

ORIGINAL ARTICLE

Democratic formation of the constitution of the Federative Republic of Brazil of 1988 (CRFB/1988)

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Abstract

Introduction: After the years of lead, as known, the military dictatorship that took part in the country, declaredly contrary to the democratic rule of law that existed in Brazil until then, and that took over power through the use of force between the years 1964 and 1985, in 1988 the Citizen Constitution was promulgated, the Constitution of the Federative Republic of Brazil of 1988 (CRFB/1988), not without a struggle but as a possible, but not perfect, combination of the democratic and social need that was curbed by conservatism and the roots lying down from dictatorialism and the right-wing vision of the instituted powers of the elite, and that made amnesty possible for coup leaders and dictators, as well as those who fought for the democratic rule of law and for social justice through the widespread use of violence at the time, which became begins with the cowardly coup of 1964. The 1988 Constitution brought to society, on its side, important mechanisms for the protection of individuals and society against the will of the State and of society itself, declared and instituted fundamental rights and created legal instruments for the protection and guarantee of fundamental rights, such as, among many, we can highlight public civil actions, the collective writ of mandamus and popular action. However, social reality depends on the implementation of fundamental rights through the effective action of the State and society, and through the appreciation of democratic institutions, such as the CRFB/1988. On the other hand, the coup and the lack of appreciation for democracy and the democratic rule of law, however, live in the shadows and underworld of violence and fake news more recently, and during the more than thirty years of promulgation of the celebrated Constitution Federal of 1988, the institutions and the constitutionally established democratic regime have been questioned by the coup, of which the dantesque event of the attacks on democracy perpetrated by vandals, possible terrorists and financiers of chaos, and purely coupists, on January 8, 2023, at the headquarters of the three branches of government in Brasília, DF. fundamental rights, occurs with great emphasis in the scope of the realization of these same fundamental rights and affects more seriously, above all, the vulnerable, marginalized population, and the black majority, with a cowardly mechanism of structural racism sedimented over the nation in Brazil and which adds to the lack of appreciation for democracy on the part of the population, and which affects, notably, and with greater gravity the economically needy people who live in poverty.

Objective: As a general objective, this manuscript aims to describe important mechanisms achieved for the defense and implementation of fundamental rights based on the Constitution of the Federative Republic of Brazil of 1988.

Methods: The present work was developed through bibliographical research, on the conquest of rights inserted in the context of the constitutionality and normative force of the Constitution of the Federative Republic of Brazil of 1988, representative of the sedimentation of democracy in Brazil. The research approach method is deductive.

Results: This research describes the evolution of generations of fundamental rights enshrined in the 1988 Constitution of the Federative Republic of Brazil, among which the current stage of new fundamental rights, resulting from bioethics and technological advances.

Conclusion: It is concluded that fundamental rights had a great evolution in a short period of time, notably driven by the barbarism created by the warlike, coup-mongering and dictatorial movements that rested from the 20th century onwards, and notably by the incidence of technological evolution resulting from the advance of science in the same historical period, and which underlie the conquest of rights and the need to implement goals to avoid the social, economic and existential collapse of humanity, with the aim of perpetuating good social coexistence and guaranteeing and promoting the quality of life of people and societies, permeated by rights that are partly individual and partly collective.

Keywords: Democratic rule of law; coup d'état; fundamental intergenerational rights; brazilian history, Humana dignity.

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Authors summary

Why was this study done?

The study under analysis was prepared from the need to discuss the dimensions of internationally recognized Human Rights, as well as their internalization in the national legal system, through conventions and treaties, being integrated to a hierarchical condition superior to legal norms. Furthermore, the research is born from a question regarding the connectivity between Human Rights (in the international sphere) and fundamental rights (in the domestic legal sphere) with movements led by society.

What did the researchers do and find?

From the research selected by the bibliographic method in research with secondary data, it was possible to analyze the 5 generations or dimensions of Human Rights, denoting their particularities, in order to understand their importance for the history of humanity, given that each generation a right inherent to the human person is recognized, in addition, there are several segments that affirm that society has always played a fundamental role in the acquisition of guarantees. It is noted that the social movements were the basis for the change from an absolutist State to what we have today: the Democratic State of Law.

What do these findings mean?

With the construction of the work, it is plausible to understand Human Rights and fundamental rights as the basis of a State that respects the individual in his particularity. In another turn, the brief study is multidisciplinary, as it uses more than one discipline for its preparation, on the one hand there are legal elements present, in order to base the norms of international law and human rights, in addition to notions of constitutionalism, but also is a study that refers to historical events and facts that marked humanity, such as the French Revolution of 1789. Furthermore, the authors seek at all times to reinforce the importance of popular movements, behold, it was from them that the State ceased to be absolute and recognizes the rights of citizens.

