

**WOMEN AND THE LAW: THE CONSTRUCTION OF GENDER
EQUALITY IN THE BRAZILIAN LEGAL SYSTEM**

**MULHERES EA LEI: A CONSTRUÇÃO DE IGUALDADE DE GÉNERO
NO SISTEMA JURÍDICO BRASILEIRO**

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ABSTRACT

The aim of this study is to conduct a historical analysis of the construction of gender equality in Brazil, emphasizing the trajectory performed by the women's movement to have secured the main Brazilian constitutions, the rights inherent to women and minorities classes considered from the point of view of history they were broken down, and put a level of inequality in relation to men. Far It will be an analysis of the mechanisms and devices that have been the basis for the implementation of human rights in the country; among them was elencada the Declaration of Human Rights of 1948, which reflected the right one in the constitutionalisation of minority rights inherent ace classes, which until then were somewhat sidelined.

KEYWORDS: Equality; Woman; Genre; Legal system.

RESUMO

O objetivo deste estudo é realizar uma análise histórica da construção da igualdade de gênero no Brasil, enfatizando a trajetória realizada pelo movimento das mulheres por ter assegurado as principais constituições brasileiras, os direitos inerentes ao sexo feminino e classes minorias consideradas do ponto de vista da história, eles estavam demolidos, e colocar um nível de desigualdade em relação aos homens. Far-se-á uma análise dos mecanismos e dispositivos que foram a base para a implementação dos direitos humanos no país; entre eles foram elencada a Declaração dos Direitos Humanos, de 1948, que refletiu o caminho certo na constitucionalização dos direitos aulas ace minoritários inerentes, que até então eram, de certa forma, relegados para segundo plano.

PALAVRAS-CHAVE: Igualdade; Mulher; Gênero; Ordenamento Jurídico.

INTRODUCTION

The aim of this study was to conduct a historical analysis of the construction of gender equality in Brazil, emphasizing the trajectory performed by the women's movement to have secured the main Brazilian constitutions, the right inherent in the female and classes considered minorities from the point of view of history, they were broken down, and put a level of inequality in relation to men.

The woman's inferior position relative to men has been observed since the early nineteenth century in Brazil, in the words of Bomfin (2011) inserted in a patriarchal society, was from childhood submitted to his father's orders and when reached the age for marriage, always negotiated by the parents, refers to it her husband's orders.

Such considerations are exposed with great conviction as follows: "He was raised and educated for marriage, domestic life, procreation, dedication to children and obedience to her husband and shall be prohibited from engaging in any profession. In poor classes (...) working as a seamstress, domestic ". (...)

In this context, the main achievements of the feminist movement, listing a few names of women who won were addressed. However, there were times when the movement has been strengthened, and the other where the movement has been suppressed by the dictatorial policy context of the country.

In a brief summary, the theme of that approach, sought to demonstrate the mechanisms and devices that were the basis for the implementation of human rights in the country; among them was elencada the Declaration of Human Rights of 1948 which reflected the right way in the constitutionalisation of the rights inherent ace minority classes, which until then were, in a way, relegated to the background.

It was also emphasized the importance of the Women's Charter to constituents, in 1987, a mechanism considered important to the feminist movement, which considered the event, one of the largest demonstrations ever held by women, with great success in the acceptance of claims.

Thus, the theme of the analysis presented here, covers, above all, the relevance of constitutional principles, considered guiding the Brazilian legal system, being fully interconnected to the dignity of the human person, and especially the principle of human dignity, considered the guiding of Brazilian legal system.

1. THE TRAJECTORY TAKEN BY WOMEN FOR THE RECOGNITION OF GENDER EQUALITY, IN THE DECADES BEFORE THE FEDERAL CONSTITUTION OF 1988.

In brief analysis about the role of women in ancient history, reports show that they worked primarily in agriculture, took care of the children and the home, were subordinate to husbands, submissive to ecclesiastical orders of the Catholic Church.

