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On the protection of motherhood and childhood: a constitutional analysis for the promotion of human dignity.

On the protection of Maternity and childhood: a constitutional analysis for the promotion of Human dignity

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SUMMARY

This article aims to reflect on the fundamental rights of maternity protection and childhood protection, from a perspective of promoting human dignity for children and adolescents, as well as parenthood. Regarding methodological aspects, a qualitative literature review was conducted, within a perspective of understanding what public policies are, identifying two examples of policies promoted by the State. Furthermore, understanding that public policies are directed towards a guiding principle—the dignity of the human person—the perspective of interpretation in accordance with the Constitution regarding the idea of maternity protection as parenthood protection is analyzed, through constitutional change, considering the social changes that exist today.

Keywords: Fundamental Rights. Motherhood. Child Protection. Parenthood.

ABSTRACT

This article aims to reflect on the fundamental rights of protection for motherhood and childhood, from a perspective of promoting human dignity for children and adolescents, as well as parenting. Regarding methodological aspects, a qualitative bibliographic review was conducted, within a perspective of understanding what public policies are, identifying two examples of policies promoted by the State. Furthermore, understanding that public policies are directed towards a goal, human dignity, we analyze the perspective of interpretation according to the constitution of the idea of protection for motherhood as protection for parenting, through constitutional mutation, given the existing social changes today.

Keywords: Fundamental Rights. Motherhood. Child Protection. Parenting.



1. Introduction

This article aims to explore the concept of protecting motherhood and childhood from a perspective of the non-literal interpretation of the constitutional text. After all, written in 1988, the idea of Parenthood and family were very different from the perspective that exists today. The concept of The concept of family, for example, has changed over the years, allowing for the expansion of rights to... various subjects of rights. For example, we have the context of the recognition of the union and same-sex marriage, stemming from a challenge to the Supreme Federal Court, which recognizes a new perspective on family.

In light of the Constitution, fundamental rights promote mechanisms for... Human dignity requires the creation of public policies to promote this highly valued principle. by the Federal Constitution of 1988. Thus, some questions arise, among which is possibility of implementing policies such as maternity leave as a means of protection constitutional right of mothers, fathers, children born from family gestation or, also, of children born from adoptive contexts.

From this perspective of maternity rights, the following interpretation would be correct, in light of Constitution, with mechanisms that allow men (fathers) to have the possibility of raising children. Emotional bond? Or, even, the recognition of same-sex couples through public policies? Focused on parenthood and the right to affection in adoption cases? These and others Questions arise within this perspective, given the multiplicity of families involved. for family rights.

Furthermore, this work also presents two examples of public policies: breastfeeding. maternal and the Peteca Project, as instruments for realizing fundamental rights directed to agents of rights under constitutional protection.

2. On the fundamental nature of fundamental rights

Before commenting on the proposed themes, it is essential to understand what... These are fundamental rights and their fundamental nature. In other words, it is essential that... Understand the aspects that make a right fundamental and what enshrines it as such.

In this sense, considering the considerations of Sarlet, Marinoni and Mitidiero (2025 p. 247), It will be found that the Brazilian Federal Constitution is the first to include the expression "Rights and Fundamental Guarantees, within their dogmatic framework, bring with them rights that enshrine... classification and terminology in the current constitutional order, "adhering to what is possible "To recognize as the dominant trend in the field of comparative law," in the author's words.

The author suggests that there could be a broader classification, such as human rights, because For example, however, the constituent assembly in original power preferred the nomenclature currently adopted.



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Sarlet also points out that the doctrine highlights this heterogeneity of nomenclatures and the "absence" of a consensus in the conceptual and terminological sphere", as he very well observed in his Considerations. However, he points out that the terminology adopted by the Federal Constitution becomes more "tuned," in accordance with the wishes of the original constituent assembly.

In this sense, it is understood that there are two aspects, two spheres of law: on the level internationally and nationally. Thus, it is clear that every fundamental right is a human right, but Not all human rights are fundamental, as Sarlet, Marinoni and Mitidiero (2025, p. 248) clarify. This occurs because the Constitution establishes the positive enactment of certain rights, enshrining them. within its constitutional framework. As the author clarifies, human rights apply to a sphere Universal legal recognition; fundamental rights, on the other hand, would be at a national level of implementation.

