World Academy of Science, Engineering and Technology
International Journal of Law and Political Sciences
Vol:9, No:7, 2015

Brazilian Constitution and the Fundamental Right to Sanitation

Michely Vargas Delpupo, José Geraldo Romanello Bueno

Abstract**—**The right to basic sanitation, was elevated to the category of fundamental right by the Constitution of 1988 to protect the ecologically balanced environment, ensuring social rights to health and adequate housing and put the dignity of the human person as the foundation of the Brazilian Democratic State. Before their essentiality to humans, this article seeks to understand why universal access to basic sanitation is a goal so difficult to achieve in Brazil. Therefore, this research uses the deductive and analytical method. Given the nature of the research literature, research techniques were centered in specialized books on the subject, journals, theses and dissertations, laws, relevant law case and raising social indicators relating to the theme. The relevance of the topic stems, among other things, the fact that sanitation services are essential for a dignified life, i.e., everyone is entitled to the maintenance of the necessary existence conditions are satisfied. However, the effectiveness of this right is undermined in society, since Brazil has huge deficit in sanitation services, denying thus a worthy life to most of the population. Thus, it can be seen that the provision of water and sewage services in Brazil is still characterized by a large imbalance, since the municipalities with lower population index have greater disability in the sanitation service. The truth is that the precariousness of water and sewage services in Brazil is still very concentrated in the North and Northeast regions, limiting the effective implementation of the Law 11.445/2007 in the country. Therefore, there is urgent need for a positive service by the State in the provision of sanitation services in order to prevent and control disease, improve quality of life and productivity of individuals, besides preventing contamination of water resources. More than just social and economic necessity, there is a government duty to implement such services. In this sense, given the current scenario, to achieve universal access to basic sanitation imposes many hurdles. These are mainly in the field of properly formulated and implemented public policies, i.e., it requires an excellent institutional organization, management services, strategic planning, social control, in order to provide answers to complex challenges.

Keywords**—**Fundamental rights, sanitation, universal access.

Open Science Index, Law and Political Sciences Vol:9, No:7, 2015 publications.waset.org/10002289/pdf

I. The Concept Limits and Definition of Fundamental Rights

THE purpose of this study is to make a conceptual deepening of the fundamental rights in order to clarify where they are located in the Federal Constitution of 1988, its historical aspect and what are its possible effects. From this, it is intended, therefore, to investigate where sanitation is inserted within the panorama of fundamental rights.

Speaking of fundamental rights, it brings us to an abundance of terminology used, sometimes in synonymous form, sometimes with different meanings, such as "natural rights", "human rights", "subjective public rights", "civil liberties", "individual rights", "fundamental freedoms" and "fundamental human rights" [1]. It is necessary, however, to properly use the terminology, because it is a key issue. In addition, we must recognize that the Brazilian national law is characterized by a semantic diversity, using several terms to refer to fundamental rights. As an illustration, it is found in the 1988 Federal Constitution expressions such as: a) human rights (Article 4, II); b) fundamental rights and guarantees (heading of Title II, and Article 5, § 1); c) constitutional rights and freedoms (Article 5, paragraph LXXI) and d) individual rights and guarantees (Article 60, § 4, Section IV).

The Anglo-American and Latinos scholars prefer the term "Human Rights" and the term "fundamental rights" is preferred by German authors, for which, fundamental rights are human rights positivized on constitutional norms [2], so, the more precise identification, once it is recognized and guaranteed by the positive law of the States.

José Afonso da Silva justified his choice of the expression "fundamental human rights" because: “In addition to refer to principles that summarize the conception of the world and inform the political ideology of each legal system, it is reserved to designate, *in the positive law level*, those prerogatives and instructions he materializes in guarantee of a dignified living, free and equal for all people. In the *fundamental* qualification one can find an indication that comes to legal situations without which the human person is not carried out, does not live and sometimes doesn’t even survives” [3].

Luiz Alberto Araujo and David Vidal Serrano Nunes Junior also accept the expression fundamental rights, for practical reasons and states: The term fundamental rights would appear to be only able to express hasty legal reality because, considering the rights, this refers to subjective individual positions, recognized in a particular legal system and, this time, subject to judicial claim. The "fundamental" adjective translates, on the other point, to the inherent rights of the human condition, externalizing, therefore, the evolutionary accumulation of manumission levels of the human being [4].

Ingo Wolfgang Sarlet draws a distinction, predominantly didactic, between the expressions [5]: "human rights" as being natural rights not positivized; "Human rights" as positivized rights in the field of international law; whereas the term "fundamental rights" as human right, recognized and

Michely Vargas Delpupo is the Department of Environmental Law, UNASP University Law School (e-mail: michelydelpupo@terra.com.br).
José Geraldo Romanello Bueno is Mackenzie Presbiterian University Law School, (e-mail: 7000123@mackenzie.br).

Open Science Index, Law and Political Sciences Vol:9, No:7, 2015 publications.waset.org/10002289/pdf

positivized in the sphere of positive Constitutional Law of each State [6].

Given these findings, it appears from the outset that the terms "fundamental rights" and "human rights", despite its ordinary use as synonyms, report to different meanings. At least for those who prefer the term "human rights", it should be noted if they are being analyzed through the prism of international law or in its positive constitutional dimension. Recognizing the difference, however, does not mean ignoring the close relationship between human rights and fundamental rights, since most of the postwar constitutions inspired both the Universal Declaration of 1948, as the various international and regional documents that followed them, in such a way that it is occurring an approximation and harmonization process, toward what is being called an international constitutional law. It is in this sense that we use the terms "human rights" when referring in terms of international law and "fundamental rights", those rights recognized and positivized in the sphere of constitutional law of such State. Note that there is no necessary identity between human rights and the role of fundamental rights, since not all states recognize the totality of human rights enshrined in the Declaration of Human Rights.

II. Historical Aspects of Fundamental Rights

The story of fundamental rights is linked to the philosophical evolution of so-called human rights as rights of freedom, evolving conceptions of naturalists to the positivist conception to the formation of the so-called new constitutionalism or post-positivism. The origin of the individual rights also appears in ancient Egypt and Mesopotamia in the third millennium B.C., where it was already seeing some mechanisms for individual protection from the state. As reminds Alexandre de Moraes:

The Code of Hammurabi (1960 BC), perhaps the first coding to devote a list of rights common to all men, such as life, property, honor, dignity, family, providing also the supremacy of laws regarding rulers [7].

Comparato, while discussing the subject, says that in the axial period, comprised of the VIII and II Centuries B.C., with the emergence of authentic monotheism, emerged the first signs that gave rise to the Fundamental Rights. In the fifth century BC, philosophy is born, replacing the mythological tradition for the logical knowledge of reason. Thus, man becomes the object of reflection, and set up the first basic principles and guidelines of life. In the words of Comparato: "In short, is from the axial period, for the first time in history, the human being is regarded, in their essential equality, as being endowed with freedom and reason, despite the many differences of gender, race, religion or social customs. Threw up, so the intellectual foundations for the understanding of the human person and the assertion of universal rights, because it entails" [8]. Later there arose in Greece, the belief in the existence of a previous natural law and superior to the written law, defended the thought of the Sophists and Stoics. Such laws have a moral foundation and justification for its validity, begins to emphasize religious thought, and the idea of natural law. On the other hand, the religious concepts brought by Christianity in the Middle Ages, according to which all men are brothers, children of the same father, God, although there were individual differences and social groups, it was instrumental in building a protective base to rights of equality amongst men.