So years later, women began to play some different activities, and when they did, they received for the activities provided well below the amount received by men; this due to the fact that civilizations have imposed a social position of inferiority to women, as noted in his writings, Ana Cristina Teixeira Barreto:

“Based on discriminatory and exclusionary laws that served as inequality consolidation tool and asymmetry in the relationship between men and women, societies have established a level of inferiority and submission in relation to man, not only in the domestic harvest in family law, but in the scenario political, for example, in the labor market, through compensation payments lower than perceived by men for performing similar or double work shift functions. Discrimination was also felt in public and private spaces of power that reflected the shy political participation of women, often limited or prohibited”.¹

Then, from the sec. XVIII, a great revolutionary historic event, definitely marked the entry of the same in the labor market, ie: it was no longer domestic hardworking, were inserted in the social environment, in society, and has been since it started a long walk at the beginning marked by inequality and discrimination, as will be seen in studies of Sergio Pinto Martins:

“The eighteenth-century industrial revolution was the real responsible for women entering the labor market because with the creation of the machines expended muscular effort was much smaller, allowing to industries hire female labor on a large scale. Entrepreneurs preferred the work of women in industries because they accept lower wages than men, but they did the same services as these. As a result, women subjected them to journey 14-16 hours a day, low wages, working conditions harmful to health and fulfilling obligations other than those which they were possible, just to keep their jobs. Overall, women should also take care of household chores and children. It not watched a protection in the woman's stage of pregnancy, or breastfeeding”.²

¹ BARRETO, Ana Cristina Teixeira. **A Igualdade entre homens e mulheres no ordenamento jurídico brasileiro**. p. 01. Disponível em: <www.anadep.org.br> Acesso em 12/abr 2014.

² MARTINS, Sergio Pinto. **Direito do Trabalho**. 13ª ed. São Paulo: Atlas, 2001. p. 517.

Notably, it was with the Industrial Revolution event, which was a concern with the working conditions offered to women, as it was realized that there was at the time laws that could ensure protection to them against different forms of discrimination.

Aside from that, it was clear that improvised scenario, where there was some exploitation of female labor, was marked by subordinate working conditions and without any respect for the dignity of the human person, verified by exhaustive number of hours women worked and the excessive activity, including the home, children and household chores.

However, the unfavorable situation faced by women, as reported, there are studies that prove that even the human rights movement ignored at first, the struggle of the feminist movement for women's inclusion in political participation, equality in the labor camp having the right to education, abortion and sexuality, which were treated secondarily, unlike what happened to the men who were, for a long time, "the human rights paradigm," as the author Barreto.

In this sense, it was found that the women's movement organized around the world, has faced major challenges in the implementation of human rights, above all, the change was very gradual way in societies at large, that were strictly paternalistic, and had a strong endorsement Man with absolute rights to vote and the political scene, with a strong resistance to the acceptance of women in these areas.

Thus, in this sequence, we list below some historical events that marked the history of women in search of recognition of gender equality and the emancipation of the rights that stemmed him.

It is also worth mentioning the importance of the end of the Declarations of Rights of the eighteenth century, quoted immediately below with respect and emphasis on the "French Declaration" and the "American Declaration" that somehow surfaced subsequent movements for so dream "liberty, equality and fraternity".

In this area it is clear that women faced numerous challenges and obstacles that they might have secured the Constitutions and Declarations, gender equality and the possibility of equal treatment and without discrimination.

Therefore, important to analyze how was that implementation of the right to equality, based on the historical approach of the author "Flavia Piovesan" who, when writing about the "Implementation of the Right to Equality" (p.191) thus notes:

"Formal equality is reduced to the formula that "all are equal before the law", which meant a major historic breakthrough resulting from modern end of the Declarations of Rights of the eighteenth century. In this historical moment, the modern calls of Rights - highlight is the French Declaration of 1789 and the American Declaration of 1776 - consecrated the optical liberal contractualist, in which human rights were reduced to the rights to liberty, security and property, complemented by resistance to oppression. The liberal discourse of citizenship was born within the movement for constitutionalism and the emergence of the liberal state model, under the influence of Locke's ideas, Montesquieu and Rousseau. Against the absolutism, it was necessary to avoid the excesses, abuse and arbitrary power. In this sense, human rights arise as a reaction and response to the excesses of the absolutist regime in an attempt to control and impose limits on abusive state action. The solution was to limit and control the power of the state, which should be based on legality and respect fundamental rights. The state-owned non-performance meant freedom. Hence the primacy of the value of freedom, the supremacy of civil and political rights and the lack of foresight of any social, economic and cultural rights. It was in this scenario that introduced the formal conception of equality as one of the elements to demarcate the rule of Liberal Law.³ "

Despite the relevance and importance of the Declarations, especially the French who influenced the rest of the world, we will focus on advances, demonstrations and obstacles faced by women in Brazil over the years leading up to the enactment of the Citizen Constitution. These movements, which had as main objective to ensure the rights inherent to the construction of equality, the right to freedom and the opportunity to vote and freedom to hold public office.