It is interesting to note that Martins (2025, p. 568) similarly views the aspects inherent to the nomenclature of Fundamental Rights and Human Rights, thus seeing as Sarlet, the differentiation between the two expressions, although there are fields of doctrine that Consider the words as synonyms.

Having understood this important perspective, it becomes necessary to question it at the national level. What are fundamental rights in our constitutional system?

Martins (2025, p. 568) clarifies that human rights are rights inherent to the person. and which are stipulated in treaties, among other international documents, and which must be put into practice. by States or even individuals (natural and/or legal persons), with the purpose of ensuring a dignified existence and their promotion, regardless of internal constitutional provisions. Conversely, the rights Fundamental rights are rights incorporated into the domestic constitutional order, recognized by the legal order. The constitutional framework of a given country that establishes them is thus highlighted, focusing on internal effectiveness and A plan for supranational effectiveness, as the author considers.

The freedoms of movement, the right to life, among other fundamental rights, are imbued with a fundamental quality. This fundamental quality is *a conditio sine qua non*. In other words Words, it's at its core, at its heart.

Martins (2025), in his book, clarifies that fundamental rights are not foreseen in the list provided for in the Federal Constitution. Thus, the list of fundamental rights is of a certain nature. This is an example, since the Constitution itself recognizes fundamental rights not expressly provided for by the Federal Constitution.³ Thus, within the spectrum of what can be admitted as Fundamental rights, the Brazilian Bill of Rights itself clarifies the possibility of treaties. and international conventions recognized as fundamental rights. It is important to note that the The Supreme Federal Court itself, as Martins clarifies, recognizes the existence of rights.

³ According to Martins (2025), this is reflected in §2 of article 5 of the Federal Constitution.



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fundamental principles not directly expressed by the Constitution, citing as an example the double degree of jurisdiction. Martins states that it would be an implicit fundamental right, citing two others

Examples: the right to same-sex relationships, brought about by ADPF No. 132 (reported by Minister Ayres).

Britto), in which he recognized it as a family entity and, consequently, granted the

Recognition by analogy to a stable union, based on that right.

Having addressed these points, the question arises as to the possibility or impossibility of losing the... fundamental right guaranteed by the Federal Constitution. Therefore, one could...

Does a particular right become, or cease to be, considered fundamental?

The first point to be verified is to identify the fundamental nature of fundamental rights.

or other rights provided for in the Constitution. For Martins (2025, p. 574), the main criterion

The identifier is the promotion of human dignity. In this sense, for the author, dignity

The right of the human person is "the main criterion for identifying these other fundamental rights."

Based on this premise, the identification of fundamentality, (SARLET, MARINONI, &

MITIDIERO (2025, p. 264) argue that dual fundamentality should underlie the right in

analysis. Thus, it is necessary that the law fulfills a condition of formal fundamentality and

Material fundamentality in this investigation.

Formal fundamentality is understood as the idea of positive constitutional provision.

In this sense, it means that it needs to be made positive, with the possibility of control (legal and

political, discussing, among other aspects, the concentrated and diffuse control of constitutionality,

In addition, of course, to the mechanisms for controlling constitutionality found in the legislative process.

of standards), the existence of incidence of analyses for verification and imposition of non-standards

reformable clauses *that worsen* (entrenched clauses) as a way to protect fundamental rights, and also

application and linking of Public Administration and private actors, as listed by Sarlet (2025, p. 264).

Regarding aspects of material fundamentality, (SARLET, MARINONI, &

MITIDIERO, 2025, p. 264) points to the idea of the materiality of the norm, that is, the analysis of law or

from the analysis of rights, verifying the fundamental elements of these rights on the level

material. When considering this aspect, one can glimpse the legal nature of fundamental rights which,

According to Moraes (2025, p. 38), it is in a "high hermeneutical position" when contrasted with

other rights enshrined in the national legal system. This is because fundamental rights

They possess inherent characteristics, such as imprescriptibility, inalienability,

inalienability, among other characteristics. In other words, when analyzing the plan of

In terms of materiality, the content of rights is examined, as illustrated by Sarlet, Marinoni and Mitidiero (2025).

