

**OVER-INDEBTEDNESS: A LEGAL PROTECTION ANALYSIS ON THE
ASPECT OF SUSTAINABLE CONSUMPTION***

**SUPERENDIVIDAMENTO: UMA ANÁLISE DA PROTEÇÃO JURÍDICA NO
ASPECTO DO CONSUMO SUSTENTÁVEL**

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ABSTRACT: Over-indebted people increase and its consequences justify a study about the judicial guardianship of such consumers. This article aims to analyze the reach of over-indebted judicial guardianship under the perspective of sustainable consumption, based on the guiding principles of contract legislation and entrepreneurial activities. The study will enable observing the current social and contractual overview, as well as the over-indebtedness effects over human dignity - based on preventive actions, which comprise the achievement of social role, and fixing actions, through jurisdictional determination, guided by joint contractual principals.

Keywords: Over-indebtedness. Consumers' protection. Business social role. Human being dignity. Sustainable consumption.

RESUMO: O aumento do número de indivíduos superendividados e os efeitos decorrentes desta situação justificam o estudo da tutela jurídica deste consumidor. O artigo objetiva analisar o alcance da proteção jurídica do superendividamento sob a perspectiva do consumo sustentável com base nos princípios que devem orientar a atividade empresarial e a disciplina contratual. Com o estudo é possível observar o panorama social e contratual atual, assim como os efeitos do superendividamento sobre a dignidade da pessoa humana, segundo um caráter preventivo ligado a concretização do princípio da função social, e de acordo com um caráter reparatório, por intermédio da determinação jurisdicional orientado pelos princípios contratuais solidários.

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1. Introduction

This research aims to analyze modern society and the role indebtedness plays in it, pointing out, in this scenario, over-indebtedness events. As a result, this article aims to demonstrate the necessity of promoting guardianship in such events, in order to recover human dignity and citizenship for over-indebted people, ensuring the balance of socioeconomic system.

Searching for an effective judicial guardianship over frameworks of over-indebtedness, the investigation must adopt a sustainable socioeconomic approach, concerning consuming relations. Thus, the research tries to build both a preventive and a fixing guardianship for such situations, which use, basically, the current principles that guide entrepreneurial and contract activities, focusing on social welfare.

This exploratory survey presents a theoretical and analytical/synoptic methodology, comprising an extensive bibliographic research in the fields of Consumer Law and Human Rights. First, the historical, social and economic evolution of consuming society will be studied. Second, considering the social context outlined, credit and indebtedness will be assessed. Therefore, the work to be developed will analyze the relationship between creditors and debtors, focusing on their structural role in the contemporaneous society context.

A concept of over-indebtedness and an analysis of its elements and judicial socioeconomic consequences – which affect the dignity and citizenship of people involved – are intended to be established.

Since previous topics are settled, the possibility and necessity of providing judicial guardianship to over-indebted people will be discussed. Such guardianship overcomes traditional individualism and is based, mainly, on laws that guide entrepreneurial activities and consuming contracts into social interest direction.



2. Consumption, credit, indebtedness and their effects on contracts

Law is expressed and emerges together with society, which is its basic reference (BETIOLI, 2015, p. 55). Thus, when Law is comprehended as a social experience, social context analysis is not only important to this work, but effectively necessary.

The emergence of an indebted society, as it will be demonstrated in this chapter, is due to “consuming society” arise and its unquestionable binding to credit.

The term “consuming society” was first used in 1970, by Jean Baudrillard (BARBOSA, 2014, p. 5). “Consuming society” presents a sociological characteristic denominated commodity sign, in which the specialized literature argues that production system changes, introduced by Industrial Revolution, are responsible for inserting people in a culture of mass consumption. By the other hand, other authors set such origin aside of this revolutionary historic moment. However, the social change occurred remains unquestionable, which has determined the contemporaneous society to be classified as a consuming one.

Zygmunt Bauman (2008, p. 12) denominates the transition from the productive society to consuming society as “consuming revolution”. Such revolutionary behavior, can be characterized by the fact that since its arise, consumption starts to play a central role in social life, guiding human behavior, and establishing itself as the main purpose of the whole society (BAUMAN; LYON, 2014, p. 96).

In this context, consumption reaches several different social life dimensions. It becomes not only a global economic engine, but also the main definition element of social outlines.