So it was necessary to expand the horizons, women are the potential views and ability to act, including in the political sphere, as councilors, MPs and senators, deserving to be respected everywhere, without discrimination as to race, color, wages, studies and professions.

This is how, with the union of the feminist movement, gradually women gained the strength to fight on behalf of their equality as to civil rights and also with regard to political participation, able to ensure the exercise of their civic citizenship with the right fulfillment and whole "dignity."

Dignity that that raises the condition of the individual to the maximum level, being ensured in the Constitution and as one of the most important principles and most significant of the new era under the aegis of the rights and guarantees which must necessarily be observed by society through respect for constitutional principles

³ PIOVESAN, Flavia. **Temas de Direitos Humanos**. São Paulo: Max Limonad, 2003. pp. 191-193.

and norms that guarantee, the citizen, the right to claim them when they feel aggrieved.

Taking a leap in history, more precisely in the twentieth and twenty-first century, it was realized that, under the influence of some important declarations, international treaties and agreements recognized in Brazil, women obtained better working conditions and were able to claim their rights.

In this sense, Ana Cristina Teixeira Barreto reports:

"(..) The UN in 2000, through the Human Rights Report recognized the importance of promoting equality between men and women, in finding that discrimination against women history has a negative impact on economic and social growth of countries and the world, measured by economic indicators.⁴"

2. THE FEDERAL CONSTITUTION OF 1988, THE LEGAL MARK FOR THE INSTITUTIONALIZATION OF HUMAN RIGHTS AND OTHER CONQUESTS

On this track, we focused on the writings of Flavia Piovesan, who considers the event occurred, as a "legal framework of democratic transition and institutionalization of human rights in the country" and adds: "an extraordinary advance in the consolidation of fundamental rights and guarantees, standing as the most comprehensive and detailed document on human rights ever adopted in Brazil".⁵

Initially, to mention the democratic transition and institutionalization of human rights in our country, they have to, in brief summary, declare that the Federal Constitution of Brazil citizens' rights have been defined, including the most obvious: individual, collective, social or political.

Especially the period after the military regime, meant that there was a great desire of the population to have a "New Constitution", unlike the previous one, which was enacted during the dictatorship. Thus, the 1st of February 1987, marked the country as it promoted the transition from an authoritarian and anti-democratic regime to a new form of government, as reported below:

⁴ BARRETO, Ana Cristina Teixeira. **A Igualdade entre homens e mulheres no ordenamento jurídico brasileiro**. p. 01. Disponível em: <www.anadep.org.br>

⁵ PIOVESAN, Flavia. **Direitos Humanos e o Direito Constitucional Internacional**. 9ª ed. São Paulo: Max Limonad, 2008.

"Was installed the Constituent National Assembly, composed of 559 congressmen (senators and federal deputies, elected last year), and chaired by Deputy Ulysses Guimaraes, the Brazilian Democratic Movement Party (PMDB).

Representing a step forward towards democracy, society, in its various sectors, was encouraged to contribute through proposals. The proposals made by Brazilian citizens would only be valid if represented by an entity (association, trade unions, etc.) and be signed by at least thirty thousand people. Sectors of society, composed of groups who sought to defend their interests, lobbied through lobbies (pressure group influencing).

Compared to previous Constitutions, the 1988 Constitution is a step forward. The most significant changes were:

- * Right to vote for the illiterate;
- * Vote optional for young people between 16 and 18 years;
- * Reduction of the mandate of the 5 president for four years
- * Elections in two rounds (for the offices of president, governors and mayors of cities with over 200,000 inhabitants);
- * Labor rights began to be applied in addition to the urban and rural workers, also to domestic;
- * The right to strike;
- * Freedom of Association;
- Decreased 48 working hours to 44 hours per week;
- * License 120 days maternity (currently being discussed magnification).
- * Paternity leave of five days;
- * Holiday allowance;
- * Thirteenth salary for retirees;
- * Unemployment insurance;
- * Compensated absences with 1/3 of the salary increase.
- * Changes to the text of the Constitution can only be achieved through Constitutional Amendment, and the conditions for an amendment to modify the Charter are provided for in the Constitution itself, in Article 60. Since the enactment in 1988 were approved 56 amendments to the Constitution."⁶

So the New Constitution, aimed to rescue the rule of law, democracy and, especially fundamental rights, under the aegis of the guiding principle of "human dignity" which covers the macro sphere, all rights available to the person with respect to minimum necessary for their own dignity, without acting any abuse and disregard of the constitutional text.