In short, when examining the fundamental nature of fundamental rights, one is faced with...

ahead with aspects of the legal nature of the right that one intends to verify as fundamental or

No. In this way, as the authors already cited point out, it is possible to analyze a right in order to...



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to understand if this right possesses the necessary elements to comprehend what the right is.

fundamental and its nature at the constitutional level: that of promoting human dignity.

In the context of this search, it is essential to understand how robust this core can be.

Consequently, as discussed in the aforementioned doctrines, the same conclusion is reached:

Sarlet, Marinoni, Mitidiero, Mores, and Martins arrived: a structuring core, whose analysis permeates

the verification of dual fundamentality to be considered a fundamental right, which

It allows the basic structural core to dignify humanity.

3. Protection of motherhood and childhood – a fundamental and social right.

The constitutional protection of motherhood and childhood is enshrined in Article 6 of the Brazilian Federal Constitution. It is listed as a fundamental right, given that these rights...

Social rights are listed in Title II, entitled "On Rights and Guarantees".

Fundamental rights, with Chapter II opening with Social Rights.

Social rights emerge within a historical-social perspective experienced by various contextual aspects. It doesn't emerge from nothing. This construction takes place in the context of Revolutions. Liberals and Industrial, among other well-known historical events. In his work, Martins² (2024) clarifies for us this development of social rights and their first appearance in the body of a constitution (Mexico and Weimar, respectively in 1917 and 1919).

It is necessary to consider here that social rights do not arise from the perspective of a A socialist, yet social, constitution, from a perspective of social welfare directly linked to aspects of liberal thought. Recently, some politicians have been distorting this view, linking- The different currents of thought regarding the reality through which social rights were conceived. as a focus of political discourse to garner votes. This distorted view is even the target of criticism. of Luiz Phelippe de Orleans e Bragança (who, if we were in a monarchist context, could ascend to the throne through heredity with D. Pedro II, Emperor of Brazil)⁴, who believes that the The same thing happens in Brazil, according to some of his statements throughout his term as a Congressman. Federal.

Social rights are a perspective from a liberal viewpoint, which aims, according to...

Silva (2014), the premise of the effective exercise of the fundamental right to freedom:

Thus, we can say that social rights, as a dimension of fundamental human rights, are positive provisions provided by the State directly or indirectly, enshrined in constitutional norms, which enable better living conditions for the most vulnerable; rights that tend to equalize unequal social situations. They are, therefore, rights linked to the right to equality. They are valid as prerequisites for the enjoyment of these rights.

⁴ A critique of the Portuguese Constitution and the Chega movement, a movement that seeks a Portugal free from foreigners. Chega is a far-right movement that has brought a xenophobic vision to Portugal. For more information, visit <https://www.gazetadopovo.com.br/vozes/luiz-philippe-de-orleans-e-braganca/chega-de-constituicao-socialista/>



Individual rights, insofar as they create more favorable material conditions for achieving real equality, which, in turn, provides a condition more compatible with the effective exercise of freedom.

Therefore, it is essential for any Brazilian to understand the distinction between a constitution. which has a social concern for a socialist constitution, whose premises are distinct from one another. Ultimately, a social constitution is concerned with well-being and is associated with the premise of the purpose of... The State, as Dallari outlines it when conceptualizing the State as a legal order endowed with sovereignty. which has the purpose of promoting the common good of the people who are in a given territory. (DALARI, 1998).

Now, considering that the purpose of the State is the common good, one is faced with a character teleological and, therefore, it is essential that fundamental rights be verified based on the premise of its purpose. Thus, considering this premise, when searching for the hermeneutical elements, The very search for fundamentality takes place within the finalistic contours of rights. fundamental, as observed in the preceding topic.

In this sense, observing how the Constitution is organized, it becomes clear that the rights Social rights are embedded within a broader concept, fundamental rights, as noted. by Martins (2025).

Regardless of the applicability of the minimum subsistence level, which is mandatory for the State, Let us focus on the rights inherent in motherhood and the protection of children.