Of particular relevance was the thought of St. Thomas Aquinas, that besides the above mentioned Christian concept of equality of men before God, professed the existence of two distinct orders, respectively formed by the natural law as an expression of the rational nature of man; and at positive law, arguing that disobedience to the natural law by governments could, in extreme cases, even justify the exercise of public resistance of law [9].

From the sixteenth century comes the natural law doctrine which can be understood as a law dictated by the will of God; a law inherent in all beings; or a law due to human reason. Regardless, what is proposed is the existence of a system of values that would be prior and superior to the regulation issued by the State, establishing thus, limits to their performance and should be recognized and guaranteed as a right of its citizens.

In Bobbio's opinion, the natural law doctrine was the predecessor of individualistic theory, as regards man as rights holder for himself, not just as a member of society, unlike the previous organicist conception, according to which society is a whole and the whole is above all the parts: "Individualistic design means that first comes the individual (sole individual, it should be noted) that has value in itself, and then comes the state, and not vice versa, since the state is made by the individual and this is not made by the State" [10].

The natural law stood out in John Locke's theory that, on the assumption that men come together in partnership to preserve the life, liberty and property, makes these items enforceable to the state power. As Locke mentioned: "The only way a person can give up any of his natural liberty and put on societal links is agreeing with other men to join and unite into a community, to live comfortable, safe and peaceful to each other in a secure enjoyment of their properties and greater security against those who are not part of it" [11].

The second phase of Fundamental Rights then begins from the moment that they become positivized by states. It is in England, even in the Middle Ages, we find the most important historical background of fundamental human rights declarations. This is the *Magna Charta Libertatum*, granted by "João Sem Terra", bishops and British barons in June 15, 1215.

The *Magna Charta Libertatum,* regardless it has only served to ensure the English nobles some feudal privileges,

George Marmelstein joined this conception, saying that the fundamental rights are legal standards, which are closely linked to the idea of the dignity of the human person and the limitation of power, expressed on constitutional level of certain Democratic State of Law, which, by its axiological importance, justify and legitimize all legal system. George Marmelstein joined this concept, saying that the fundamental rights are legal standards, which are closely linked to the idea of dignity of human being and the limitation of power, expressed on the constitutional level of certain Democratic State of Law, which, by its importance axiologically, justify and legitimize all legal system.

Open Science Index, Law and Political Sciences Vol:9, No:7, 2015 publications.waset.org/10002289/pdf

served as a reference point for some rights and classic civil liberties, such as *habeas corpus*, due process and the guarantee of property. Also the *Petition of Rights* (1628), the *Habeas Corpus* Act (1679), and the *Bill of Rights* (1689), ensured rights to British citizens, such as the prohibition of arbitrary detention, habeas corpus and the right to petition. Later, in the evolution of human rights we find the participation of the Revolution of the United States of America, where we can mention the historical documents: Virginia Bill of Rights (1776), Declaration of Independence of the United States of America (1776), and the Constitution of United States of America, 1787.

The Virginia Bill of Rights, according to Comparato, was the "*birth record of human rights in history."* This is because predicted a range of Rights subsequently reaffirmed by the Declaration of Independence of the United States of America, which is considered by Comparato as *"rights inherent to the human condition,"* which ushered in a new political legitimacy: popular sovereignty [8]. Also, the Constitution of the United States, intended to limit state power establishing the separation of state powers and many basic human rights such as religious freedom, inviolability of the home, due process, trial by jury, legal defense and the inability to apply cruel or unusual punishment.

The normative consecration of fundamental human rights, however, fell to France, when in 1789; the National Assembly passed the Declaration of Human and Citizen Rights. In the opinion of Bonavides, American and British statements gained in concreteness, however, were directed to a specific people, or a privileged social layer, while the French Declaration had mankind as recipient [11]. As such, Comparato shares the same understanding, saying that: "While the Americans were more interested in establishing their independence from the British crown than in encouraging equal movement in other European colonies, the French considered themselves invested with a universal mission of liberation of the peoples" [8]. In addition, the United States emphasized judicial guarantees of fundamental rights, while the French were limited to declare rights, not to mention legal instruments that would guarantee. However, Comparato does not understand such necessary guarantees because: "[...] The right lives, ultimately, in human consciousness. Not because certain legal rights are unaccompanied of its own guarantee instruments that they are nevertheless unfelt in the social environment as necessary requirements. [...] The exercise of human rights is independent of their constitutional recognition, that is, his consecration in the state positive law as fundamental rights." [8]

In principle, it was considered that the Declaration of 1789 had no normative character, as he did not have the sanction of the monarch. However, later it was recognized that the decision-making power exercised by it came from the will of the nation, as constituent power, and that the king was merely constituted power. It should be noted also the Universal Declaration of Human Rights of 1948, which began the third and final phase of Fundamental Rights, because in addition to its universality, "[...] Sets in motion a process which endpoint of the human rights must be not only proclaimed or just ideally recognized, but effectively protected even against the State itself that has breached them" [10]. Against this illusion, Bobbio raises four difficulties [10]: the first consideration concerns the vagueness of the term "human rights", which makes it impossible to say, as absolute rights which do not have a precise idea; secondly human rights are a variable class, as are the result of history; Furthermore, the human rights class is heterogeneous, leading to affirm not the foundation, but the fundamentals of natural rights; and, finally, the existing contradiction between them, since often they are found in competition with each other.

According to Bobbio, the relativity of human rights is clear from the very reality of relations that constantly lead to ponder the application of rights of this category; not in terms of an absolute basis, but seeking, in each case, the several possible reasons, from the study of the conditions, means and situations in which this or that right can be realized [10].

III. Theory of Dimensions of Fundamental Rights

Fundamental rights went through several transformations, both as regards its content, as with respect to its ownership, efficiency and effectiveness. In this context, marked by historical evolution, it is usual to say about the existence of fundamental rights' generations.

The idea is to note that the term "generations", underwent deep doctrinal criticism because it induced the false impression of the gradual replacement of one generation by another, which is why some people prefer the term "dimensions" of fundamental rights. In this sense, Canotilho: criticizes the pre-understanding behind them, for it suggests the loss of relevance and even the replacement of the rights of the first generations. The idea of total globalization is not entirely correct: the rights of all generations [13]. Therefore, it is important to understand that the emergence of new rights does not mean the disappearance of rights already established, i.e., is not occurring replacement, but addition of fundamental rights. In this sense, the doctrine began to speak in dimensions, to replace the word *generations*. Zulmar Fachin explains that: "The terminology may lead to errors in the interpretation and implementation of fundamental rights. It has been abundant the use of the word *generation* to express the times - not always distinct - in which they emerged. The use of this term can lead to the idea that there is succession between different generations of fundamental rights, so that the first would end with the advent of the second, which disappear with the arrival of the third and so on. But such does not occur. The arrival of new rights has not power to succeed (replace) those previously existing, making them disappear" [37]. It should be noted, however, that the disagreement lies essentially in the terminological sphere, having, in principle, consensus when it comes to the contents of its respective "dimensions" and "generations" of rights. Thus, for a better understanding of the subject, the expression to be used is *dimensions*, on the grounds that it is more appropriate and does not call for interpretation deviations.

Open Science Index, Law and Political Sciences Vol:9, No:7, 2015 publications.waset.org/10002289/pdf

A. The Fundamental Rights of the First Dimension

Fundamental rights, at least under its recognition in the first written constitutions, are the peculiar product of the liberal-bourgeois thought of the eighteenth century. At that time, the idea in mind was that man has inalienable rights against the state. The historic moment was characterized by the struggle against medieval absolutism, identified as a season of darkness; it should succumb to the light brought by reason.