It should be emphasized that one of the legislator's concerns was about the applications required by women, which culminated in the drafting of the "Charter of

⁶ BRASIL. **Constituição da República Federativa do Brasil de 1988**. Disponível em: <<http://www.planalto.gov.br>> Acesso: 16 ago 2008.

Brazilian Women to Constituents", whose claims were the result of extensive discussion and national debates on the proposed themes the same.

Still, with respect to representing this great achievement for women, Nilcéia Freire adds:

"The 1988 Constitution represented a legal expansion of Brazilian women citizenship. However, between the setting of standards and its effectiveness in everyday life continued to exist a wide distance. One response to this situation was the creation of institutional mechanisms for promoting equality between men and women, responsible for formulating and implementing public policies. In fact, the women point to the state when pleading for the creation of spaces of government aimed at implementing the women's agenda is the recognition by the State itself and society, that their issues need treatment and answers within public, and not in limitation of private lives. Despite the gains and growing achievements, women still struggle in the 2000s, to consolidate the formal universe of the Brazilian state the principle of fact equality between men and women and to incorporate a gender perspective in all public policies. It is undeniable how much women have achieved, but it is also very inescapable that there is still to advance.⁷"

Indeed, the country never had such a complete Constitution, where the legislator emphasized and established, early on in art. 3, as one of the objectives of the Federative Republic of Brazil, the following:

"... Promoting the well-being of all, without prejudice as to origin, race, sex, color, age and any other forms of discrimination" and in art., 5, INSC., XLI and XLII ensure that "punish all acts of discrimination against fundamental rights and freedoms, "adding, although the practice of racism is a criminal offense non-bailable and imprescriptible, subject to the penalty of imprisonment under the law."

On the extent and scope of the Largest Law, seen as the Constitution that more guaranteed popular participation in the process of its preparation, as well as a special moment in the defense of human rights of women, it is important to collate, some considerations Flavia Piovesan about :

The 1988 Constitution, the one that ensures popular participation in the process, and an assessment as the women's movement, was perceived by them as an important moment in the defense of human rights of women, through the joints developed over pre-1988 period, whose main objective

⁷ FREIRE. Nilcéia **Percepções sobre os direitos humanos das mulheres. Direitos Humanos percepções da opinião pública**: análises de pesquisa Nacional. Secretaria de Direitos Humanos da Presidência da República, p. 103-104 Disponível em: <http://portal.mj.gov.br/sedh/biblioteca/livro_percepcoes/percepcoes.pdf> Acesso em: 24 mai 2014.

was to get, ensure rights and achievements within the constitutional framework, which will be shown below, with excerpts from "Letter from Brazilian Women to Constituents."⁸

On the regulatory apparatus that served as a model for the world, the author made an overview of the key that directly influenced and innovated many Constitutions, among them Brazil, as we see just ahead:

"Internationally, are elaborated the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture, the Convention on the Rights of child, among other important international instruments. It is underlined that this international system of protection enhances the specification process of the subject of law, where the subject of law is seen in its specificity and concreteness. That is, the conventions that make up this system are addressed to a certain subject of law, or seek to answer specific violation of law. Try that, under the general system of protection, as with the International Bill of Rights (integrated in the Universal Declaration of 1948 and the UN Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, 1966) the addressee is any person, generally designed with a view that under the general system the subject of law is seen in its abstraction and generality."⁹

2.1 EQUAL TREATMENT BETWEEN MEN AND WOMEN IN ART. 5º, I, CF/88.

In general, when seeking to understand the context lived by women in the past, it is evident a disadvantage compared to men in the Brazilian scene. However, other countries of the West, the same situation was repeated, and, most often, was imposed by civilizations or with respect to the customs, culture or even through the laws adopted in a given period, most of the time, were about better conditions for men in various sectors of society.