Structuring society through consumption presents basically, but not exclusively, three perspectives. First, the economic perspective that defines consumption as a central element of the current capitalism model. The second is related with sensorial experiences produced by consuming acts, which are



based in an intending confusion caused by instantaneous pleasant and happiness. The third one is connected with the feeling of belonging, which means the construction of a real notion of citizenship caused by the consuming act.

It is a fact that consumption promoted substantial changes in the economic scenario, since it is crucial to the emergence of one of the main principals regarding social arrangement. Industrial Revolution was the basic social movement for the consuming capitalism birth, since it caused the arise of its two huge milestones elements: marketing and mass production (LIPOVETSKY, 2005, p. 60-61).

With the technological development and the restructuring of working methods, industrial activities are boosted, raising their productivity and reducing their costs. Here, mass production is originated, which is linked to the necessity of a demand as huge as the industrial activities. In its turn, such demand is originated from social habits changes originated from consumption encouragement. For this purpose, marketing is created, which becomes the guiding force of the new capitalist model (ALVES, 2015, pp. 237-241).

Since a mass and consumption production scenario is consolidated, a seduction process made by branches is also developed in another moment, using marketing technics. Consuming capitalism starts using such technics, in order to be strengthened even more (TAVARES, 2016, p. 9). In this context, a deep transformation between consumers and retailers is verified, since traders are not considered as a key element of the consuming act anymore, which is now determined by branch products domain.

It was observed that a seduction environment created by branches and not by products themselves increases the demand for products technologically innovated. And this consuming act is boosted by the advertisement seduction, performed by branches, which characterizes capitalism consumers. Capitalism, here, is defined based on the actions of credit suppliers, in order to diversify more the products and reduce their lifespan (LIPOVETSKY, 2005, pp. 63-66).



New necessities are constantly created from the development of new marketing strategies, making products, until then indispensable, obsolete.

The seduction environment built by such development makes market saturation and production reduction inconceivable, consolidating consuming capitalism, which is strengthened when symbolic values are attributed to products. This symbolic act is the aspect that set products objective function aside of consuming act.

Consuming goods are not acquired due to their function and usefulness, but because – in over-consumption times – consuming is based on values purely symbolic, which, built over reverence to the same goods, refer to searching for personal satisfaction and acceptance by the whole society (BUMAN, 2000, p. 101). Consuming is, in this context, a social and personal obligation.

Individual satisfaction rationale stems from consuming act. Therefore, the relation between consumption and happiness stems from human natural predisposition to search happiness. This happiness, socially shaped, is externally highlighted. Be happy means consuming goods which not only enable a more comfortable life, but which demonstrate this achievement (MCCRACKEN, 1990, p. 29-35).

The exaltation of this happiness myth, only exposed due to the necessity of its exhibition, determines a relevant change in consuming relations. The purpose of consumption is not using the object acquired, but the pleasure the consuming act provides, referred to a constant and necessary search for happiness, which, in its turn, moves the modern consuming society.

When searching such happiness, goods considered basic for well-being are acquired. This consuming act, since it is able to demonstrate the achievement of the supreme happiness social objective, causes a great satisfaction. This feeling, due to the effect caused in consumers, should be felt again and immediately, justifying new acquisitions.

Satisfaction corresponds, almost immediately, to dissatisfaction, frustration and disappointment, which, in their turn, cause a new search for the



unavoidable feeling of satisfaction, pleasure, and well-being. Searching for this feeling becomes the main, and also the unique, purpose of buyers, inserting them into the consuming rationale (NETO; GIBRAN, 2016, p. 144). Therefore, the fact that consumption provides happiness, through immediate pleasure feelings, as well as creates a process of social identification, is confirmed.

Socially shaped, consumers just see themselves individually and, when take such position, are seen by other consumers and the whole society as well. In this point, trade rationale underestimates the current distinction among “person, citizen and consumer” (PERLINGIERI, 2002, p. 34). Consuming society transfers “the absolute value”, which should be referred just to people and citizens, to consumers, and these, theoretically, should be seen simply and purely as those who are inserted in a circumstantial situation.