Highlights:

- The 1988 Constitution brought to society, on its side, important protection mechanisms for individuals and society against the will of the State and society itself.
- The manuscript aims to describe important mechanisms achieved for the defense and implementation of fundamental rights based on the 1988 Constitution of the Federative Republic of Brazil.
- The study under analysis was prepared based on the need to discuss the dimensions of internationally recognized Human Rights.
- The conquest of rights inserted in the context of constitutionality and the normative force of the Constitution of the Federative Republic of Brazil of 1988, with a representative sedimentation of democracy in Brazil.

INTRODUCTION

Brazil experienced a regime of exception between 1964 and 1985¹. A regime of exception is one in which the imposition of force takes precedence over the interests of democracy and, therefore, over the interests of the majority.

The majority is the rule of democracy established by political science since Aristotle as the way to decide things in a democratic decision-making process of a rule of law².

A democratic rule of law is a state formulation in which the law with democratic validation by majority rule and with the guarantee of respect for fundamental rights is the rule established with validity and imposition by and to the institutions of the State and society.

Democracy is respect for and promotion of fundamental rights³.

A democratic State of law like the Brazilian one established in 1988 is not only a State of law, but one that depends on the democratic order for the establishment and imposition of fair law.

This distinction between the “*Rule of Law*” and the “*Democratic State of Law*”⁴ is of paramount and fundamental importance, given that the “Nazi German national state” also based its foundations on a Nazi “*Rule of Law*”, which was prejudiced, discriminatory and inhumane that caused the tragedy of the genocide and the Second World War.

By the way, when we mention the majority rule it is important to point out that it does not mean to say that the will of the majority can be arbitrary. Quite the contrary, it is up to the majority to protect everyone’s rights, and especially those rights of parts of the population in a state

of vulnerability and, above all, fundamental rights that affect all majorities and minorities.

Unfortunately, it was not the democratic rule of law that flourished in Brazil from 1964 with the institution of institutional act number 1 and the deposition of the elected president João Goulart⁵.

The political forces behind the 1964 coup had a notorious violent force of imposing their arbitrary will on a previously established democratic process in the country.

The iron years of this dictatorship of exception claimed the lives of thousands of young people and condemned future generations of poor and marginalized Brazilians, mainly because they were vulnerable, to cultural and social democratic involution, so that there was the establishment of a regime of censorship, of political persecution, torture and homicides in the basements of the dictatorship, the rule of law in Brazil was subjugated to a regime of brute force, irrational and inhumane from its corrupt and corrupt agents who obtained their inglorious mission of destroying democracy and the social values of humanity in the country⁶.

There was, on the other hand, a slow and gradual recomposition of the democratic forces over about two decades, which culminated in the movement of direct elections in 1983-1984, previously encouraged by the reading of the “*Carta aos Brasileiros*” by Professor Goffredo da Silva Telles Jr. in 1977 in the “*Pátio das Arcadas*”⁷.

From then on, then, a process of gradual transition was established from the dictatorial regime imposed by the armed forces in a country barbarized by the dictatorship, to a new pact of its democracy based on one of the National Congress.

A national agreement of political forces established the institution of a constituent process with the convening of a constituent national assembly capable of weaving the fabric of the Brazilian political social fabric in the reconstruction of a democratic Constitution for Brazil⁸.

In a brief summary, everything happened through a dialogue that was made possible by the amnesty law that guaranteed dictators not to be prosecuted and criminally persecuted after the end of the iron regime⁹.

The constituent process of 1987-88 was absolutely a democratic process and that made possible, with its own goals, the hearing of all Brazilians, notably gave rise to the voices of minorities and all majorities in the sense of building a free, democratic, fair and supportive, with a view to reducing inequality and eliminating poverty, with the utmost appreciation of the principle of human dignity, the protection and promotion of human life in all its forms and diversities, and the construction of a country free fair and supportive¹⁰.

Within this democratic context, the National Constituent Assembly approved the approval of a constitutional text that was approved in a session presided over by the then constituent Ulysses Guimarães, in the years 1987-88, and came into force from its promulgation and entry into force. in 1988 and then became known as the 1988 Constitution of the Federative Republic of Brazil¹¹.

The 1988 Federal Constitution was born in the spirit and faith of building a fair democratic State in solidarity and drank at the source of the Republic of the Mexican Constitution of 1917¹² and that of the Weimar Constitution of 1919¹³.