Therefore, the figure of the woman "submissive and treated with inferiority", belonging to a class of minorities, so 'left out', with a voice that was silent and took care only of the household chores, the children and the home, in the vast majority under the rule of the "patriarch" who dictated the rules and regulations, indoors, dissipated in societies in general, and made them establish a "pre-concept" with respect to women, and consequently generated Call of inequality and discrimination

⁸ PIOVESAN, Flavia. **Direitos Humanos e o Direito Constitucional Internacional**. 12ª ed. São Paulo: Saraiva, 2011.

⁹ PIOVESAN, Flavia. *Temas de Direitos Humanos*. São Paulo: Max Limonad, 2003. pp. 194-195.

as compared to the path of man in relation to his intellectual development, professional, cultural and employment opportunities.

Nevertheless, it is possible to say that the very laws enacted in the past, in a century old, had a discriminatory bias, which, in fact even more favor the consolidation of inequality and asymmetry in the relationship between men and women, as noted in Barreto their studies, the approach to the subject which dealt with the equality between men and women in the Brazilian legal system.

"Based on discriminatory and exclusionary laws that served as inequality consolidation tool and asymmetry in the relationship between men and women, societies have established a level of inferiority and submission in relation to man, not only in the domestic harvest in family law, but public setting, such as in the labor market, through compensation payments lower than perceived by men for performing similar functions or double shifts. Discrimination was also felt in public and private spaces of power that reflected the shy political participation of women, often limited or prohibited."¹⁰

So long was evident the situation of inferiority and pronounced the woman's submission in relation to man, in various segments of society, and there was the participation of women in public and private spaces of power, because as mentioned Barreto (almostIt had no political participation of women, and when he was very limited).

In this area, yet with respect to feminist movements the aforementioned author pointed out in his study on "Equality between men and women in the Brazilian legal system" that man has always been the paradigm of human rights of all mankind, that is, other vulnerable sectors lagged "behind the scenes" because there were still no principles and standards nor the existing planning and legal at the time that dealt with these issues of discrimination and inequality as priorities.

"Even the human rights movement ignore at first, the feminist struggle flags in favor of political participation, equality in the labor market, education, abortion and sexuality of women, among many other claims."

¹⁰ BARRETO, Ana Cristina Teixeira. **A Igualdade entre homens e mulheres no ordenamento jurídico brasileiro**,p.01. Disponível em: <www.anadep.org.br> Acesso em: 12 abr 2014

Human rights for a long time, addressed the issue of women secondarily, as if their rights, struggles and achievements were linked to human rights. Man has always been the paradigm of human rights of all mankind, as if there were no other paradigms or more vulnerable social groups such as women, children, the elderly, blacks, Indians, immigrants, homosexuals, transgender, transsexual, disabled and mental.”¹¹

The basis of the text of the "International Convention on the Elimination of All Forms of Discrimination" ratified by Brazil, regarding discrimination, states:

"(...) Any distinction, exclusion, restriction or preference based on race, color, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise on an equal footing of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.¹²

And yet, in reference to the art. 5, I of the Federal Constitution, there is the statement that "men and women have equal rights under this Constitution."

Thus, in de Moraes approach, we have:

The correct interpretation of this device makes it unacceptable to use the discrimen sex, whenever it is elected for the purpose of materially desnivelar man of woman; accepting it, however, when the intended purpose is to mitigate the gaps. Consequently, in addition to differential treatment between men and women provided for by the Constitution itself (Articles 7, XVIII and XIX;. 40, paragraph 1, 143, paragraphs 1] and 2; 201. Paragraph 7), can the infra-constitutional legislation want to mitigate the gaps treatment based on sex.¹³

In this vein, it is necessary to mention the ADI 1946 / DF, in which the Supreme Court adopts the following position regarding maternity leave.

¹¹ BARRETO, Ana Cristina Teixeira. **A Igualdade entre homens e mulheres no ordenamento jurídico brasileiro**. p. 01. Disponível em: <www.anadep.org.br> Acesso em: 18 ago 2014.

¹² FARIA, Helena Omena Lopes de; MELO, Mônica de. Convenção sobre todas as formas de eliminação de todas as formas de discriminação contra a mulher e convenção para prevenir, punir e erradicar a violência contra a mulher. In: **Direitos Humanos: Construção da Liberdade e da Igualdade**. 1998. p. 371–404.

¹³ MORAES, Alexandre de. **Direito Constitucional**. 26ª ed. São Paulo: Atlas, 2010. p.39.