Martins² (2025, p. 514) highlights a very important point for reflection: "in addition to appearing As one of the fundamental social rights outlined in Article 6 of the Federal Constitution, it is one of the objectives of social security (art. 201, II, CF) and social assistance (art. 203, I, CF).

Therefore, when trying to find answers to the questions and queries that arise in In the field of legal science, it is necessary to consider that the protection of motherhood is not limited to... As the author rightly points out, this involves verifying a social right that deserves appropriate policies. public. Note that the author clarifies that there is a concern with social security and related aspects. Social assistance for the protection of motherhood. Considerations that may be reflected upon and weighed. later.

However, for methodological purposes, this article will limit its analysis to a... a more focused perspective, namely the breastfeeding program and the peteca project, both in This course serves as an important benchmark within public policies aimed at protecting motherhood. and to childhood, respectively, which are verified below.

But before delving deeper, it is imperative to verify what is understood. like childhood. And, in Brazil, according to the Constitution and the Statute of Children and Adolescents, In accordance with the Statute of Children and Adolescents, a child is understood to be a person up to 12 years of age. incomplete years (Brazil, 1990). However, the Convention on the Rights of the Child establishes that



Every person under the age of 18 is considered a child (UNICEF, 1989).

Given this impasse, how should the Constitution be interpreted when establishing the necessary precautions? With what about childhood? Who understands the fundamental and social rights inherent to children? This point of discussion is crucial.

According to Maciel, Cordeiro, and Amin (2025, p. 44), Article 3 of the ECA allows for a extensive interpretation regarding the care and protection of children arising from adolescents Federal Constitution. However, due to the effects of Law No. 13.257/2016, this would be dedicated to care. Specific to early childhood.

From this context, it is understood that constitutional protection for children can be, by force... Article 3 of the ECA (Brazilian Statute for Children and Adolescents) is applied to the reality of children and adolescents, allowing for public policies. focused on the interests of children and adolescents, given the universal nature of the guarantee system. of fundamental rights established by the Statute of Children and Adolescents, as listed below authors.

It is interesting to examine the contours given by Law 13.257/2016, as it declares explicitly focusing on public policies for early childhood, including it in the first 6 years of the child's life.

3.1 Public Policies – Concept and Practice of State Public Policies

Before any necessary considerations and premises, it is imperative to understand... and understand what Public Policies are. After all, understanding the concept leads to... initial dialogues are necessary to question the aspects needed to verify what is intended. present work.

In a broad sense, in more colloquial language, Public Policies can refer to acts of The State, in a general sense, which can accompany political-electoral speeches, mainly in election campaigns (FONTE, 2021, p. 13). However, it does not fulfill the necessary aspects to This work is presented on screen, but a more in-depth conceptualization is needed.

On the website of the Secretariat of Environment, Infrastructure and Logistics of the State of São Paulo⁵, Public policies are defined as a set of measures and guidelines to be... adopted by the State, with the purpose of achieving goals and objectives, to meet the needs of a society. Furthermore, combined with the concept brought by Fonte (2021, p. 27), it is verified- I understand that Public Policies translate into the exercise of discretion by the public administrator, Faced with the challenges posed by a set of concrete problems in society,

⁵ Available in <https://semil.sp.gov.br/educacaoambiental/prateleira-ambiental/politica-publica/#:~:text=%C3%89%20o%20conjunto%20de%20medidas,a%20avalia%C3%A7%C3%A3o%20dos%20resultados%20alcan%C3%A7ados>.



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This allows the public manager to pursue the achievement of the public interest through the production of necessary means and actions, including in the legal field.

It is important to highlight that this discretion (or Discretionary Power) is not an end in itself. in itself, but it is a necessary instrument for the realization and achievement of public interests and to achieve the constitutional purpose: the promotion of the dignity of the human person (SOURCE, 2021, p. 27).

In simpler and more concrete terms, public policies are understood to be state actions. decisions made by public managers, with the aim of achieving a primary purpose for the State: a Promoting the common good.

3.2 Breastfeeding – Care for Mother and Child: The Brazilian Program that is an international benchmark

One of the most important public policies aimed at protecting motherhood in Brazil is Breastfeeding. This public policy is present in all Brazilian states.

exporting, according to the Ministry of Health, technology to other countries, including some from Europe.