The historic conflicts of the 20th century did not pass unscathed, as many conflicting interests ended up having shelter in their body and core, as well as the interests of the large landowners flanked by the institutionalization of the right to agrarian reform established in the Federal Constitution of 1988¹⁴, among other particular agreements ideas that are often conflicting and incompatible with each other.

As closer sources, the 1988 Constitution of the Federative Republic of Brazil was inspired by the pacts of rights established within the scope of the United Nations, both the pact of civil and political rights¹⁵ and the pact of social, economic and cultural rights¹⁶, both from 1966.

In fact, the Universal Declaration of Human Rights of 1948¹⁷ consolidates the scope of protection of the individual and society against the terror established by the State usurped by arbitrary wills and majorities or minorities that impose their strength to the detriment of life in favor of people's suffering.

In the Brazilian constitutional history we had some democratic constitutions.

This was not the case with the first Brazilian Constitution, which was granted by the then Emperor Dom Pedro I in 1824¹⁸.

The Brazilian Constitution of 1891 was also granted and is known as the first republican Constitution after the Proclamation of the Brazilian Republic.

During the first Republic known as the Republic of "coffee with milk" there was the first republican Constitution enacted in Brazil, in 1934¹⁹, whose validity

was interrupted due to the Vargas dictatorship and the decree of the "State of Sítio" still in March 1934, this dictatorship which in 1937 granted the Constitution as it is known as Polaca²⁰, eminently dictatorial.

The Vargas dictatorship lasted from 1930 to 1945, and in 1946²¹ a democratic Constitution that recognized fundamental rights was promulgated and remained in force until 1964 with the coup d'état perpetrated by the armed forces in Brazil and with the institution of institutional act number 1.

The 1988 Constitution brought to Brazilian society the possibility of security and protection of its interests, and was embodied in a difficult concert of wills and interests of Brazilian society, often conflicting and incompatible with each other.

The citizen Constitution, as the Federal Constitution of the Federative Republic of Brazil of 1988 is known, expressly established fundamental rights and guarantees, enshrining the civil and political rights known as civil liberties (1st generation human rights) and the social, cultural and economic rights considered as 2nd generation human rights.

Constitutional mechanisms and instruments were created for the protection of these fundamental rights, among which we can highlight public civil actions, the collective writ of mandamus and popular actions.

Nevertheless, the so-called intergenerational human rights of the 3rd, 4th and 5th generations were also, and are, protected and guaranteed in the Citizen Constitution.

The 1988 Federal Constitution of the Federative Republic of Brazil legally guarantees a Democratic State based on the rule of law, based on citizenship, human dignity and political pluralism, whose fundamental objectives are to build a free, fair and solidary society, to eradicate poverty and marginalization, reduce social and regional inequalities and promote the good of all, without prejudice or discrimination of any kind¹¹.

However, the social reality of non-democratic and non-pluralistic interests conflicts with the Magna Carta and, during the more than twenty years of existence of the Federal Constitution of 1988, the institutions and the constitutionally established democratic regime have been frequently confronted by conservative setbacks.

Non-compliance with the Major Law occurs with great emphasis in the scope of fundamental rights and affects, above all, economically needy people who live in vulnerable situations.

Often, legal norms of fundamental rights are forgotten, misapplied, causing enormous suffering and for many forgotten, marginalized people, who can be seen as the "nadie" of Galeano's poem²².

On the other hand, in many respects there is progress in relation to fundamental rights.

The Citizen Constitution depends on the action and political articulation of social movements for the implementation of the Constitution, that is, for the realization of historical advances in human rights enshrined in the Citizen Constitution and in the human rights treaties and conventions signed by Brazil.

Thus, before the CRFB/1988, we analyze the issue of guarantees and fundamental rights, while we have an

understanding of them as an approximation between ethical values and law.

As a general objective, research was carried out on fundamental rights from the first to the fifth generation and social movements, thus understanding the aspects of the problem of the realization of rights that we have faced in Brazil.

■ METHOD

We developed this work through bibliographical research, analysis of jurisprudence on the subject, the Constitution of the Republic of 1988 and infraconstitutional laws.

The research approach method is deductive. The deductive research methodology first analyzes information broadly to reach a specific conclusion and uses the logical relationship to arrive at new, unknown information. It is also stated that it is a method with a restricted range and difficult to make mistakes²³.

Within this approach, it is based on the 1988 Constitution and fundamental rights²⁴. Therefore, this research made a historical search since the origin of fundamental rights as a means of achieving a democratic society. It is interesting to observe that each generation of rights reflects the historical moment of its own struggles and achievements necessary for the development of life and the fulfillment of human needs in society before an established State.