“The ADI 1946 / DF, oC. Supreme Court, recognized as the constitutional entrenchment clause forecast maternity leave (art. 7, XVIII), stating that any change, even by constitutional amendment (assuming, EC No 20/98), "as to make it ineffectual, imply a historic setback in social welfare matter, that you can not assume you want ", as it may provide" discrimination that the Constitution sought to combat, when it banned wage gap, due to exercise and criteria admission by reason of sex (art. 7, inc. XXX, the CF / 88), prohibition, which in essence is an offshoot of the principle of equal rights between men and women.”¹⁴

In this area, corroborating the study regarding the presence of women in the labor market, Antunes adds:

The presence of women in the workplace allows us to add that if class consciousness is a complex joint, behaving identities and heterogeneity between singularities that live a particular situation in the production process and in social life, in the realm of materiality and subjectivity, both the contradiction between the individual and his class as that which arises from the relationship between class and gender have become even more acute in the contemporary era. The class that lives the work is both male and female. It is, therefore, so most diverse, heterogeneous and complexified. Thus a critique of capital as a social relation, must necessarily grasp the scale of this operation in the capital / labor relations and also those oppressive present in the male / female ratio, so that the struggle for the establishment of its kind to yourself enables also the emancipation of women gender.¹⁵

Above all, to better understand the principle of equality and the rules prohibiting any kind of discrimination, as well as the meaning for female class achievement to have secured in the Constitution this right, we must return to the past and, with eyes focused on the historical context the time leading up to the Citizen Constitution, understand how was the process of construction of Equality.

Thus, the text Alcir Sperandio, who wrote about the "Protection against discrimination of Brazilian workers" in Roland Hasson, the book coordinator "Right Workers & Fundamental Rights defines discrimination as" the conduct for which

¹⁴ STF – Pleno – ADI 1946/DF – **Rel. Min. Sydney Sanches**, Diário da Justiça, Seção I, 16 maio 2003, p. 90

¹⁵ ANTUNES, Ricardo. **Adeus ao trabalho? Ensaio sobre as metamorfoses e a centralidade do mundo do trabalho**. São Paulo: Cortez, Campinas, 1995. p. 46.

refuses to . A person a legal treatment bottomed concrete situation for it experienced

"It also states:

"Thus, the regulatory apparatus is clear and precise with regard to combating discrimination, where the art. 3, states that one of the objectives of the Federative Republic of Brazil is: to promote the welfare of all, without prejudice as to origin, race, sex, color, age and any other forms of discrimination "and in art. 5, incs. XLI and XLII ensure that: shall punish any discrimination against fundamental rights and freedoms."¹⁶

Thus, the constitutional law sought to eliminate discriminatory practices against women workers. Thus, the intention of the legislator was to ensure that men and women are equal, on equal terms, without discrimination of any kind. However, does, in fact, in practice this equality happens without discriminatory treatment can be verified, particularly with regard to the labor market?

In this sense, it appears that there are indications and evidence supporting the existence of many discriminatory practices and to address this situation, mentions to Leila Linhares approach on the various ways to eradicate violence and discrimination related to women , the firm:

When we analyze the issue of gender violence, e'important to note initially that the pressure from the women's movement, both in Brazil and internationally, has been formulated a series of documents - conventions, agreements and treaties - where the problem of domestic and sexual violence against women is emphasized. Organize the United Nations has recommended to member states that violence is dealt with social and political issue, and one should create mechanisms to reduce its incidence, as well as support for women victims of violence services. Documents such as the Declaration on the Elimination of Violence against Women, adopted by the UN General Assembly in December 1993 and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, adopted in Belém do Pará in 1994, recognize the gender-based violence as a serious problem to be eradicated. The Declaration recognizes the urgent need for universal extension to women of the rights and principles on equality, security, liberty, integrity and dignity of all human beings. Also considers that the violence that prevents full and partially to women such rights and freedoms. This new formulation is important because, even in our country a decade ago, the entities defending human rights - which, along with the women's movement fought against the authoritarian state - had a very high strength to take violence against women as a violation of human rights.¹⁷

¹⁶ SPERANDIO, Alcir. Proteção contra a discriminação do trabalhador brasileiro apud HASSON, Roland (coord.) **Direito dos Trabalhadores & Direitos Fundamentais**. Curitiba. Juruá. p. 103.