A new process builds in consumers a new ability of identification, set apart from any individual and intrinsic element, in which “being” is linked to “consuming”, remaining the rationale that a person is what he/she uses to buy. Thus, consumption does not only produce satisfaction feelings, but also plays a current role of an element, which defines each person’s identity. Nowadays, people recognize and define themselves, and build their own identity, as well as notice and define others, whose identities were also built based on their consuming acts.

Therefore, individuals build their identities based on the consumption of goods and services, since goods consumed are what enable individuals to attribute an identity to themselves or to others. In this context, an unavoidable transformation in consumers occurs internally. Individual freedom is currently defined based on the possibility of consuming more and more goods, satisfying consumers’ intimate desires.

The fact that fundamental rights start to be consistent with the rationale of consuming society has to be observed. Consuming rationale is applied to the most expensive society’s rights, so that those who do not have income - and cannot make financial contributions to the right’s costs mentioned - use to be effectively deprived of these rights. Social security rights can be mentioned as



an example. Individuals who are not able to consume goods, that is, to pay taxes which will be collected to public coffers, do not have such rights recognized, although they are, effectively, basic rights.

In this context, Axel Honneth discusses about social approval, which is refused by society (Honneth, 1987, pp. 66-69). Social exclusion refers to a disrespected individual, who does not have specific rights, and also to his/her degradation, which includes personal self-esteem loss, caused by the fact that he/she cannot see him/herself socially steamed by the others due to his/her particularities.

Those who do not consume goods have more difficulties of being recognized as citizens and, consequently, having their rights respected. Actually, there are individuals without rights being deprived of their own citizenship. This fact produces detrimental effects over their dignity.

3. CREDIT AND INDEBTEDNESS IN CONSUMING SOCIETY

The original rationale says that consuming relation stated that who consumes does have funds. In this scenario, credit was relegated to those who did not have any other way of supporting themselves and their families. However, credit has emerged as an ideal tool to be used in the purpose of overcoming this obstacle.

Under consuming capitalism, the relation between production and mass demand, – which were constantly risen –, signed depletion in a specific moment (BAUMAN, 2008, p. 121). On the one hand, the tireless search for profits by credit suppliers, which determined the constant production increase, and on the other hand, the individual's hunger for consuming new products and services, highlighting the necessity of more funds to make all their desires possible.

In this context, credit supply comes up with a perfect solution, theoretically responding the interests of several credit suppliers and consumers. During post-Industrial Revolution period, credit was, initially, guided to credit suppliers. In that moment, the necessity of guiding credit also to consumers was



also observed, making this action a new pillar of consuming capitalism in a very fast way.

Credit offered for consumption, in large scale, is presented, in this context, as a natural consequence of capitalism system itself, established on the massification of consumption (LAZZARATO, 2006, p. 22-29). Thus, the fact that the world has experienced the constant increase of credit offer to individuals - whose democratization of credit started in United States of America and had spread, right after, to the European Continent, since the mid-20th century, is observed.

Bauman (2008, p. 29) states that we have lived, in the last decades, not only in a consuming society, but also in a “society of credit”, since credit starts to play a role of supporting social inclusion and citizenship. The idea of credit access comes from the presupposition that individuals counts on it, in order to acquire any kind of good, including those which are essential to their livelihood.

It can be verified that credit is constantly offered and contracted without many formalities (usually by credit card). In this framework, consumers count on credit not just as a creditor’s right, that can be provided or not, but as their own right, as if credit was part of their estate. Some people give to credit a character of basic right – basic feature to exercise citizenship –, like the Economist Muhammad Yunys, who presented the credit responsible usage, which promoted microcredit and helped to significantly reduce poverty in Bangladesh. For this reason, Yunys won the Nobel Peace Prize, in 2006 (O GLOBO, 2016).

Nevertheless, it must be observed that credit is currently the best and most profit-maker product of consuming capitalism. The fact that credit suppliers have great interest in the constant provision of credit must not be forgotten, since they have the unique purpose of getting profits, setting any social end of this activity aside.

The analysis of credit’s social importance should be carried out with caution. It may mean, actually, individuals imprisonment, since it refers, necessarily, to a debt. Credit offer is so huge that indebtedness is not an exception anymore, but is presented as a constant social factor.



Credit offer generalization, a result of the dominant economic model evolution, determined an important cultural revolution. Nowadays, the world lives in a culture of indebtedness, so that running up debts is not considered an exception anymore, but a natural, essential and ordinary event, since indebtedness is used by consumers to build their individuality.