■ RESULTS

Fundamental rights²⁴ are historical constructs that were realized by peoples, which in itself is independent of their foundation, whether religious, secular, metaphysical or positive.

Its origin is much discussed among the most diverse scholars of the genre, whether philosophers or jurists who, each in their own way, aim to explain their outlines²⁵.

It is essential to analyze and be aware of this process of social construction of fundamental rights, observing the historical and social circumstances that preceded the demands for rights, and the evolution of these rights since the first Declaration of Rights of the State of Virginia²⁶ and with the Declaration of the Rights of the man and citizen from 1789, with the French Revolution²⁷, and up to the present day.

This historical cut certainly only delimits a sequence of movements, which unfold several manifestations that posit human rights in the form of fundamental rights since then.

However, it is impossible to establish a chronological order without mentioning so many other series of activities that certainly contributed to unleashing the bases for the effective self-determination of peoples and for the recognition and construction of fundamental rights.

It becomes evident, when expanding the notion of human rights beyond the established right, that the fundamental freedoms and guarantees of the citizen and the human being are not matters that interest only each State, but, on the contrary, interest and oblige the entire international community, so that the primary need for

protection and effectiveness of human rights made possible, at the international level, the emergence of an autonomous discipline of public international law, called International Human Rights Law²⁸.

Despite the remoteness of this discussion on the internationalization of human rights, the historical evolution of the protection of fundamental human rights in international diplomas is relatively recent. It derives from the post-war period, so that the affirmation of human rights is humanity's response to the barbarism imposed by Nazism and the Second World War²⁹.

The reaffirmation of the internationalization of human rights in the post-Cold War world took place at the World Conference on Human Rights in Vienna, in 1993³⁰.

However, the implementation of this initiative only took place in a significant way with important non-binding declarations, to later take the form of international treaties, with the aim of obliging the signatory countries to comply with its norms.

The development of this process of internationalization of Human Rights began in the post-Second World War with the outlining of basic human rights that were therefore adopted by the United Nations (UN) in the Universal Declaration of Human Rights adopted and proclaimed by Resolution No. A (III) of the General Assembly of the United Nations, in 1948¹⁷, which affirmed the belief of the peoples of the United Nations in human rights, in the dignity and worth of the human person, as well as in the equal rights of men and women, aimed at promoting social progress and improving living conditions.

In fact, currently domestic law, represented in this research by the 1988 Constitution of the Federative Republic of Brazil (CRFB/1988)¹¹ already reproduces, in general terms, the international list of protected human rights.

The question arises as to whether there are international mechanisms that oblige National States to comply with the human rights enshrined in international treaties²⁸. Without such a connection between the mechanisms for investigating the violation of international obligations (guarantee, protection and promotion of human rights within the scope of national States) and the daily conduct of national States in the construction of their democratic States of law, it would be a step away from affirming the character of merely advisory and advice or moral exhortation of the international protection given within the scope of the concert of Nations to human rights.

It observes, therefore, in the field of human rights, that the accountability of the national State that violates international human rights treaties is an essential method to reaffirm the legality of this set of norms aimed at the protection of individuals and the historical affirmation of human dignity²⁸.

Questions remain whether all human rights are customary norms or general principles of international law. Currently, States and part of the doctrine only recognize a portion of human rights as custom and general principles of international law.

The international consensus around respect for the right to life differs from the consensus around social rights, for example. Thus, there is no denying the limitations of

using non-conventional sources to oblige States to respect all human rights, especially social, cultural and economic rights in a world still marked by hunger and misery for hundreds of millions of people.

It is undeniable that since ancient times, human beings have always walked their path in search of equality between individuals and their rights, and their general affirmation.

The struggle for rights has driven human beings since the most remote times, even if these rights are not written down, it is surprising to see the effects of this saga³¹.

The dignity of the human person, central point of formation and genesis and foundation of fundamental rights, represents a set of actions and fundamental rights necessary for human subsistence, such as broad access to health services, education, social security, protection, guarantee of access to rights, among others, included, but not always fulfilled and effective for the entire population²⁹.

Considering this information, it is taught that the constitutional device that consecrates human dignity as a fundamental constitutional principle in Brazil contains norms that grant subjective rights of a negative nature (non-violation of dignity), but that also impose positive behaviors in the sense of protecting and promoting dignity, which includes all the struggles under construction by generations of human rights³², all demonstrating the multiplicity of norms contained in the same device.