The fundamental rights of first dimension has as the holder the individual in opposition to the state and the overvaluation of the natural man, so also called individual rights enshrined in various bills of rights. They are, therefore, rights presented in a "negative" light, as directed to a failure, not as a positive conduct by the state. Thus, Bonavides clarifies that: The rights of first generation or rights of freedom has as the holder the individual, are opposite to the state, translate as colleges or individual attributes and sports a subjectivity that is its most characteristic feature; finally, the resistance rights or opposition to the state [12]. Of particular importance in the list of those rights, especially the notorious inspiration in natural law, the rights to life, liberty (freedom of speech, press, expression, assembly, association, etc.); political participation (rights to vote and to stand for election capacity); property; equality before the law; and some procedural guarantees such as due process, *habeas corpus*, and the right to petition.

In short, as Paul Bonavides reminds, so-called civil and political rights, which largely correspond to the initial phase of Western constitutionalism, but which continue to integrate the catalogs of the current Constitutions, even if it has been assigned content or also a different meaning [12].

B. The Economic, Social and Cultural Dimension of the Second

The nineteenth century was marked by the industrial revolution, resulting from the production of technical development which provided an unprecedented economic growth never seen before. However, this prosperity came at the expense of sacrifice by the large portion of the population, especially workers, who survived in increasingly poor conditions.

Industrialization brought with it, in addition to economic prosperity for the wealthy few, a number of social problems, generating great dissatisfaction for those who did not have the means. Thus, there were large movements vindicated in order to assign to the State into remediating social conflicts. The development of society was no longer as a result of individual freedom; on the contrary, freedom could only be achieved through the realization of fundamental social rights. It is in this context that gives rise to the State social welfare (welfare state), a new political model in which the state without refrain of the basic foundations of capitalism, commits to promote greater social equality and ensure the basic conditions for a dignified life. In addition, the state social welfare is also committed to ensure the so-called "economic, social and cultural rights", which are those rights related to basic human needs such as food, health, housing, paid work, education, welfare, retirement etc. Thus, the Constitution of Mexico 1917, product of the Mexican Revolution of 1910, and the German Weimar Constitution of 1919 were the first to make positive these rights, providing the legal basis for the recognition of social economic equality as a guideline imposed constitutionally.

In Brazil, the Constitution of 1934 and, more broadly, in 1946 gave initial steps to the formation of a government social welfare by providing alternative social rights (retirement, education, welfare, etc.) and the rights relating to the protection of workers. In addition, the fundamental rights of second dimension are protected by the International Covenant on Economic, Social and Cultural Rights, adopted by the UN in December 19, 1966 and incorporated in Brazilian law [15]. It has been understood that, unlike civil and political rights, economic, social and cultural rights should be affected gradually. In this same line of thought is the lesson of Flavia Piovesan: “If the civil and political rights must be guaranteed by the State plan, without excuse or delay - have called autoaplicability - the social, economic and cultural, in turn, in the terms that are designed by the Covenant, to be realized progressively. [...] That is, are rights that are conditional upon state action, which must adopt measures both through their own efforts as through international assistance and cooperation, especially in economic and technical plans, up to the maximum of its available resources, with view to achieving progressively the full realization of these rights” [16]. Therefore, the fundamental rights of second dimension are often called nature of rights "positive" because, as stated, do not complain about the abstention of the State, but an account activity, in order to seek to overcome individual and social needs.

C. The Rights of Solidarity and Fraternity of the Third Dimension

The fundamental rights of third dimension, also called brotherhood and solidarity rights, bring as distinctive note the fact that they are intended for all mankind and not just the defense interests of a group of individuals. In the list of those rights, it should be noted the right to development, peace, the right to the environment and the healthy quality of life, the right to use the historical and cultural heritage and the right of communication (emphasis added). The Universal Declaration of Human Rights of 1948, this led the birth of a new world order, much more committed to human rights, which is already incorporated in customary international law. In addition, inspired the adoption of the International Covenant on Civil and Political Rights (known as the Pact of San Jose, Costa Rica), and the International Covenant on Economic, Social and Cultural Rights.

Arion Sayão Romita clarifies that the third dimension has developed in international rights, especially through meetings and documents of the United Nations (UN) and the United Nation Educational, Scientific and Cultural Organization (Educational, Scientific and the United Nations Cultural Organization - UNESCO), which enunciated these new rights: It was the Senegalese internationalist Keba M'baye who, in inaugural lecture delivered at the International Institute of

Open Science Index, Law and Political Sciences Vol:9, No:7, 2015 publications.waset.org/10002289/pdf

Human Rights in Strasbourg in 1972, launched the thesis that the right to development is a human right. The term "right to development as a human right", was mentioned by Resolution 4 (XXXIII). Dated February 21, 1977, in which the UN called upon UNESCO to develop specific studies on the subject [...]. From the notion of the right to development as a human right, Karel Vasak, in inaugural lecture given at the International Human Rights Institute in Strasbourg on 2 July 1979, built the theory of human rights of third generation, considered solidarity rights and later known as collective and diffuse rights [17].

In 1986, the UN adopted the Declaration on the Right to Development, reinforced by one hundred forty-six (146) States, with voting against (United States) and 8 abstentions, as served to register, at least in the formal sphere, the universal desideratum to see an ethical and supportive global process [18].

Nationally, the 1988 Constitution maintained an excellent international humanitarian tuning, in addition to provide the fundamental rights of third dimension. Incidentally, related to the environment, the Federal Constitution of 1988 provides a specific chapter for environmental protection (Article 225), stating that "everyone has the right to an ecologically balanced environment of common use being essential to a healthy quality of life. Thus as stated this binds the Government and the community the duty to defend and preserve the environment for present and future generations".

Certainly, positivization of this right was influenced by the Stockholm Declaration (1972). The text expressly provides the right to a healthy environment as a fundamental right of all mankind. The first constitutional principle refers:

> Brazilians have the fundamental right to freedom, equality and to enjoy adequate living conditions in an environment of quality that permits a dignified life and enjoy well-being, and obligation to protect and improve the environment for present and future generations [19].

Thus, this principle by stating the fundamental right to freedom, equality and adequate conditions of life in a quality environment that permits a life of dignity and wellbeing, can be understood as the oldest statement linking human rights and environmental protection.

D. The Fundamental Rights of Fourth Dimension

Also as regarded by the issue of various fundamental rights dimensions one has to recognize the existence of a fourth dimension, which, however, still awaits his positiveness in the sphere of international law and domestic law. Thus, the existence of fundamental rights of fourth dimension is still contested. However, under the parental right, Bonavides has positioned favorably, defending it as an area under construction: “The neoliberal globalization policy goes silent, without any reference values. [...] There is, however, another political globalization, which sometimes develops, over which it has no jurisdiction to neoliberal ideology. It is rooted in the theory of fundamental rights, the only real that matters to the people of the periphery. Globalize fundamental rights equivalent to universalize them in the institutional field. [...] The political globalization in the legal normative sphere introduces the fourth generation of rights, which, incidentally, is an ultimate phase of institutionalization of the welfare state which are the rights of fourth generation, the right for democracy, the right to information and the right to pluralism. They all depend on the implementation of the open society in the future, of maximum dimension of universality, for which the world seems to lean in terms of all good relations. [...] The rights of the first generation, individual rights, the second generation, social rights, and the rights of third generation as rights to development, the environment, peace and brotherhood, remain effective, and as infrastructure forms the pyramid, whose apex is the right to democracy” [12]. Bobbio also envisions a fourth dimension of fundamental rights, but in a different content of exposed by Bonavides. For him, the fourth dimension comes from new requirements concerning the effects increasingly traumatic biological research that will allow new manipulations of the genetic heritage of each individual [10]. In this context, would be present issues of the highest importance for society, such as human cloning, embryo rights, the rights of the anencephalic fetus and the use of cells for therapeutic treatment.