Regarding society thought, indebtedness was considered a taboo, an exception, and also a shame for every family (LIMA; FERREIRA, 2015). These characteristics have changed. Currently, earlier and earlier, people become indebted, in order to get more benefits.

In conclusion, credit arises as a tool to be used in the development of economics, based on the emotional effect caused by consumption. The case is that an indebtedness culture has been imposed and spread among people. Credit is not only an economic tool, but also comes up as an element of paradigmatic cultural change in modern times, which comprises the transition from the reality of a saver society to a general over-indebted one.

Currently, credit and, consequently, debt play a role that did not overcome some specific borderlines, which should be respected in order to maintain a healthy social reality, considering their economic, political and cultural aspects. Meanwhile, indebtedness comprises a sociopolitical bias, and it is used to maintain a mass of indebted consumers subdued to a small group of creditors, who possesses the major part of wealth (DAOU, 2004, p. 41).

Indebtedness arises from the relation individually established between creditors and consumers. However, the rationale involved in such power relationship is repeated in many different levels, reaching a global range between poor and rich countries, caused by neoliberal economics, which is developed by a notion of public indebtedness.

4. Contract paradigms in consuming society

Since the social development of consumption has been discussed, the research focuses now on contractual subject guidelines over consuming



relationships, which determine undesirable over-indebtedness scenarios. Over-indebtedness is a scenario in which debtors, also considered individual and honest consumers, are unable to quit their current and future debts, referred to acquisitions made during a specific time, based on their wealth and income, except debts related to crimes and food (MARQUES, 2010, p. 21).

In a context of minimum government intervention, contract relations were guided by the principle of autonomy of parties, introduced by the traditional contract theory (NOVAIS, 2000, p. 34). Industrial Revolution introduced a new way of producing, which was needed in order to guarantee the interests of industrial bourgeois aiming profits. Focusing this purpose, from this moment on, changes occurred in society habits started to be induced, introducing individuals into the consuming age, in large scale.

Facing such consuming scenario, contracts' clauses are then imposed by credit suppliers, which state that consumers could not express opposition. In this context, the existence of a real statement of will - as well as its content - of all parties involved in such consumerist relations is, then, questioned (ROSENVALD, 2016, p. 454). The presence of will is reduced in the contracts, which started to be characterized by aspects increasingly more straight.

The notion of parties' will being set aside constitutes a feature specifically related to contracts celebrated by the emergent consuming society, which are then guided objectively through the adoption of statement idea. Considering a contracts' massification scenario, it is easy to realize the real impossibility of considering and assessing people's will behavior, taking into consideration the amount of contracts and the way they are agreed (ZANETTI, 2015, p. 20-23). Thus, such subjective aspect gives place to an objective one, causing important socioeconomic effects.

The end of parties' priority will is observed, and it determines changes in the current contract model. Such transition, based on contract objective profile, is presented as an essential base to the economic system being established.

A formal establishment of a new contract ordinance passes through the idea of the Social Rule of Law, which is based on the principle that humans are



the main concern of the society, State, and, consequently, Law (NALIN, 1988, p. 188). Then, the new reality demands that all established relations aims also the satisfaction of social interests, as it will be better explained in the next pages. In this context, Contract relations shall be required to play a new role, concerned with impacts on society.

The legislation, which refers to contractual relations established between creditors and consumers, presents then a new conception that comprises contractual relations field. Theoretically, liberal and individualist paradigm is overcome (LEITE, 2016, p. 334). Inside this new context, which states that economic activities should be carried out second its social function, it is true that contracts celebrated must respect such principle.

The new contract ordinance aims to guarantee the establishment of balanced relations, respecting the interests of creditors, consumers and society. From this context, arises the principle of private autonomy (LEITE, 2016, p. 132). Previously, when parties' will, related to the contract – which was strictly liberal and in which legislation played a subsidiary role that just guaranteed the respect to contracts execution –, was adopted in an unrestricted way, the idea of private autonomy was different. At that moment, such idea finds intrinsic connection with the dispositions present in the judicial system.