¹⁷ LINHARES. Leila. **Comissão Nacional de População e Desenvolvimento**. (CNPD). Brasília: CNPD, 1996. pp. 102-103.

In this sense, important to emphasize the definition of what is "human dignity and fundamental rights" because, in general, every culture has a terminology, given that every culture has its typical conceptions of human dignity, and also considering the historical moment in which this principle has been accepted by the constitutions of each country.

In this way, we approach this analysis considerations of Sarlet (p. 30) states the duty of the community and the state with respect to self-determination capacity.

"From the foregoing, it is argued that dignity has a twofold dimension, manifested while simultaneously expression of the autonomy of the individual (linked to self-determination of thought when it comes to the essential decisions concerning the very existence) and the need for its protection (assistance) from the community and the state, especially when weakened or even - and especially - when absent self-determination capacity. Thus, according to Martin Koppernock, dignity in their care perspective (protective) of the human person may, under the circumstances prevail in the face of autonomic dimension, in such a way that all those who are missing the conditions for own decision and responsible (especially in the context of biomedicine and bioethics) may even lose - the eventual appointment of a trustee or involuntary submission to medical treatment and / or hospitalization - the personal exercise of self-determination capacity, leaving him, however, the right to be treated with dignity (protected and assisted)."¹⁸

This compass, after transcribing the concept of human dignity, we analysis the principle of equality which is mentioned in some studies as a principle "structuring" the issue of human rights, as well as with regard to fundamental rights and guarantees, when determining your applicability, regardless of the condition of the individual without relevance to social, racial condition of sex in art dictates. 5 of CF / 88, which ensured that all are equal before the law, being forbidden any kind of distinction.

From this perspective, in order to prohibit any attempt at random and unjustified *desequiparação*, the Bandeira de Mello counselor, considers the principle of equality as follows:

¹⁸ SARLET, Wolfgang Ingo. **Dignidade da pessoa humana e direitos fundamentais na Constituição da República de 1988**. Porto Alegre: Livraria do Advogado, 2002, p. 30

[...], Through the principle of equality, the law intends to establish is the impossibility of accidental or unwarranted *desequiparações*. To achieve this well, this value absorbed by the law, the legal system devised clever formula that forbidden, how can such results, since, demanding equality, ensures that the generic provisions, the abstract and concrete acts reap all without arbitrary specifications so that *detrimentos* useful for the affected.¹⁹

Thus, referring to the applicability of the principle of equality that provides for the possibility of equal treatment, Barreto, brings the following contributions:

The principle of equality provides for equal skills and virtual possibilities of citizens to enjoy equal treatment by the law. By this principle are prohibited arbitrary and absurd distinctions, not justified by the values of the Federal Constitution and aims to limit the role of the legislature, the interpreter or public authority and private. "(...)" The principle of equality operates in two parts: before the law and the law. For equality before the law it is understood the duty to apply the law in the case; turn equality in law requires that legal rules should not know distinctions except the constitutionally authorized.²⁰

Thus, compliance with the principle of equality should be observed by law enforcement officers as well as by the legislature, which can not edit standards that are conflicting or contradictory with the above principle, on pain of blatant unconstitutionality. Thus, the applicability of laws and normative acts to the case, should respect the *insculpido* in art. 5 of the constitutional order.

Regarding possible cases in which the Federal Constitution and legislation can make distinctions and give differential treatment, with exceptions to the observations listed in the Greater Charter, such distinctions should only aim at equal treatment for the underprivileged. This compass, far-One will once again mention the writings of Teixeira Barreto adds.

"In this sense, the Constitution and legislation can make distinctions and give differential treatment according to judgments and evaluative criteria, reasonable and justifiable, aimed at giving equal treatment to unequal: "Thus, different regulatory treatments are compatible with the Constitution when checked for a reasonably proportionate to the aim intended purpose ". (MORAES, 1989, p. 58) .Only worth, so the discrimination contained in the

¹⁹ BANDEIRA de MELLO, Celso Antônio. **Conteúdo Jurídico do princípio da igualdade**. 3ª ed. São Paulo: Malheiros, 1999. p. 18.