Thus, we can note that the 1988 constituent directed all its focus on providing the dignity of the human person with a prominent point, in other words, as being a foundation of the Federative Republic of Brazil, taking into account the Democratic State of Law, to show that the individual is the primordial subject and recipient of the modern legal structure, as well as to make it clear that any practice that tends to reduce the human being to the condition of a thing or that intends to deprive him of the necessary means for his conservation will not be admitted³³.

Thus, fundamental rights are the internal enshrinement of human rights in the country, and are, therefore, legal goods expressly provided for in the Federal Constitution of 1988¹¹. These are indispensable rights for the subsistence of human beings, consolidated in the principle of human dignity.

Art. 5, caput, of CRFB/88 prescribes the considered most important fundamental rights: "All are equal before the law, without distinction of any kind, guaranteeing to Brazilians and foreigners residing in the Country the inviolability of the right to life, freedom, equality, security and property (...)"¹¹.

In this sense, George Marmelstein points out that fundamental rights are legal norms, closely linked to the idea of human dignity and limitation of power, positivized in the constitutional plan of a given Democratic State of Law.

The author also states that if a certain legal norm is connected with the principle of human dignity or with the limitation of power and is recognized by the Constitution of a Democratic State of Law as deserving of special protection, it is quite likely that one is facing a fundamental right³⁴.

Thus, in relation to the conception of human dignity, Sarlet emphasizes that it is not an easy task, at least not in an evident way, but points out that the dignity of the human person as a fundamental value (and normative principle) [...] requires and presupposes the recognition and protection of fundamental rights of all dimensions³¹.

The function of freedom or the defense of fundamental rights has a double dimension on a legal-objective level, which seeks, therefore, to establish norms of negative and positive competence for the public authorities, and to demand omissions or actions from the public authorities³⁵.

The most important principles are made up of basic concepts that underlie decisions of a political nature and that are indispensable to the establishment of the Democratic State of Law, providing parameters for its way of being³⁶.

In this way, from article 1 of the Federal Constitution of 1988, the innumerable fundamental principles are delimited, and among these we can find the foundation and foundation of the democratic State of law, which is the value, right and principle of the dignity of the human person.

The Brazilian Constitution provides the protective and structuring norm of the dignity of the human person with a very comprehensive normative nature, taking into account that this presents a reflection on the entire political, social and legal system³¹, even being a consecrated point and foundation of the State of democracy under Brazilian law³².

In addition, it also presents, in a relevant way, the importance that the State has given to the human person, since it exists because of it³¹.

DISCUSSION

It is now worth discussing the fundamental rights of the first to the fifth generation.

It is essential to emphasize that all fundamental rights have their dimensions or generations of rights as a way of scoring their historical and political evolution, but this is not to say that the rights of each generation are watertight or function separately from the others. The effectiveness and effectiveness of fundamental rights or generations of human rights is joint and interconnected, transversally and with concomitant application in terms of the phenomena of the facts of legal reality, since fundamental human rights are indivisible and, above all, universal³⁷.

It is a mere cataloging for didactic purposes and for contextualizing its origin and concept, despite existing at the same time on the normative level, as exemplified by the 1988 Constitution of the Federative Republic of Brazil (CRFB/1988)¹¹.

1st Generation Fundamental Rights

It can be seen that the first dimension of fundamental rights symbolizes the achievement of man's conquest in the face of the absolutism that prevailed in society. It is then possible to state that it refers to a mechanism for the protection of the person in the face of state arbitration, consequently ensuring the minimum conditions for survival to the detriment of the sovereign's power³⁸.

The mentioned dimension of rights determines that the State abstains, that it does not do so, assuring the human person the right to freedom, to life, among others, and must also limit the State's actions at the moment when this implies an intrusion in the lives of people. people.

The studies by Araújo and Nunes Júnior teach that this was the first step towards what they call manumission of the human being, recognized by a Constitution³⁸.

It is also noted that the 1st generation fundamental rights arise at the same time from the idea of the rule of law, through a system of division of functions³⁹.

Studies point out that, in principle, fundamental rights constituted a limitation of state power, as they sought to delimit state action. Such rights defined the border between what was lawful and what was not for State interventions in freedom. The authors also point out that these were called the right of defense, marking a zone of non-intervention by the State (negative fundamental rights)³⁹.

In this way, the fundamental rights of the first generation present as their most relevant peculiarity the exemption of the State's action in relation to the individual rights of each individual, making very clear a role of the citizen's rights of defense⁴⁰.