Previously, contract ordinance respected contractors' will, which was unlimited and applied with the protection of laws. The new contract ordinance, although, is guided by the principle of private autonomy, which states that parties' will is limited by law. Parties' will can be performed only inside the limits established by law (MOTTA, 2010, p. 113). There are principles which guideline contracts that must be highlighted: contract social function, objective good faith, contract balance and contractual justice.

Even when built on the liberal paradigm, contracts become a useful tool to be used in favor of consuming society dominant interests. The paper contracts play on consuming society is so huge that modern society becomes restricted to the market outlines, being developed according to its rationale and used just for their interests. Ricoeur (2015, p. 271) states that: "I must conclude



that, in capitalism age, the dominant ideology is not a religious one anymore, but, precisely, a market ideology”.

Consumption contracts remain being guided by the rationale imposed by the dominant social concern. Against this background, Alain Supiot (2007, p. 38) comments that contracts present different purposes from the regulation of goods interchange and services to protect all parties involved. Modern contracts present as main purpose the maintenance of the power structure established and, therefore, are not able to serve also consumers’ interests.

In such scenario, is not difficult to infer how current consumption contracts will behave. Since contracts are a powerful tool used to perform a socioeconomic domination, their usage only in favor of creditors’ interests is observed, due to the existence of an endless number of contracts, which cannot be questioned by consumers. They are unilateral contracts, and consumers can only accept them or not. (GAGLIANO; PAMPLONA FILHO, 2016, p. 160).

The fact is that the social context presented induces consumers to agree with contracts without being conscious about them, the consuming act, and the effect they cause over society future (SILVA, 2008, p. 45). In other words, individuals are unable, in most part, to reflect about consuming socioeconomic role, and use to accept the game imposed in the contracts by the dominant part of society.

Facing over-indebtedness subject, contracts are useful just to market interests, and so do not comprise related social affairs. The absence of a judicial guardianship for this problematic is a reason for mistrust and skepticism about law and the role contracts should play.

5. Over-indebtedness and human dignity

Credit offer for a consuming society is not, on its own, a problem. By the way, credit can be used and offered according to the guidelines established by the most important principles that guide contractual and consuming subject. It means comfort, freedom and social progress.



Notwithstanding, an alarm should be sounded from the moment in which a great part of population impairs its future income, in order to pay debts, impeding living life with dignity. In this case, constant debt assumption, aiming to acquire different goods and services, inclusively those which are basic to subsistence, determines consumers' over-indebtedness (DELGADO, HALIK, 2016, p. 195).

Using credit to finance the subsistence of people and their families is harmful, being the first step, most of times, to an over-indebtedness scenario (MARTINS, 2007, p. 73). In this context, over-indebtedness is constantly increasing. A problem which was, previously, small, one-off, and personal has become a huge and worrying social problem.

Analyzing the history, we can identify in the beginning of Classical Antiquity, precisely in Ancient Greek, the concept of human being's dignity. The political and philosophical view recognized personality and abilities in all individuals. However, their guardianship was different, according to the social position occupied by them (SARLET; MARINONI; MITIDIERO, 2015, p. 300). Thus, inserted into the society, there were people who deserve more protection or less protection, depending on the group they were inserted.

On the other hand, personality, in ancient Rome, was protected, but it was not recognized. Only Roman citizens had personality, concept referred just to free men and households, excepted women, slavers and strangers (RAMOS, 2016, p. 38). Human being dignity concept is, though, boosted by Christianity, especially by Catholic Church. It was Christian thought that conceived, for the first time, human dignity as something attributed to all individuals, exclusively due to their human condition.

Kant's dignity conception considers very important to comprehend that dignity cannot be set apart from humans. Besides, remains the understanding of Kant that the person is always the target and never the tool (CASTILHO, 2016, p. 146). The evolution of the political and philosophic thought was critical to develop the current dignity conception.



Affirming human being dignity is recent in the legal system. Just during the 20th century, especially after the Second World War, great part of Western constitutions had confirmed such affirmative. Thus, based on political and social claims, most part Western constitutions had included in their texts the principle of human being dignity. Brazilian constitution of 1988 not only affirmed the principle mentioned, but upgraded it, for the first time, to the status of a basic norm (TERRA, 2016, p. 59).

Human being dignity concept is molded according to the circumstances in which is being discussed, as well as needs – constantly, to be changed and transformed –, in order to satisfy human rights and social pacification (RAMOS, 2016, pp. 76-78). The concept is broad enough to comprise all situations presented, always protecting the individual. Specifically, dignity idea must be related to the over-indebtedness caused by the current social status.