The Brazilian program, a world reference, clarifies the existence of more than one type of breastfeeding, listing the following: exclusive breastfeeding, breastfeeding predominant, breastfeeding, completed breastfeeding, mixed breastfeeding (or partial).

Exclusive breastfeeding refers to when a child is fed only breast milk. maternal, whether directly or by expressing, whether from human milk or another source, "without other liquids or solids, with the exception of drops or syrups containing vitamins, oral rehydration salts, Mineral supplements or medications. Predominant breastfeeding may contain water. or other water-based drinks (teas, fruit juices, among other liquids), but what predominates In her diet, breast milk is the primary food source. Breastfeeding, in turn, is exclusively breast milk. whether directly from the breast or expressed. When the child receives any solid food or Semi-solid, intended as a nutritional supplement, it is said to be mother's food. supplemented. And finally, when supplementing the diet with different types of milk, in addition Regarding breast milk, it is said that mixed (or partial) breastfeeding occurs (Brazil. Ministry of Health, 2015).

Martins² (2025, p. 514) clarifies that women must be able to breastfeed, as a fundamental right of the child and the mother, from the perspective of a right belonging to both. This perspective encompasses, among other aspects, affection as a premise of a relationship between mother and son or daughter. After all, the emotional bond is a necessary component and has been the basis for the conceptualization of family, as Gagliano (2025, p. 365) points out when establishing the concept of family from the perspective



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current constitutional order.

Thus, the right to breastfeed goes beyond the act of feeding; it is also the pursuit of...

The emotional bond between a mother and her offspring, with the aim of establishing affection between them, having as a direct consequence, nutrition and dialogue revolve around the right to life, as well as the establishment of Affection between them. And thus, the establishment of a family bond.

Returning to the Brazilian program, one of the leading programs in the world, it distributes 150 one thousand liters of breast milk, according to the website of the Ministry of Health⁶, possessing the largest and most complex Network of Human Breast Milk Banks (RBLH), carrying out international cooperation, a network created in 1998, whose work is organized in conjunction with Oswaldo Cruz Foundation. The Human Breast Milk Bank Network (RBLH) carries out the collection, with guidance and effective support for mothers, being an important national public policy, composed of 225 milk banks (some of these banks also offer home delivery).

It's interesting to note that this premise of being an international benchmark comes from a country in development, corroborating, for example, the impressions arising from the study "Poorer countries have more pro-breastfeeding actions than rich countries: an ecological study of 98 countries"⁷. The The aforementioned model of collection and distribution networks is, according to information from the Network and the Ministry of Health, exported to approximately 20 countries: in Latin America, the Caribbean, and the Iberian Peninsula. and some European countries." This reinforces the expertise observed in the aforementioned study.

This policy of promoting breastfeeding and newborn care is not care alone is a fundamental right, and is also considered preventative care, with with the aim of preventing various diseases in newborn children:

In the postpartum period, the newborn and mother have the right to breastfeeding, **an economical and prophylactic measure that immunizes the baby against a considerable number of diseases**, ensuring the beginning of a healthy life. Furthermore, **it strengthens the emotional bond between mother and child, especially during a period of great vulnerability for the woman**. In order to encourage and guide mothers regarding breastfeeding, Law No. 13.436, of April 12, 2017, amended Article 10 of the ECA (Statute of the Child and Adolescent), adding item VI, which obliges public or private hospitals and healthcare facilities for pregnant women to monitor the breastfeeding process, providing adequate guidance to pregnant women (MACIEL, CARNEIRO, & AMIN, 2025) – Emphasis added

As already mentioned, breastfeeding provides the possibility of an emotional bond. This The bond will be important even within the sphere of family law, given the aspect conceptual basis for what has been legally established as the concept of family.

3.3 Project Peteca – A children's game, how good it is, how good it is!

When thinking about this project, a very common song from the 1990s comes to mind:

⁶ Available at: <https://www.gov.br/saude/pt-br/assuntos/saude-de-aaz/d/doacao-de-leite>

⁷ Available at: <https://doi.org/10.1590/0102-3111XPT007024>

Children's games, how good they are, how good they are!
I still remember how good it is, how good it is.
Peace, love, and hope, how good that is, how good that is
It's good to be happy with Molejão.