IV. Economic, Social and Cultural Rights

Social rights provided in Article 6 of the Federal Constitution, includes the right to work, to social security (health, welfare and assistance), education, housing, leisure, security, maternity and childhood protection and assistance to helpless. In addition, Title VIII of the Federal Constitution of 1988 that deals with "Social Order” is regulated by many rights that can be classified as socioeconomic. Therefore, social rights are, in the light of the Brazilian-positive constitutional law, fundamental rights and are all directly related to human dignity and the promotion of a decent life. What comes to be a dignified life is the notion of a human being considered in its aspect both physical and psychological endowed with strong cultural connotation.

The dignity of the human person is a value on which all other fundamental rights will develop economically and socially. Cultural rights are nothing more than economic rights related to sociality, dignity and culture of a human being. As stated by John the Baptist Herkennhoff: “Deny belief in the dignity of the human person assigning individuals to fend for themselves taking care of each other affront human dignity and defends a model of state and society that refrains from providing economic, social and cultural rights indispensable to the safeguard of human substratum” [20].

The doctrine is not unison to identify the relationship between fundamental rights and social rights. Among lawyers are also disparate ideological positions. Bobbio equates social rights (2nd generation) to fundamental and extends them to the rhetoric of human rights, in search of an effectiveness that he recognizes not in full [10].

José Joaquim Gomes Canotilho, a jurist from Portugal writes about subjective rights, social, economic and cultural events and states that this rights to require state benefits. These benefits are original rights and they don’t derive from the law

Open Science Index, Law and Political Sciences Vol:9, No:7, 2015 publications.waset.org/10002289/pdf

[21]. Today, Canotilho has recognized that social rights are no longer legally regulated claims and that the legislative power determines what is a social right, which is not bounded to the social rights [22]. In Brazil, Celso Albuquerque Mello defends the indivisibility of human rights, which would include civil, political, economic and social rights, but regrets its lack of efficacy [23]. Thus, the social, economic and cultural rights can either refer to their rights such as the right to a benefit from the state, which takes place through public policies to ensure protection and provide the means for a dignified life those who do not have conditions to do so, as the grounds of distributive justice and the socialization of risk of human existence.

Fábio Konder Comparato analyzes the social relations of work when he says: The set of social rights is founded today in the world severely shaken by the hegemony of the so called neoliberal policy, which is nothing more than a universal setback invigorating capitalism in the mid-nineteenth century. It created, in fact, a social exclusion of entire populations, unimaginable to authors of the Communist Manifesto. Marx and Engels, in fact, in his analysis of capitalism, had departed from the assumption that capitalism will always depend on work *(die Bedingung des Kapitals ist die Lohnarbeit),* which would give workers attached to the force necessary to defeat capitalism in the clash end of the class struggle. In the late twentieth century, which is found in all parts of the world, the working masses became quite unnecessary in the production process. What lies before us, Hannah Arendt wrote forty years ago, "is the possibility of a society of workers without work, that is, without the only activity left to them." [...] Certainly, nothing could be worse than that [2]. In this context, Ingo Sarlet distinguishes between the fundamental right to the benefit in a broad and narrow sense. Rights to provide a broad sense are all fundamental rights and do not fit in advocacy category. On the other hand, the fundamental rights to provide strict sense are defining standards of rights enshrining fundamental rights materials from their recipients, which are usually identified as fundamental social rights [5].

You cannot restrict social rights, the fundamental right to benefits. Considering that social rights cannot sue state positive benefits, requiring only abstention or, for example, the social rights of workers, which have a category holders and addressed to the employees, and not specifically by the State [5].

Stephen Holmes and Cass R. Sustein maintain that all rights are positive, indicating an overcome, the dichotomy between the rights of defense (negative) and entitled to benefits (positive) under the argument that rights carry negative economic burdens to the government [24]. In addition, the authors state that social rights sometimes depend primarily of budgeted funds of states, the example, point out that, in the 1996 elections, the United States spent approximately 300 to 400 million dollars, that is, to guarantee the exercise of voting rights. In the same year (1996), the US Department of Justice spent the equivalent of $ 23 million in protection programs to witnesses. Also in the US in 1992 was spent $ 21 million in judicial and legal services and invested about $ 73 billion on police protection, an amount which represented much more than the Gross Domestic Product (GDP) of more than half of the countries World in the same period [24].

As for Brazil, the Institute of Applied Economic Research (IPEA) released a study on the amount of resources applied by the federal government in the social environment and the amount actually spent policies in this area, related to the period from 1995 to 2010. Considering the eleven areas of the Federal Social Spending (general social security, public servants benefits, health, social care, food and nutrition, housing and urban planning, sanitation, employment and income, education and agricultural development culture), it is noted that the study period, spending increased 4.3%, from 11.24% of GDP in 1995 to 15.54% in 2010 [25].

Ingo Sarlet points out that criticism of Stephen Holmes and Cass R. Sustein only part of the criteria of economic relevance. However, the differences are also apparent in relation to the object and function of positive and negative rights. Synthesizing a defense right (negative) may have a corresponding positive dimension, as well as account rights (positive) may have a negative dimension. It states: The truth is that fundamental social rights to benefits, unlike the rights of defense, aiming ensuring, through the offset of social inequalities, the exercise of freedom and real and effective equality, which requires active behavior of the State be adequately implemented. Moreover, the fundamental social rights aims to true equality for all, attainable only through an elimination of inequalities, and not through an equality without freedom, can be said in this context that, in some extent, freedom and equality are accomplished through social fundamental rights.

Regarding the costs of positive and negative rights, Ingo Sarlet explains that: Indeed, no one will seriously question (just taking this point to illustrate) the impossibility of a judge - once present assumptions - no longer grant an order of Habeas Corpus or refuse to guarantee the right to life, property or privacy against any breach by the simple fact that there is an appropriate structure available or on the grounds that the state does not have sufficient resources. On the other hand, there are few who turn against the recognition by the judiciary and especially when the absence of a specific law, the legal rights to material benefits against the state. Indeed, the fact that a negative right also has a "cost" - which assumes prominence in terms of its effectiveness - does not preclude the possibility of immediate applicability and justice, which, in principle, as stated above, is controversial in the case of account dimension [5].