²⁰ BARRETO, Ana Cristina Teixeira. A Igualdade entre homens e mulheres no ordenamento jurídico brasileiro. p. 02. Disponível em: <www.anadep.org.br> Acesso em: 10 set 2014

Federal Constitution aimed at ensuring equal rights and obligations between men and women. Can be cited as an example, Article 7, XXX of the Federal Constitution, which prohibits the wage gap, the performance of duties and in hiring criteria by reason of sex, age, color or marital status; or else, Article 7 XVIII which provides for maternity leave in the period longer paternity leave and also Article 40, paragraph 1, III, b, and Article 201, paragraph 7, of the Constitution, which give differing treatment of women, decreasing the time required to aposentatar.O equal treatment between men and women, provided for in section I of Article 5, paragraph of the Constitution, therefore, assumes that sex can not be used as discrimination on the purpose of substantially desnivelar men and women, but it can and must be used in order to mitigate the social disparities, political, economic, cultural and legal existing between them.”²¹

FINAL CONSIDERATIONS

The provisions of art. 5 of the Federal Constitution of 1988 provides that: everyone is equal before the law, without distinction of any kind, guaranteeing to Brazilians and foreigners residing in the country the inviolable right to life, liberty, equality, security and property.

Aimed at reducing inequalities supported by a certain group of people, it is that the constitutional principles gained strength and relevance in society as a tool to combat the various forms of discrimination, either with respect to work, studies, civil and political rights , to his right to equality and freedom.

Highlighting the historical period of the authoritarian post-regime, clear the purpose of the Citizen Constitution to rescue the rule of law, with emphasis on fundamental rights, the principle of human dignity. It is also observed that democracy, freedom and equality are the foundations of the dignity of the human person, making affirmative action and public policy if they developed to effect the constitutional achievement.

Affirmative actions are viewed and analyzed in the twentieth century as tools for promoting equality and combating different forms of existing discrimination.

²¹ BARRETO, Ana Cristina Teixeira. **A Igualdade entre homens e mulheres no ordenamento jurídico brasileiro**. p. 04. Disponível em: <www.anadep.org.br> Acesso em: 12 set 2014.

In this vein, it can say that there have been many achievements by the women's movement, including on the submission to her husband, that this taboo was slowly being refurbished and reached new prospects of freedom and equality of conditions.

Regarding the presence of women in the labor market, there has been progress, and currently many are responsible for supporting their families.

However, analyzing the question "discrimination of women", based on the sources listed in this study, it was found that discrimination not only existed in the past, but exists to this day, manifesting itself in different ways, either in the Marketplace work, where there is differentiation of salaries and positions compared to the male or the moral and sexual harassment to which it is subject, and also with regard to the strength of the commercial sectors to accept the evolution of woman, because, even while she was in even playing field, yet there is a big "inequality" in society regarding the acceptance of evolution of women.

In this context, the authors: Ircineide Santos Soares, Fernando Gustavo Cardozo Knoerr and Francisco Oliveira, when addressing the issue concerning "the front woman condition public policies of employment and income in Brazil" complement with the following data:

"By analyzing the PNAD tables 2011 women still have not achieved their due space to high positions and salaries as men, even today, in the XXI century, no longer have the value and respect they deserve."²²

There is, however, inefficiency and lack of deepening of affirmative policies and actions to combat discrimination. Thus, women still suffer, avoiding to speak or report by strict need to ensure work and in other situations, for fear of persecution and that a complaint of the facts being submitted, can lead to more discrimination in the middle where they work .

As much as the legal apparatus to combat discrimination is properly requirements established maximum spatial Brazilian law, that his art. 3 requires that one of the foundations of the Federative Republic of Brazil "is to promote the welfare of all, without prejudice as to origin, race, sex, color, age and any other forms of discrimination", and also in art. 5, incs. XLI and XLII, ensures that "shall punish any

²² SÉLLOS – KNOERR, V.C. de. Dialogos (im)pertinentes – Dignidade Humana. Viviane Coêlho de Séllos Knoerr – Organizadora. Curitiba: Instituto Memória, 2014. p.32-51.

discrimination against fundamental rights and freedoms", adding that "the practice of racism is a criminal offense non-bailable and imprescriptible, subject to the penalty of imprisonment under the law", it is clear there is still incidence discrimination and affirmative actions that are necessary so that this situation may evolve to neutralize, reduce or solve the problem of discrimination of the female condition, eradicating discriminatory systematic.

We propose finally to be implemented channels of communication between the public and private sectors for the discussion of actions of inclusion and fighting on action to promote inclusion and to combat all forms of discrimination, it included a woman.

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