Children's Play, Composed by Délcio Luiz and Wagner Bastos (1997)

The composition mentioned above refers to a song that was very popular in the late 1990s. It deals with the playfulness of children's games, the memory of childhood, and the innocence of... childhood times.

In this sense, it is important to understand the Brazilian reality regarding childhood in Brazil. The alarming reality affecting the Brazilian state, as can be seen from news reports. Regarding the issue of child labor, it provides a snapshot of this reality, which is not always made public. It's not just about children's games, but about the abuse of children by adults in the reality of child labor exploitation. According to the IBGE news agency, in 2023 Brazil had 1.8 million children. Children and adolescents in situations of child labor (whether for subsistence or economic activities). Of these, 1.6 million were in situations of child labor. Data from the AbrinQ Foundation shows that four out of five children and adolescents are in situations of child labor. It is therefore verified that The reality of childhood in Brazil is alarming.



The Peteca Network aims to raise awareness of society, combating all forms of child labor, through actions aimed at promoting debates in schools, with a primary focus on the issue of child labor. In Over the years, the Project has incorporated other themes, including They addressed the issue of *bullying*. The project began in The state of Ceará, with the participation of 51 municipalities in Ceará in 2008. Currently, according to the CNJ (National Council of Justice), the project is present in... all municipalities in Ceará, having been applied in other states of the federation. And, according to

According to data from the MPT (Brazilian Labor Prosecutor's Office), the project has already helped reduce child labor in the state of Ceará by almost 70%.

In 2021, the Peteca Network, in the state of Ceará alone, served 100 municipalities, involving

⁸ Available at <https://agenciadenoticias.ibge.gov.br/agencia-noticias/2012-agencia-de-noticias/noticias/41618-em-2023-child-labor-falls-again-and-reaches-the-lowest-level-in-the-series>;

⁹ Available at <https://www.fadc.org.br/noticias/cenario-trabalho-infantil-Brazil#:~:text=This%20increases%20the%20probability%20of%20dangerous%20or%20unhealthy%20nightwork,ere.&text=A%20campanha%20N%C3%A3o%20ao%20Trabalho,e%20junte%20Dse%20%C3%A0%20causal&text=O%20combate%20ao%20work%20children,assistance%C3%AANCia%20a%20others%20organize%C3%A7%C3%B5es%20social>.

¹⁰ According to the website <https://peteca2008.blogspot.com/p/que-somos.html>



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1,665 schools, 12,661 teachers, and 251,128 students. In the other states, the

The network adopts the name MPT na Escola (MPT at School) and, in a general perspective, the project already reaches 370 municipalities, 4,810 schools, 49,107 teachers, and 714,359 students. In Ceará, where the project

It was born, the Network expanded, allowing other topics to be added such as *bullying and pregnancy*.

In adolescence, physical punishments, suicide prevention, and laws such as Maria da Penha (CNJ, 2022).

4. Maternity leave as a fundamental guarantee: parenthood as the target of this policy in a constitutional (re)reading

The premise of maternity leave as a fundamental guarantee is raised in Martins (2025), right at the beginning of his book, as a possibility for the effectiveness of outlined public policies by the Constitutional Charter itself, from a perspective of, at the very least, providing assistance.

social security:

"Protection of motherhood," in addition to being one of the fundamental social rights in Article 6 of the Federal Constitution, is one of the objectives of social security (Article 201, II, CF) and social assistance (Article 203, I, CF). (MARTINS, 2024, p. 514)

From this perspective, a question arises, given that maternity pay presupposes...

The need to be separated from the mother so that she can give birth and care for her child.

child. The question remains, then, what happens when the worker is a man and needs this care with the

What about a newborn child? And what if there is a need for an adoptive father or even a mother?

Will adoptive parents have the same rights guaranteed to mothers and fathers?