Fábio Konder I shares states that "one of the great weaknesses of the Theory of Human Rights is the fact of not having yet realized that the object of economic, social and cultural is always a public policy." Ingo Sarlet refutes such understanding, when it ensures the existence of social rights, whose purpose is to abstentions by the recipient, or social rights to benefits whose recipient is a private entity or even an individual, as with the right of workers. Thus, it appears that the fundamental social rights are of different categories, and may or may not result in positive benefits of the state, or imply

Open Science Index, Law and Political Sciences Vol:9, No:7, 2015 publications.waset.org/10002289/pdf

positive benefits of a private individual. In the case of social rights that imply positive benefits from the state, such benefits are recognized as public policies that can still generate subjective rights to particular reflections. However, recognition of public policies, as positive benefits from the state, leads to two main issues: a) the development of such public policies investment of material resources is necessary, however, the big problem of underdeveloped countries is the lack of resources, becoming thus the great limit to the achievement of fundamental social rights; and b) the possibility of judicial protection of economic, social and cultural rights. The power to implement policies is part of the executive branch, in which the judiciary cannot interfere. That is, the effectiveness of these rights shall be subject to the discretion of the government, which shall elect public policy actions, depending on the preparation of the state budget approved by the legislature. To grant to the judiciary the power to compel the production of social law to citizens, there would be an invasion in the administrative jurisdiction of the State conferred on the executive branch.

V. Efficacy and Effectiveness of Social Fundamental Rights

Fundamental rights can be defined as a set of rights which, in a given historical moment, embody the requirements of freedom, equality and dignity of human beings, and for the humankind the essential conditions for a dignified quality of life and social well-being.

George Marmelstein cites five basic elements that, if combined provide the concept of fundamental rights: rule of law, human dignity, limitation of power, the Constitution and Democracy.

Fundamental rights are rules, closely linked to the idea of human dignity and power limitation, imposed at a constitutional level of certain democratic state, which in axiological importance establishes and legitimizes the whole legal system [6].

Fundamental social rights are characterized as true positive liberty (freedom), consisting of a factual nature of services and equipments, which claims for active management of the state in economic and social aspects. Its purpose is to improve living conditions for those in need, aimed in achieving social equality, and are consecrated as the foundations of the democratic state, in Article 1, Section IV of the Federal Constitution. The big problem in this particular refers to the applicability (efficacy) and effectiveness of those rights.

First, it is necessary to distinguish between efficacy and effectiveness of social rights. José Afonso da Silva addressed the differentiation with usual precision: Effectiveness is the ability to achieve goals fixed in advance as targets. In the case of legal rules, the effectiveness is the ability to achieve the goals, make the legal dictates targeted by the legislature. “[...] The range of standard goals was the effectiveness. [...] A rule can have legal effect without being socially effective, i.e. it can generate legal effects, for example, the repeal of previous standards, and not be effectively fulfilled social terms” [26].

The notion of particular effectiveness, corresponds to what Hans Kelsen - distinguishing it from the concept of validity of the standard - portrayed as the "*real fact that it is effectively implemented and observed, the fact that a human behavior as the norm it is found in the order of facts*" [27]. In addition, the effectiveness therefore means the realization of the right, the concrete implementation of its social function. She is the embodiment, in the world of facts, legal precepts and symbolizes the approach, as close as possible, among the *must-be* normative and *be* social reality. In this sense, the lesson of Hans Kelsen is clear enough to differentiate the duration of the effectiveness of the standard. The validity of the standard, for him, belongs to the order of duty-being, and not the order of being. Term means the specific existence of the standard; effectiveness is the fact that the standard is effectively applied and then; the fact that a human conduct compliance with the standard is verified in the order of events [27].

In addition to the aspects already considered, it register, the legal effect of the standard, is directly associated with social fundamentality. In the material aspect, stress out the recognition and protection of certain values, legal interests and essentially claims for humans rights in a particular country. By analyzing the aspect of effectiveness or applicability of constitutional law, it is important to be observed also, the legal and social validity of the rule in question, since speaking effectiveness of law implies in implementation or enforcement of the rule of law in human relations. So is the fundamentality in the formal perspective that will distinguish the fundamental constitutional rights. In the 1988 Constitution, this formal fundamentality received special dignity, revealing not only the top normative hierarchy of constitutional norms in general, but especially in the fact that, in accordance with the provisions of art. 5, § 1 of the Brazilian Constitution, "the law defines fundamental rights and guarantees, and the law have immediate application." Thus, the constitutional provision of 'immediate implementation' gets a different placement for social rights, as they should be treated differently from traditional rights in the defense against state power. Leaving to the State to maximize the effectiveness of the Social Fundamental Rights and create the material conditions for its realization.

The classification of constitutional requirements regarding their applicability is subdivided into full efficiency standards contained efficiency and limited effectiveness. As to the constitutional requirements of full effectiveness, this has immediate applicability and therefore independent of subsequent legislation for its full implementation. José Afonso da Silva points out that the constitutional arrangements in full effect, are: [...] Are the ones who received the normativity constituent enough to its immediate effect. They are located predominantly in the organic elements of the constitution. Do not require further regulatory action to your application. Create subjective situations of advantage or bond immediately due [26].

At another point José Afonso da Silva, had already defined the constitutional arrangements in full effect as: [...] Those

Open Science Index, Law and Political Sciences Vol:9, No:7, 2015 publications.waset.org/10002289/pdf

who, since the entry into force of the Constitution, produce, or has the potential to produce all the essential effects relating to interests, behaviors and situations that the legislature constituent, direct and normatively, wanted regular [26].

Constitutional efficacy standards have direct and immediate applicability, but possibly not in full. Although conditions on the promulgation of the new Constitution produced all its effects, it can be limited [...] Are those in which the constitutional legislator sufficiently regulated the interest in a given matter, but left room for restrictive action by the discretion of the Government, pursuant provided by law or under general concepts set out in them [26].

Finally, constitutional norms of limited effectiveness are those with indirect, mediated and reduced applicability because it does not have the power to produce all its effects, needing an infra integrative law.

Given the presented classifications, one realizes that admit the existence of constitutional rules capable of producing all its effects immediately; and constitutional rules that require the ordinary legislative measures to achieve all your goals. In general, the constitutional rules always produce legal effects and have at least the minimum legal effect.

VI. From Social Fundamental Right to Sanitation in the Federal Constitution 1998

The Brazilian state has a duty, through public policies and concrete measures of social policy, enable humans better quality of life and a reasonable level of dignity for granted the very exercise of freedom. This hypothesis is corroborated by José Afonso da Silva, saying that: [....] *Social rights* as fundamental rights dimension of man, the positive benefits offered by the State directly or indirectly, laid down in constitutional provisions that enable better living conditions to the weakest rights which tend to bring about equalization of unequal social situations [3]. In this sense, one can understand that the content of the defining standards of social rights privileges material equality, considering it essential for the full enjoyment of other rights. This idea is reinforced by Paulo Bonavides, stating that social rights "*were born embraced the principle of equality, which cannot be separated, for to do so would be to dismember them the rationale that it supports and encourages"* [12].

The principle of equality is not only to ensure the same condition for all before the law, but allow everyone to empower and have equal conditions to develop, including giving individuals the freedom to live in dignity.

The 1988 Federal Constitution, in Article 6, enshrines social rights: education, health, food, work, housing, leisure, security, social security, protection of motherhood and childhood, and assistance to the destitute. It also provides for a specific title that comes the Social Order (Title VIII), which is listed, for example, social rights on health, social security, social assistance, education, environment, among others [28].

The right to housing has been inserted in the text of the Constitution by Amendment No 26, 14 February 2000, by changing the word of Article 6 of the Federal Constitution of 1988.

This list is more comprehensive than the International Covenant on Economic, Social and Cultural Rights of 1966 [15], of which Brazil is a party and speaks on labor rights and social security; and, in Article 11:12 states: Article 11. States Parties to the present Covenant recognize the right of everyone to a standard of living for himself and adapting his family, including adequate food, clothing and housing, and to the continuous improvement of their living conditions. States Parties shall take appropriate measures to ensure the realization of this right, recognizing the effect of essential importance of international co-operation based on free consent.