Thus, the sayings also point out that, as rights of defense, negative fundamental rights imply for the State a duty to abstain from acting, that is, a duty not to interfere in the sphere of individual freedom, which would then be immune to the so-called *jus imperii* of the State⁴⁰.

In this way, the fundamental rights of the first dimension, or even, with regard to their original function of defense, ensure the person a space of self-determination, providing a counterpart to all the strength and state action.

It then refers to a subjective right, capable of assuring human beings that the State does not interfere inappropriately with their freedom⁴⁰.

In order to represent the double point of view of the citizen's rights of defense, we can see that, in the first place, they constitute, on a legal-objective level, norms of negative competence for the public authorities, fundamentally prohibiting their interference in the individual legal sphere and, secondly, imply, on a juridical-subjective level, the power of individuals to positively exercise fundamental rights (the so-called positive freedom) and to demand omissions from public powers, in order to avoid harmful aggressions on their part (called freedom negative)⁴⁰.

We can then point out as examples of fundamental human rights of the 1st generation or dimension, the rights to freedom, life, physical integrity, property, voting, among others.

It is the aforementioned initial generation of fundamental rights, which can be called civil or individual rights, or civil and political freedoms and which are characterized as the citizen's rights of defense before the State.

It is also pointed out that their characteristic is state negativity, that is, they are obligations not to do on the part of the state, for the benefit of individual freedom.

They are inspired by a logic based on guarantees and constitute the basic legal declaration of the Liberal State⁴¹.

In this sense, the first generation fundamental rights must be endorsed as individual rights for the protection of each person with regard to state activity.

Therefore, they have a nature especially focused on the defense of the individual and have a characteristic of abstention by the State, to the detriment of state power and focused on individual protection⁴¹.

2nd Generation Fundamental Rights

Individual rights alone are not enough to ensure the exercise of fundamental rights. In this way, the fundamental rights of the first dimension ensured the right to life to the citizen, however they did not ensure how this should occur, nor under what conditions the person would have the possibility of enjoying that right. Without yet existing the possibility, for example, of guaranteeing life and not providing human beings with the conditions to live, taking into account that it is necessary to have means and conditions of survival to be able to implement the right in question, the 2nd generation or dimension rights.

It is also worth mentioning as an example in this case the right to liberty. It is not enough to emphasize the right to freedom if conditions and possibilities of choice are not provided so that the person can choose in an effective, free and unimpeded way the directions to be followed. Thus, with a concern for the needs of human beings and, above all, having to ensure a minimum of dignity for their existence, fundamental rights of the second dimension were born.

It should also be noted that, contrary to the first generation fundamental rights, resulting in state abstention, the second generation fundamental rights result in a requirement for direct action by the same State, causing it to have a commissive action (by action) aiming to ensure the minimum of dignified conditions, complementing and making effective the previous fundamental rights, those of the first generation.

It is also pointed out that these rights are related to the previous ones because, in order to have effective freedom, it is necessary to guarantee individuals a decent standard of living⁴¹.

The lessons of Brega Filho³⁹ contribute to the theme, remembering that social, economic and cultural rights were defined and ensured in Brazil, seeking to guarantee reasonable social conditions for all men to exercise individual freedoms.

In this sense, it is possible to conclude that the second generation of rights that received recognition was what became known as "social rights": the right to work, as well as the right to decent housing and even health³⁸.

Ensuring only state exemption in fact is not enough to guarantee the application of fundamental rights, taking into account that, based on the words of Biagi⁴⁰, we can see that the freedom of individuals can no longer be achieved simply through abstention of state intervention.

The search by the State for the effectiveness of fundamental rights becomes, therefore, an assumption that there is a so-called real freedom⁴⁰.

Directing to the State the responsibility of acting in order to ensure the minimum conditions of survival

and, also, to guarantee the minimum of material and legal conditions to the citizen, thus enabling a dignified life and simply providing him with his minimum natural right, makes it possible for the citizen the exercise of first generation fundamental rights, or individual rights, as freedom is significantly associated with the ability and chance to make choices without being induced. In other words, it is also associated with the need to provide true conditions and possibilities for human beings to freely choose the direction they want to follow.

3rd Generation Fundamental Rights

We can see then that the third generation of rights goes beyond the individual, the individual, converging to a generation of rights associated with the essence of the human being, its reason for existing, thinking the human being as a gender and not attached to the individual or even to a determined collectivity.

During the Second World War it became clear that there are different rights that do not belong only to the individual and that the recognition of first and second generation rights is not enough in this sense either³⁹.

