inclusion – the fullness of social guarantees linked to the realization of socioeconomic rights, and not merely social rights.

Therefore, the right to socioeconomic inclusion is an implicit right, linked to economic and social human rights, as well as to fundamental social and economic rights, established in the Federal Constitution of 1988, specifically with the effectiveness of these rights in a joint and inseparable way.

References

- BRASIL. *Constitution of the Republic Federativa of Brazil 1988*. Disponível em: <https://www2.senado.leg.br/bdsf/bitstream/handle/id/243334/Constitution_2013.pdf>. Acesso em: 23 nov. 2021.
- CAMBI, Eduardo; LIMA, Jairo Néia. *Constitucionalismo inclusivo: o reconhecimento do direito fundamental à inclusão social*. p. 11-35. *Revista de Direito Privado*. Coord, Nelson Nery Jr e Rosa Maria de Andrade Jr. Ed. *Revista dos Tribunais*. v. 60, out.-dez., 2014.
- COELHO, Fábio Uhoa. *Curso de direito comercial*. São Paulo: Saraiva, 2018.
- MASSOLI, Vitor Biccás. *Função social da empresa aspectos relevantes*. 2015. Disponível em: <<https://www.conpedi.org.br/publicacoes/66fsl345/h0yx9ly1/Jgu7U1umFoz688lo.pdf>>. Acesso em: 17 nov. 2021.
- PETTER, Lafayette Josué. *Direito Econômico*. Porto Alegre: Verbo Jurídico, 2007.
- PIOVESAN, Flávia. *Justiciabilidade dos direitos sociais e econômicos: desafios e perspectivas*. p.



51-68. Direitos fundamentais sociais/ coordenação JJ Gomes Canotilho, Marcus Orione Gonçalves Correia, Érica Paula Barcha Correia. – 2. ed. – São Paulo: Saraiva, 2015.

REQUIÃO, Rubens. *Curso de direito comercial*. São Paulo: Saraiva, 2019.

RAMOS, André de Carvalho. *Curso de Direitos Humanos*. São Paulo: Saraiva, 2014.

SARLET, Ingo Wolfgang. *Curso de direito constitucional*. 5. ed., rev. e atual. São Paulo: Saraiva, 2016.

SEN, Amartya Kumar. *Desenvolvimento como liberdade*. São Paulo: Companhia das Letras, 2000.

SILVA, José Afonso da. *Curso de direito constitucional positivo*. São Paulo: Malheiros: 2019.

ZANOTI, Luiz Antonio Ramalho. *Empresa na ordem econômica*. Curitiba: Juruá, 2009.