Article 12 The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

The relationship between basic and public health sanitation resulted in substantial development of the state's presence in the country and the performance of this to society. This historical aspect of public policy development was accompanied by the consecration of health as a right. Thus, there is a parallel between the awareness of sanitation issues and the establishment of health as a collective problem, followed by its recognition as a right. This relationship allows us to see the sanitation as a determinant right to health.

Based on consideration of this relationship it is possible to directly link the sanitation services to public health services and consider them, as social services. Article 196 of the Federal Constitution provides that: Health is everyone's right and duty of the State, guaranteed through social and economic policies aimed in reducing the risk of disease and other health problems and the universal and equal access to programs and services for its promotion, protection and recovery. However, the main effect of the provision of basic sanitation services is exactly in reducing the risk of disease. As pointed out, the sanitation was consecrated as a health manifestation as a collective problem. This statement, combined with the legal provisions, reveals the importance of the issue from a social point of view. Sanitation is recognized as one of the services that most contribute to improve health, quality of life and the environment, which explains the need for universal, essential precondition for the implementation of the principle of equality. This means that sanitation services should meet the minimum and essential health needs of the population, considering the conditions and social differences of users and determining the expansion of services at the horizon of satisfaction of the entire population. It is, therefore, essential services of interest to all without distinction, whose parameters cannot be measured according to the market criteria [29]. In fact, sanitation and health fall into a public system of social solidarity (3rd dimension rights) that, based on the Federal Constitution of 1988, aims to give citizens the ability to its full development and well-being.

VII. Sanitation and Public Service in the Federal Constitution of 1988

According to Marcal Justem Son, the public service is a public administrative activity concrete satisfaction of

Open Science Index, Law and Political Sciences Vol:9, No:7, 2015 publications.waset.org/10002289/pdf

individual needs or trans, tangible or intangible, linked directly to a fundamental right, for the indeterminate people and performed under direct public system [30]. It's a contemporary design; he lists the following principles of public service: continuity; equality; universality; neutrality; equality in the rates; adequacy of service (mutability); transparency and participation of users; absence of gratuity; and low rates. However, certainly, the provision of public sanitation services is rooted in this concept. In addition, the basic principles consist on continuity, universalization of care, and adequate provision of services.

The question we try to answer refers to basic sanitation services in Brazil fall into the division that can perform from the Constitution between economic and social services. On the one hand, basic sanitation is an economic or industrial-commercial service; it is organized in the form of infrastructure networks, involves the collection of fees and is likely to be granted to the private sector. These features are subject to the provisions contained in the laws governing the provision of such services, as required by Article 175 of the Federal Constitution of 1988. Thus, basic sanitation services may be considered a social service, to the extent that is responsible for an essential dimension of the right to health, essential for the realization of human dignity and to achieving the fundamental objectives of the Federative Republic of Brazil. Sanitation serves as a tool capable of achieving these objectives. Thus, as teaches José Afonso da Silva, the objective of the Brazilian state, marked exemplarily by the Federal Constitution, is effective, in practice with the dignity of the human person [3].

The rights and fundamental guarantees constitutionally guaranteed; especially here on social rights should be included among the goals to be achieved by the state. In Alexandre de Moraes words can be defined as: "The institutionalized set of rights and guarantees of human beings whose basic purpose is respect for their dignity, through their protection against arbitrary state power and the establishment of minimum conditions of life and development of the human personality can be set to *rights fundamental human"* [7].

The realization will occur through the establishment of guidelines and implementation of public policies by federal agencies. Thus, the union of basic public health and sanitation resulted, throughout history, the substantial increase in the state's presence in the country and the performance of this to society. This historical aspect of development of public policies was accompanied by the consecration of health as a right. In addition, the need to preserve water resources has been the focus of global concern, as it constitutes a key factor to ensure life on the planet. Regarding the collection and treatment of sewage, this implies not only damage to the environment, but is a strong factor of social exclusion and causes serious problems for public health, with the proliferation of infectious diseases and high infant mortality rates. Thus, there is a parallel between the awareness of sanitation issues and the establishment of health as a collective problem, followed by its recognition as a right. This relationship allows us to see the sanitation as a determinant of the right to health. Made these considerations about this relationship can directly associate to the basic sanitation services of public health services and consider them social services. Article 196 of the Federal Constitution provides: "Health is everyone's right and duty of the State, guaranteed through social and economic policies aimed in reducing the risk of disease and other health problems and the universal and equal access to programs and services for its promotion, protection and recovery". Thus, the sanitation is recognized as one of the services that most contribute to improving the health, quality of life and the environment, which explains the need for a universal, essential precondition for the implementation of the principle of equality. This means that sanitation services should meet the minimum and essential health needs of the population, considering the conditions and social differences of users and the determination of the expansion of services, which should reach even the low-income populations and areas of low population density, having as the satisfaction of all population. It is, therefore, essential services of interest to all without distinction, whose parameters cannot be measured according to market criteria [29]. In fact, sanitation and public health fall into a public system of social solidarity that, based on the Federal Constitution of 1988, aims to give citizens the ability to its full development and wellbeing. Sanitation has in short the principle of solidarity in its unwavering foundation.

Regarding sanitation services, the current legal doctrine on the matter turns, in general, on other aspects of the issue, not addressing in depth the constitutional issue now proposed, regarding the effectiveness of fundamental rights and the role of the judiciary this harvest.

Interestingly, the doctrinal point of view, it is typical of ineffectiveness situation due to the lack of material provision of services by the Government. The matter has constitutional and infra rules, however, are not being met satisfactorily by the Executive. This allows us to discuss about the effectiveness of fundamental social rights and, specifically, to implement public sanitation services.

In respect to the basic sanitation services, there is a pressing need for a *positive* performance from the State in the collection and treatment of wastewater in order to prevent contamination of water resources. More than just "need" social and economically, there is even a duty of the public power to implement such services.

In addition to the constitutional protection, the duty to protect and preserve the environment for present and future generations, and in particular water resources, is also harboring the environmental constitutional legislation and

Art. 175. The responsability of Public Authority, in the form of law, either directly or by grant or permission, always through a public bid, the provision of public services.

Art. 1. The Federative Republic of Brazil, formed by indissoluble union of the States and Municipalities and the Federal District, is a democratic State governed by the rule of law and has as background: III - the dignity of the human person.

Art. 3. Are fundamental goals of the Federative Republic of Brazil: III - eradicate poverty and marginalization and reduce the social and regional inequalities.

Open Science Index, Law and Political Sciences Vol:9, No:7, 2015 publications.waset.org/10002289/pdf

health. It is therefore typical situation without providing material; the question has been properly regulated by the legislator. This calls for firm methods of interpretation and consistent application of the rules of urban and environmental protection, in the face of the values enshrined in the Constitution. Added to all this, it is very difficult for the judiciary develop an appropriate weighting of individual interests, collective/ diffuse and public involvement.

Note that the installation of sanitation services is, in this case, *indispensable* means to protect the ecologically balanced environment, reduce the rates of infectious diseases and infant mortality and seek, in short, give citizens the right to a life worthy. We know, therefore, that the effective protection of constitutionally supported rights depends on the deployment of such services. It is for the administrator, of course, the *discretion which is the service delivery* (more efficient technique, compatibility cost / benefit). There is no doubt, however, the compulsory implementation of this service. It is necessary to define, so far as discretion may serve as immunizing curtain that prevents judicial review on the fulfillment of fundamental rights.

