

# THE CITIZEN'S BASIC INCOME AS A FUNDAMENTAL RIGHT IN THE BRAZILIAN LEGAL SYSTEM

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## OBJECTIVE OF THE STUDY

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The two main questions:

1. Is there a subjective right to UBI in the Brazilian legal system?
2. If there's such right, what type of right is this?

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## RELEVANCE OF THE STUDY

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The legal consequences are different when one is faced with a fundamental right, a "right" conditioned to the existence of full public purse or a mere ethical guideline.

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**LAW N. 10835/2004**

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”Art. 1. As from 2005, citizen’s basic income shall be established, which shall be the right of all Brazilians residing in the Country and foreigners residing in Brazil for at least five (5) years, regardless of their socioeconomic condition, to receive, annually, a monetary benefit.

(...)

§ 2o The payment of the benefit shall be of equal value for all, and sufficient to meet the minimum expenses of each person with food, education and health, considering for this the degree of development of the Country and the budgetary possibilities.

§ 3o The payment of this benefit can be made in equal and monthly installments.”



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**LAW N. 10835/2004**

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In general terms, Citizen's Basic Income (CBI) has the 5 main characteristics of an UBI:

- 1) it refers to a periodic payment;
- 2) in currency;
- 3) in an equal amount for all;
- 4) on an individual basis;
- 5) without requiring proof of insufficient resources or compliance with any work requirements.

So, CBI must not be confused with minimum income systems.



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## WHY CBI WAS NOT IMPLEMENTED YET?

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Article 1, §1, Articles 2 and 3 (Law n. 10835/2004) allowed the Executive Power to regulate certain aspects, such as the implementation stages, the value of the benefit, the allocation of amounts in the Budget for 2005 and the other measures necessary for the implementation of the Program.

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## CBI FROM THE STATE PERSPECTIVE

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From the State perspective, it is clear that the CBI is a **public policy program**.

It involves a set of legal acts and facts, such as abstract legal norms, administrative acts and budget authorization, whose purpose is the achievement of public objectives by the Public Administration.

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## CBI FROM THE BENEFICIARY PERSPECTIVE

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Under the perspective of the beneficiary, there's a subjective right.

Trilateral relationship:

- 1 the holder of the right (beneficiary);
- 2 the one to whom the law is addressed (State); and
- 3 the object of the right (CBI)
  - 3.1. normative provision (regulate the law); and
  - 3.2. material provision (payment of the benefit to the beneficiaries, from the specifications to be published by the regulations).



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## THE IDENTIFICATION OF THE FUNDAMENTAL CHARACTER

The identification of the fundamental character of a right is not something that can be done universally.

The analysis has to respect the values determined by the Constitution of each legal order.

Criteria:

1. Formal (topographic): Title II, composed by the articles 5 to 17 of the Constitution;
2. Material: Article 5, paragraph 2 .The “material opening clause” for the definition of fundamental rights.

“The rights and guarantees expressed in this Constitution do not exclude others arising from the regime and the principles adopted, or of international treaties to which the Federative Republic of Brazil is party.”



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## THE IDENTIFICATION OF THE FUNDAMENTAL CHARACTER

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Types of fundamental rights:

1. Expressed rights: inside or outside Title II;
2. Implicit fundamental rights: implicit in the regime and the principles adopted by the Constitution.

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## HOW TO IDENTIFY AN IMPLICIT FUNDAMENTAL RIGHT?

The strong connection with the constitutional foundations of the Federative Republic of Brazil

“Article I. The Federative Republic of Brazil, formed by the indissoluble union of the states and municipalities and of the Federal District, is a legal democratic state and is founded on:

(...)

II – citizenship;

III – the dignity of the human person;

(...)”



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## HOW TO IDENTIFY AN IMPLICIT FUNDAMENTAL RIGHT?

The deep relation with the CBI and two constitutional foundations attributes to the right to the CBI the character of an **implicit fundamental right**.

Even if not expressly foreseen in the constitutional text, it derives directly from its foundations.

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## DOES IT MATTER IF THE RIGHT TO CBI IS CONSIDERED A SOCIAL RIGHT?

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1. In the Brazilian constitutional system, there is no sufficient dogmatic argument for differentiating between social rights and liberty rights. All fundamental rights must be treated in the same way.
2. Even among authors who differentiate fundamental rights between liberty rights and social rights, there are those who consider all social rights, explicit and implicit, as fundamental rights.
3. The right to CBI takes care of the most basic rights to human nature (food, education and health). So, this right is defensible by the arguments of protection to the **existential minimum** and should be considered a fundamental right even by the minority that doesn't consider all social rights as fundamentals.

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## FINAL CONSIDERATIONS

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- After the Law n. 10835/2004, CBI leaves the field of pre-legal debate to assume the character of an implicit fundamental right, related with the dignity of the human person and citizenship, two of the constitutional foundations of the Federative Republic of Brazil.
- Practical relevance: the fundamental rights are in the category of the rights that can not be abolished (Article 60, §4, IV, Constitution of Brazil 1988) and have immediate applicability (article 5th, §1, Constitution of Brazil 1988), limiting those rights and measures that do not have this characteristic and are opposed to the fundamental right.
- What is observed in Brazil is an omission characterizing the unconstitutionality of the conduct of the Executive Power, which can be controlled by legal means.

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# Thank You!

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