These are presented as rights that go beyond the individuality of the human being and are owned by all humanity, known as solidarity rights. It is possible to point out as examples of the rights of solidarity the right to peace, the right to development, the right to a balanced environment, and all the rights to the protection of humanity against arbitrariness, among others.

In this sense, studies by Alarcón⁴² indicate that third generation fundamental rights can be understood as rights of human groups, the family, the nation or humanity as a whole.

In this way, third-generation rights differ from others because they go beyond the individual and must protect all of humanity or a collectivity, usually indeterminate, also pointing out that these rights are distinguished from others due to their collective ownership³⁹.

It is interesting to note that many of the first and second generation rights have their individual dimension, on the one hand, and their collective or social dimension, on the other.

This third generation of rights points out that the citizen is understood as a relational human being. Araújo and Nunes Junior add value to the theme by saying that the focus is on the relational human being, that is, in conjunction with others, without physical or economic boundaries³⁸.

The new conception of the human being was explored by Alarcón⁴², who states that the appearance of this third dimension of fundamental rights evidences a trend aimed at broadening the notion of the subject of rights and the concept of human dignity.

This is due to the universal character of the individual's fundamental rights to be exercised in the face of political regimes and states that may put them at risk, as well as in the face of contemporary technological advances that guide our quality of life, with the remodeling of weaknesses and human vulnerabilities.

It should also be noted that the globalization of the economy, the dynamics of economic and social relations stipulate innovative ways of submission of the individual, so that it is necessary, therefore, through the law and the implementation of all dimensions of fundamental human rights, the construction of structures social, political and juridical for the liberation of the individual³⁸ and more, for the emancipation of the human being⁴³.

4th Generation Fundamental Rights

As a result of economic, social and political globalization, and the dissemination of what was understood as the "Neoliberal State", a tendency to recognize a fourth dimension of rights emerged, which should include the right to democracy, the right to information and the right to pluralism⁴⁴.

Still with regard to the emergence of the fourth dimension of rights, the words of Bonavides⁴⁴ teach that political globalization in the sphere of legal normativity introduces fourth generation rights.

It should also be noted that these are fundamental human rights of the 4th generation or dimension known or called "new" rights related to biotechnology, bioethics and also to the regulation of genetic engineering.

It is these specific rights that are directly linked to the manipulation of human life, such as assisted human reproduction (artificial insemination), abortion, euthanasia, intrauterine surgeries, organ transplants, genetic engineering, cloning, contraception and others⁴⁵.

This generation of rights is the focus of relevant and controversial discussions among the most varied professionals, such as biologists, doctors, jurists, philosophers, sociologists, psychologists, theologians, each aiming at defense, provided that it is based on science and human dignity³², to defend, protect and promote human life in the face of any threat, constantly ensuring its well-being⁴⁵.

5th Generation Fundamental Rights

The transition from the 20th to the 21st century was characterized as a paradigmatic transition of society towards a new realization of the industrial revolution. In other words, fifth dimension rights were constituted, rights resulting from information technologies (internet), as well as from cyberspace and also from virtual reality in general⁴⁵.

Therefore, there are some divergences with regard to what are actually the rights denominated as fifth dimension. Studies indicate that peace is the right that constitutes this dimension⁴⁴.

Peace presents itself as the result of all the justifications where human reason, through the conception of law and justice, is able to base the act of effecting the regimentation of society, punishing the terrorist, judging the criminal. The intention, then, is to make peace the axiom of democracy, especially through and through participatory democracy, through its technological tools, its theory, its values of equality and social justice that were already enacted in the 1988 Constitution⁴⁴.

CONCLUSION

It is possible to understand with this brief research that fundamental rights had a great evolution in a short period of time, and that from them derives a fundamental bridge for good coexistence based on solidarity, which consolidates constitutional values, and which enables people, societies and to the States, the day-to-day construction of the reaffirmation and realization of these same fundamental human rights.

Fundamental human rights are, therefore, fundamental historical and social achievements in constant evolution, with occasional setbacks seen, for example in the lead years in Brazil, which is why a permanent constructive and protective process of fundamental rights is necessary, as well as the dissemination of the culture of promotion and consecration of fundamental human rights in society, in public and private institutions, in the State and in science.

With this brief study, based on bibliographical research, it is understood that the norms of fundamental rights and human rights are still misunderstood by society and even stressed by hate speech and oppression with the purpose of extinguishing fundamental human rights, but that education and social knowledge about the achievements of fundamental rights are increasingly grounded and provide potential access to a democracy of law that allows social justice and equality to the population.