VIII. Fundamental Human Right to Water

Water is one of the most important natural resources for the survival of man on earth. It is essential to life in all its forms, and to humans is essential to satisfy all our needs, which will include, from survival, to maintenance of world's economic balance, due to its importance for the productive process. However, currently, Brazil is in a worrying scenario because despite of having abundant resources, the percentage of drinking water is very low, which gives a finite character, which is compounded by poor geographical and economic distribution, in order to generate different situations in different regions of Brazil. In this sense, the Brazilian newspaper Folha de São Paulo, published an article regarding to the water level of the Cantareira system, in São Paulo. The level of the Cantareira system reservoir is continously falling and reached recently another historical record. According to the report of Sabesp, the reservoir is with only 9.2% of its full capacity - a rate considered critical. It is the worst drought of the last 84 years, which further aggravates the system framework [31].

A survey by the Data Popular Institute revealed that the lack of water in São Paulo affects 23% of São Paulo in recent months. The index rises to 35% in the metropolitan region, compared to 30% in the capital and 14% backwoods. The problem is two times higher among low-income families, reaching 12% of those earning more than 10 minimum wages and 25% among those who earn up to one minimum wage [31]. Thus, there is no need to deny that among the main environmental problems in Brazil, the most worrying is the lack of drinking water. Boaventura de Souza Santos warns that "desertification and water shortages are the issues that will most affect the Third World countries in the next decade [32].

The shortage of drinking water in Brazil, its bad distribution, its rampant use and pollution in its various forms generated a serious crisis, undermining the livelihoods of Brazilian life. In other words, the shortage of drinking water is a major problem. Therefore, this lack generates the need to implement a fundamental right. Based on this perspective, Freitas asserts that water is a fundamental right of the human person and is related to fundamental rights [33]. From this perspective, Paulo Affonso Leme Machado acknowledges that the fundamental human right enters the heritage of the simple fact of his birth. "No matter where and how one was born there must be take into account the exercise of the human right to nationality, ethnicity and sex [34].

Only recently the role of water have had more comprehensive discussions regarding to the inadequate availability and access to water as a serious and threatening phenomenon. Thus, the right of access to water is a fundamental human right and should be distributed equally to all citizens, in order to not hurt the human dignity, given that there is no life without water and there is no way to live with dignity if your access is poor or even unavailable.

IX. The Right of Access to Drink Water

The right to water can be conceptualized as a set of legal principles and rules governing the domain, use, exploitation, conservation and preservation of water, with the protection against its harmful consequences [35]. Thus, the content of the human right to water has been defined generally as a right of access to water clean enough and in sufficient quantities to meet individual needs. At a minimum, the amount should be sufficient to meet human needs for drinking, hygiene, cleaning, cooking and sanitation [34].

Access to safe water, as proclaims the Berlin Conference 2004, is about the introduction of the right to drinking water, convenient for human consumption, free of appreciable amounts of minerals or harmful microorganisms, and potential for consumption so as not to cause damage to the body. The World Health Organization also standardized potable water for human consumption. In this context, the Brazilian Ministry of Health established the standardization of drinking water used for human consumption and which microbiological, physical, chemical and radioactive parameters meet the standard for drinking water and offers no risk for health [36].

The fundamental right to drinking water means an addition to the fundamental rights a new step in the long walk of humanity. This fundamental right, necessary to human existence and to other forms of life, requires priority assistance of social and state institutions, as well as by every citizen.

Understood as a fundamental right, access to drinking water requires changing attitudes of the State and society [14].

The state legislature is committed to make laws that prioritize the protection and promotion of fundamental rights, demanding that their performance is linked to the legality of that right. Regarding the State it should establish public policy, taking into account that one is facing a fundamental right. The judiciary also is evaluating social conflicts and decided to implement the fundamental right. On the other hand, the Brazilian society also began to recognize the greater importance and legal interest to be protected and preserved.

People in their common behavior usually distinguish this right that, while important, is not fundamental.

In short, access to drinking water, shall receive from the State and also from the society proper treatment so that it can be preserved for the benefit of all people and future generations [14].

X. Conclusion

It is considered the sanitation a network of public services, which in addition to essential service for the Brazilian population, should be recognized as an integral element of human dignity is central to human development and existential well-being. However, the institutional model of basic sanitation in Brazil is going through a process of evolution, due to the uncontrolled growth of urban demands and low efficiency of sanitation services. Thus, it is urgent the need for a positive performance from the State in providing drinking water, collection and treatment of wastewater in order to prevent contamination of water resources and spread of diseases. More than just social and economic need, there is also a duty of the government to implement such services. Therefore, it is essential to recognize the right to sanitation as a constitutional fundamental right and integrate it to the list of fundamental social rights that guarantee a minimum integral element for human dignity. Thus, basic sanitation services are directly linked to the achievement of human dignity, as all citizens have the right to have a life endowed with dignity. In addition, basic sanitation services also serves as a means to try to abolish the subhuman living conditions of most Brazilians. However, the basic sanitation sector is going through many challenges, for example, low sewage coverage ratio; popular participation and social control; informal settlements; high cost of water and sewage; huge regional inequalities in access to water and sewage services; lack of capacity in terms of human and financial resources by many municipalities to develop plans and projects to apply for federal funds; quality and continuity of access to water and sanitation.

Challenges that have been checked in the course of this study we have noticed a large gap related to health situation in Brazil and the level of socioeconomic development, or at least what we want to achieve.

Perhaps, one of the possible solutions for the universal access to basic sanitation is identifying the lack of development at the source of the problems, Brazil should implement a regular investment policy and funding for the sector, improving technologies, perceive the ineffectiveness of engineering projects and, finally make professional training programs involved in these services. In addition, in the economy, it emerges as a possible solution, the location of insufficient public investment the main root of deficits. It needs greater volume of federal costly investment, and the easing of rules that limit the ability of services to capture public resources.

Finally, another possible solution would be in the field of public policies. In this case, it requires greater improvement of legal frameworks and institutional organization, placing the management of services in the critical path of the success of its performance. One supports planning and evaluating performance control by the society, regulating and inspectioning, among other political, managerial and administrative factors.

Ensure universal access to basic sanitation, based on the fundamental principles of sanitation, will only be achieved through a systemic view of the sector. Only the availability of resources will ensure the implementation of works, but not its sustainability over time.

In short, to achieve universal access to basic sanitation various obstacles must be overcome. And these obstacles are mainly related to a properly formulated and implemented public policies, in other words, it is necessary an excellent institutional organization, service management, strategic planning, social control, in order to provide answers to the complex challenges.

References

[1] Tavares, André Ramos. *Curso de direito constitucional***.** 9. ed. São Paulo: Saraiva, 2011, p. 492.

[2] Comparato, Fábio Konder. Comentário ao artigo 1º da Declaração Universal dos Direitos Humanos. In: Conselho Federal da Ordem dos Advogados do Brasil Comissão Nacional de Direitos Humanos (org.). *50 anos da Declaração Universal dos Direitos Humanos:* Conquistas e Desafios. Brasilia: Letraviva, 1999, pp.14-21.

[3] Silva, José Afonso da. *Curso de direito constitucional positivo.* 34. ed. São Paulo: Malheiros, 2011, pp. 178-286.

[4] Araujo, Luiz Alberto David; Nunes Júnior, Vidal Serrano. *Curso de direito constitucional.* 15. ed. São Paulo: Verbatim, 2011, p. 141.