The idea is the comprehensive protection of children and adolescents. That's what Junqueira and Adreucci... (2017) refer to it as full and special protection for children and young people. Based on this

From a perspective of full and special protection, the protection of the child is embodied, the child being the target of the protection of maternity benefits. Therefore, from a constitutional interpretation perspective, more

Specifically within the finalistic (or teleological) context, targeted protection could be verified.

also to parenthood (whether by adoptive parents, single parents, same-sex couples, among other possibilities).

The fundamental guarantee, therefore, can also be understood within the legal framework of the Statute.

Early Childhood. And, in this design of public policies focused on motherhood and childhood, not

Is it possible to separate the cries of children from those of parents in the modern family context?

(JUNQUEIRA & ANDREUCCI, 2017). In other words, when considering means of protection for

motherhood and childhood, even if the policies are focused exclusively on the child or on

In parenting, it is important to consider contextualizations that are within the social framework of

question. After all, as seen in a previous topic, public policies originate from a

social problem.

It is important to emphasize that attention is turning to a reality different from the one envisioned in



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1988. After all, society is very different from the one idealized at the time of its promulgation.

Federal Constitution. Today, the male presence within the formation of households is very different.

where the woman was the central figure in the home. This is evidenced, for example, by the Civil Code of 1916.

Throughout history, new forms of family have emerged in contemporary society. Their trajectory has involved numerous modifications resulting from social evolution itself. Thus, in the Brazilian context, a brief account describing, albeit succinctly, this evolution is necessary to arrive at the current conceptions of family (NASCIMENTO, 2019).

With the advent of the enactment of the Civil Code in 2002, a new family context emerged.

Although it had already been introduced in Brazil with the 1988 Constitution, it became a formal provision. And even today, this...

Reality has changed. After all, society changes: "the Constitution, with regard to the family,

recognized social changes that permeate values present in Brazilian reality.

(NASCIMENTO, 2019) – emphasis added.

Now, with the advent of new possibilities, new times, new perspectives and of

Given these new realities, the application of the phenomenon of constitutional mutation is imperative.

Public Administration. However, this is generally only observed with the explicit manifestation of

The Judiciary, most frequently the Supreme Federal Court. This phenomenon can be

observed by the change in interpretation of the Constitution (as well as by others, as is customary).

constitutional and through constitutional construction) - (MARTINS, 2025).

This phenomenon has already been applied to maternity leave, as noted as

example by Prof. Flávio Martins (2025, p.323): "in Extraordinary Appeal 778.889, reported by

Justice Roberto Barroso, discussing the equalization of adoption leave with the duration of parental leave...

"pregnant".

Even though the context was to safeguard the rights of same-sex couples in the adoption of

Regarding children, the constitutional premise for verifying the principle of equality (Article 5, CF/88) imposes on them...

Interpretability allows for a broad application, permitting same-sex adoptive parents, since the law

The right to create an emotional bond in the formation of a family is a subjective right inherent in the act of adoption.

The formation of a family, even a heterosexual one, as previously stated, presupposes a bond.

affective as described by Iotti (2013). And, within adoption, this perspective of forming

Affection is imperative for adoption to be successful. State suppression of this is not the case.

Allowing moments for the formation of this bond violates the fundamental right to family protection, to

Child protection, to the protection of parenthood.

As seen, there is the possibility of change in the interpretability of the constitutional text.

allowing for an open understanding that can be applied to the specific case of a social phenomenon. And,

In the case at hand, the legal possibility of applying this understanding to both can be admitted.

men, as well as same-sex couples, among other possibilities that may be verified within the

social context in which the right of the child and even the adoptive father to raise the child can be understood.



bond with the child.

And, with the recognition of same-sex unions and marriages as family entities, there is no...

It is not a matter of speaking from a single perspective of protecting the social right to maternity protection, but of a protection of parenthood, considering the extension of rights to homosexual relationships.

same rights as heterosexual relationships (MARTINS, 2025).

Therefore, maternity leave is not just a temporary situation, it is a necessity for the...

so that the child can create bonds of affection, allowing the person, whether biological or adoptive parent, to possibility of having their bonds formed at a crucial moment, regardless of

Sexual orientation expressed by adoptive parents.