The constant advances in the historical reaffirmation of fundamental human rights and in the declaration and positivization of new designs and concepts of fundamental human rights are socially important because they promote the realization of historical advances in terms of protection and promotion of human life and human dignity, many of which have already consecrated by the Constitution of the Federative Republic of Brazil of 1988 (CRFB/1988).

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Resumo

Introdução: Após os anos de chumbo, assim conhecida a ditadura militar que tomou parte no país, declaradamente contrária ao Estado de direito democrático que havia no Brasil até então, e que tomou conta do poder pelo uso da força entre os anos de 1964 e 1985, em 1988 foi promulgada a Constituição Cidadã, a Constituição da República Federativa do Brasil de 1988 (CRFB/1988), não sem luta mas como uma conjugação possível, mas não perfeita, da necessidade democrática e social que foi freada pelo conservadorismo e pelas raízes deitadas do ditatorialismo e da visão de direita dos poderes da elite instituídos, e que viabilizaram a anistia aos golpistas e ditadores, bem como aos que lutavam pelo Estado democrático de direito e pela justiça social através do uso disseminado à época da violência, o que se inicia com o golpe covarde de 1964. A Constituição de 1988 trouxe para a sociedade, de seu lado, importantes mecanismos de proteção dos indivíduos e da sociedade contra os arbítrios do Estado e da própria sociedade, declarou e instituiu direitos fundamentais e criou instrumentos legais de proteção e garantia de direitos fundamentais, tais como, dentre vários, podemos destacar as ações civis públicas, o mandado de segurança coletivo e a ação popular. Contudo, a realidade social depende de implementação dos direitos fundamentais pela atuação efetiva do Estado e da sociedade, e através da valorização das instituições democráticas, tal qual o é a CRFB/1988. De outra sorte, o golpismo e a falta de apreço à democracia e ao Estado democrático de direito, no entanto, vive nas sombras e no submundo da violência e das fake news mais recentemente, e durante os mais de trinta anos de promulgação da celebrada Constituição Federal de 1988, as instituições e o regime democrático constitucionalmente estabelecido vêm sendo questionados pelo golpismo, de que é um ápice o evento dantesco dos atentados à democracia perpetrados por vândalos, possíveis terroristas e financiadores do caos, e puramente golpistas, em 8 de janeiro de 2023, na sede dos três poderes em Brasília, DF. O descumprimento da Lei Maior, seja em eventos pontuais de golpismo, seja na prática cotidiana da vida constitucional em uma sociedade doente e que não se reconhece como parte do sistema democrático e detentora de direitos fundamentais, ocorre com grande destaque no âmbito da efetivação destes mesmos direitos fundamentais e afeta com maior gravidade, sobretudo, a população vulnerável, marginalizada, e de maioria negra, havendo-se no Brasil um mecanismo covarde de racismo estrutural sedimentado sobre a nação e que se soma à falta de apreço pela democracia de parte da população, e que afeta, notadamente, e com maior gravidade as pessoas economicamente necessitadas que vivem em situação de pobreza.

Objetivo: Como objetivo geral o presente manuscrito visa descrever importantes mecanismos conquistados para a defesa e implementação de direitos fundamentais sediados na Constituição da República Federativa do Brasil de 1988.

Método: Desenvolveu-se o presente trabalho através da pesquisa bibliográfica, sobre a conquista de direitos inseridos no contexto da constitucionalidade e da força normativa da Constituição da República Federativa do Brasil de 1988, representativas da sedimentação da democracia no Brasil. O método de abordagem de pesquisa é o dedutivo.

Resultados: Obteve-se nesta pesquisa a descrição da evolução das gerações de direitos fundamentais consagrados na Constituição da República Federativa do Brasil de 1988, dentre os quais destaca-se o estágio atual dos novos direitos fundamentais, decorrentes da bioética e dos avanços tecnológicos e digitais.

Conclusão: Conclui-se que os direitos fundamentais tiveram uma grande evolução num curto espaço de tempo, notadamente impulsionados pela barbárie criada pelos movimentos bélicos, golpistas e ditatoriais que refestelam a partir do século XX, e notadamente pela incidência da evolução tecnológica decorrente do avanço da ciência no mesmo período histórico, e que fundamentam a conquista de direitos e a necessidade de implementação de balizas para evitar o colapso social, econômico e existencial da humanidade, com a finalidade de perpetuar o bom convívio social e a garantia e promoção da qualidade de vida das pessoas e das sociedades, permeadas por direitos que são em parte individuais e em parte coletivos.

Palavras-chave: Estado democrático de direito; golpismo; direitos fundamentais intergeracionais; história brasileira.

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