[5] Sarlet, Ingo Wolfgang. *A eficácia dos direitos fundamentais:* uma teoria geral dos direitos fundamentais na perspectiva constitucional. 10. ed. Porto Alegre: Livraria do Advogado, 2011, pp. 30-205.

[6] Marmelstein, George. *Curso de direitos fundamentais.* 2. ed. São Paulo: Atlas, 2009, p. 20.

[7] Moraes, Alexandre. *Direitos humanos fundamentais:* teoria geral, comentários aos arts. 1º a 5º da Constituição da República Federativa do Brasil, doutrina e jurisprudência. 7. ed. São Paulo: Atlas, 2006, pp. 6-7

[8] Comparato, Fábio Konder. *A afirmação histórica dos direitos humanos.* 5. ed. São Paulo: Saraiva, 2007, pp. 11-140.

[9] Luño, Antônio Enrique Perez, *Los derechos fundamentales.* 7. ed. Madrid: Tecnos, 1998, p. 30.

[10] Bobbio, Norberto. *A era dos direitos***.** Tradução de Carlos Nelson Coutinho. Apresentação de Celso Lafer. 10. Reimpressão – Nova ed. Rio de Janeiro: Elsevier, 2004, pp. 23-76.

[11] Locke, John. *Dois tratados sobre governo***.** 2. ed. São Paulo: Martins Fontes, 2005, p. 468.

[12] Bonavides, Paulo. *Curso de direito constitucional.* 26. ed. São Paulo: Malheiros, 2011, pp. 562-572.

[13] Canotilho, José Joaquim Gomes. *Direito constitucional e teoria da constituição.* 7. ed. Coimbra: Almedina, 2003, p. 386.

[14] Fachin, Zulmar; SILVA, Deise Marcelino da. *Acesso à água potável:* direito fundamental de sexta dimensão. Campinas: Millennium, 2012, p. 222-223.

[15] Brasil. Presidência da República. *Decreto nº 591, de 6 de julho de 1992.* Atos Internacionais. Pacto internacional sobre Direitos Econômicos, Sociais e Culturais. Promulgação. Disponível em: < http://www.planalto.gov.br/ccivil_03/decreto/1990-1994/D0591.htm>. Acesso em: 20 nov. 2013.

[16] Piovesan, Flávia. *Direitos humanos e o direito constitucional internacional.* 11. ed. São Paulo: Saraiva, 2010, pp. 179-180.

[17] Romita, Arion Sayão. *Direitos fundamentais nas relações de trabalho.* São Paulo: LTr, 2005, pp. 101-102.

[18] Piovesan, Flávia. Desenvolvimento histórico dos direitos humanos e a constituição brasileira de 1988. In: AGRA, Walber Moura (coord.). *Retrospectiva dos 20 anos da Constituição Federal.* São Paulo: Saraiva, 2009, p. 26.

[19] Onu – Organização das Nações Unidas. *Declaração da Conferência das Nações Unidas sobre o Meio Ambiente Humano - 1972.* Disponível em:

Open Science Index, Law and Political Sciences Vol:9, No:7, 2015 publications.waset.org/10002289/pdf

<http://www.onu.org.br/rio20/img/2012/01/estocolmo1972.pdf>. Acesso em: 20 nov. 2013.

[20] Herkenhoff, João Baptista. Comentário ao artigo 22 da Declaração Universal dos Direitos Humanos. In: Conselho Federal da Ordem dos Advogados do Brasil Comissão Nacional de Direitos Humanos. (Org.). *50 Anos da Declaração Universal dos Direitos Humanos: Conquistas e Desafios.* Brasília: Letraviva, 1999, p. 278.

[21] Canotilho, José Joaquim Gomes. *Constituição dirigente e vinculação do legislador:* contributo para a compreensão das normas constitucionais programáticas**.** Coimbra: Coimbra, 1994, p. 371.

[22] Canotilho, José Joaquim Gomes. Metolodologia "Fuzzy" y "Camaleones Normativos" em la problemática actual de los derechos económicos, sociales y culturales. Tradução J. Astudillo Pólo. *Derechos y libertades.* n. 6, 1998, pp. 35-49.

[23] Mello, Celso Renato Duvivier de Albuquerque. Algumas Notas sobre os Direitos Humanos, Econômicos e Sociais. In: *Anais do VI Seminário Nacional de Pesquisa e Pós-Graduação em Direito.* Rio de Janeiro: UERJ, 1998, p. 51 - 60.

[24] Holmes, Stephen; Sunstein, Cass R. *The cost of rights:* why liberty depends on taxes. New York: W. W. Norton & Company, 2000, pp. 15-93.

[25] IPEA - Instituto de Pesquisa Econômica Aplicada. *Gasto Social Federal: prioridade macroeconômica no período 1995-2010.* Brasília: IPEA, 2012, p. 28. Disponível em: <http://www.ipea.gov.br/portal/images/stories/PDFs/nota_tecnica/120904_notatecnicadisoc09.pdf>. Acesso em: 29 out. 2013.

[26] Silva, José Afonso da. *Aplicabilidade das normas constitucionais.* 4. ed. São Paulo: Malheiros, 2000, pp. 66-262.

[27] Kelsen, Hans. *Teoria pura do Direito.* 7. ed. São Paulo: Martins Fontes, 2006, p. 11-12.

[28] Brasil. Presidência da República. *Constituição da República Federativa do Brasil de 1988.* Disponível em: <http://www.planalto.gov.br/ccivil_03/constituicao/constituicaocompilado.htm>. Acesso em: 05 nov. 2013.

[29] Alves, Alaôr Caffé. *Saneamento Básico:* concessões, permissões e convênios públicos. 1 ed. Bauru, São Paulo: Edipro, 1998, pp. 24-25.

[30] Justem Filho, Marçal. *Curso de direito administrativo*. São Paulo: Saraiva, 2005, p. 478.

[31] Folha de São Paulo. *Nível do reservatório do sistema Cantareira chega a 9,2%*. Acesso em: < http://www1.folha.uol.com.br/cotidiano/2014/05/1451813-nivel-do-reservatorio-do-sistema-cantareira-chega-a-92.shtml>. Acesso em: 09 mai. 2014.

[32] Santos, Boaventura de Souza. *Crítica da razão indolente:* contra o desperdício da experiência. 3. ed. São Paulo: Cortez, 2001, p. 24.

[33] Freitas, Vladimir Passos de. *Águas:* aspectos jurídicos e ambientais. 3. ed. Curitiba: Juruá, 2008, pp. 61-62.

[34] Machado, Paulo Affonso Leme. *Direito ambiental brasileiro.* 22. ed. São Paulo: Malheiros, 2014, p. 505.

[35] Pompeu, Cid Tomanik. *Direito de águas no Brasil.* São Paulo: Revista dos Tribunais, 2006, p. 508.

[36] Ministério da Saúde. *Portaria nº 2.914, de 12 de dezembro de 2011.* Dispõe sobre os procedimentos de controle e de vigilância da qualidade da água para consumo humano e seu padrão de potabilidade. Disponível em: <http://bvsms.saude.gov.br/bvs/saudelegis/gm./2011/prt2914_12_12_2011.html>. Acesso em: 05 fev. 2014.

[37] Fachin, Zulmar. *Curso de direito constitucional.* 5. ed. Rio de Janeiro: Forense, 2012, pp. 81-82.

Open Science Index, Law and Political Sciences Vol:9, No:7, 2015 publications.waset.org/10002289/pdf