5. Final considerations

Constitutional protection is inherent to the human condition of every individual. The right to

Comprehensive protection, aimed at the full development of the person, is not just one aspect of protection.

Formal, but also material, as can be inferred from all the content examined in this article.

Thus, public policies are verified, seeking the premise of the realization of

Full development of the human person, under the aegis of human dignity.

This work sought to understand what fundamental rights are and what

These would be the fundamental characteristics of the rights that have received special constitutional protection.

the focus of the constitutional dogmatic body, understanding that this list of rights is not limited to

positive change, but which finds in it an important foundational point in verifying the means that

so that they can promote the guarantee of fundamental rights and duties.

From this perspective, questions such as the possibility of a right are also raised.

The idea of "fundamental ceasing to be fundamental" permeated the debate, finding support in the understanding...

that fundamental rights do not lose their fundamental nature, since they do not originate from

It's not about positive actions or even the State's recognition of its duties, but rather about social necessity.

imperative to the condition of seeking to promote the dignity of the human person.

In a second phase, the aim was to understand what understanding is.

doctrinal framework for public policy, encompassing the perspective of state action for the realization of

a common good, a precept necessary to the purpose of the State, as verified in the topic

corresponding. Based on this, two important state public policies were analyzed, being

that one of them does not necessarily fit the vision of public policies, but that it can be.

This is a serious matter, given that it is promoted by an institution linked to state activity (*in this case*, the MPT).

And finally, in the last topic, in a concise manner, we sought to understand the protection aspect.

to motherhood as an element of constitutional protection for parenthood, through analysis of

Maternity leave as a fundamental guarantee. After all, the right inherent in this guarantee is not...



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It is not necessarily linked to the birth mother, but also to the mother or father, even if adoptive, through the bonds that...

They may need to be created due to parenthood, even if by adoptive parents (or individuals).

Whether heterosexual or homosexual.

References

BRAZIL. Law No. 8,069, of July 13, 1990. Provides for the Statute of Children and Adolescents and other measures. Brasília, DF: Presidency of the Republic, **2025**.

BRAZIL. Ministry of Health. Child health: breastfeeding and complementary feeding. Brasília, DF: Ministry of Health, **2025**. (Primary Care Notebooks, no. 23).

CNJ. CNJ News Agency. Brasília, DF: National Council of Justice, **2022**.

DALARI, Dalmo de Abreu. *Elements of general theory of the State*. 25th ed. São Paulo: Saraiva, **1998**.

FONTE, F. *Public policies and fundamental rights*. Rio de Janeiro: Saraiva Jur, **2021**.

GAGLIANO, Pablo Stolze; VEIGA FILHO, Rodolfo Pamplona. *New course in civil law*. Rio de Janeiro: SRV, **2025**.

JUNQUEIRA, Marcela Andrade; ANDREUCCI, Ana Paula. Visible children and the right to voice as a fundamental human right: legal-social contributions of the early childhood legal framework to the design of participatory public policies in Brazil. *Cadernos de Direito Actual*, n. 8, p. 289-303, **2025**.

MACIEL, Kátia; CARNEIRO, Rosana; AMIN, Andréa. *Course on the Law of Children and Adolescents*. 17th ed. Rio de Janeiro: SRV, **2025**.

MARTINS, Flávio. *Social rights in times of economic crisis*. Rio de Janeiro: Saraiva Jur, **2024**.

MARTINS, Flávio. *Course on Constitutional Law*. Rio de Janeiro: SRV, **2025**.

MORAES, Alexandre de. *Constitutional Law*. Rio de Janeiro: Atlas, **2025**.

NASCIMENTO, Máira do. The evolution of the family from a historical, legislative and educational perspective. *Quaestio – Journal of Studies in Education*, v. 21, n. 1, p. 221-241, **2019**.

SARLET, Ingo Wolfgang; MARINONI, Luiz Guilherme; MITIDIERO, Daniel. *Course on Constitutional Law*. Rio de Janeiro: SRV, **2025**.

SILVA, José Afonso da. *Positive Constitutional Law*. 37th ed. São Paulo: Malheiros, **2014**.

UNICEF. Convention on the Rights of the Child. New York: United Nations Children's Fund, **2025**.