The relativization of human being dignity is unconceivable. In this context, it is necessary to comprehend the consequences of the damages related to not safeguarding and depriving from market the over-indebted. Such action produces impacts on economic and social levels. The following act is the inscription of over-indebted data, by creditors, in bases of institutions expert in credit protection (MARTINS, 2011, p. 252; OLIVA; PESSOA, 2016, p. 12). Such inscription impedes them to have access to any kind of credit.

There is a consequence even more harmful than set over-indebted people apart from market, that is, the unaffordability of consuming goods and basic services necessary to the subsistence of themselves and their families (TONATO, 2012, p. 122). In the modern society, characterized by consumption and credit, families' expenses, such as acquiring a housing unit, are made, historically, through indebtedness, although using credit excessively, in order to consume current goods, became a daily practice in the modern society.

Credit has being increasingly offered without red tape, and considered by modern consumers a subjective right; a part of their wealth. (VERAS; ROSA, 2015, pp. 217-227). Setting over-indebted consumers apart from market causes more than their social exclusion, but also impedes their access to the most



basic goods, which are necessary for their subsistence. This represents an evident disrespect to the provision of basic needs, highlighting the necessity of judicial guardianship to human dignity.

In this scenario, all indebtedness situations present also the necessity of judicial guardianship, for example, those that cause an over-indebtedness episode. Then, the act of complying with the contract's requirements means to subdue people to indignity, since to enable such fulfillment, their subsistence becomes impossible to be guaranteed (PEREIRA, p. 562).

The fact that over-indebted consumers are impeded to comply with contract requirements, caused by the disrespect to human dignity principle, determines the end of the contract relation. Since existent legal clauses are solved, a new consuming relationship is contracted, which should be connected with thoughts like social function, comprised by contract clauses, balance, contractual justices and objective good faith.

6. Over-indebtedness guardianship in support of sustainable consuming development

Judicial guardianship of over-indebtedness can be performed by the national judicial system, since it comprises the notion of sustainable socioeconomic consumption. It is not necessary the issue of new laws, although social changes, that determine an effective appliance of norms and judicial principals already established, are important.

The emergence of an economic crisis enables the discussion about sustainability concept, which is, in thesis, one of the concerns of the countries. In general terms, sustainability is related to society concerns about the future and the next generations, focusing on the tripod: environment, economics and society.

Regarding environmental dimension, the notion of sustainability focus on preserving the environment, a good of each and everyone, so it could meet the needs of not only the current generation, but of the next ones, guaranteeing



their quality of life (ROSA, 2010, p. 122-126). Sustainability is related to citizens' welfare, the balance of the relations established among them, and their rights (SANTOS, 2016, p. 92). Sustainability presents a new bias for the consumption, which is just one of the different manners to achieve accomplishments, happiness and dignity in life, as well as promotes human being dignity.

Sustainable economic consumption does not put the economic balance of the State in risk, but enable development in a healthy way. On the other hand, sustainability has been used as a political slogan by the dominant classes, without observing its real dimension (DELGADO; FERREIRA FILHO, 2016, p. 185).

Consuming opposes to sustainability. For this reason, the whole society must change its habits. A social perspective change will enable the development of a sustainable and socioeconomic consumption, and also the improvement of over-indebtedness guardianship by judicial system.

Currently, consuming society focus on development, which represents its distinctive and constant economic purpose, such as consumption and production growth and income per capita growth. In the opposite side, Serge Latouche (2009, p. 7-9) focuses on reduction aspects. In general terms, he emphasizes that unlimited growth, intended by the capitalists to make profits, must be ceased. Regarding the discussion, Bauman affirms that:

I believe that the "reduction" mentioned by Serge Latouche, no matter how rational it is or how advisable it appears to be, is far from being considered a predetermined fact. It is just one of the possible scenarios. If it is going to play a historic role, will depends on what we, its actors and, in a final analysis, its unintended authors, are going to do (BAUMAN, 2008, p. 156).

The current social model, totally focused on searching development, is not sustainable in any aspect. Consuming society is apart from any kind of sustainability, even if related to environment, society or economics (GRANZIERA, 2015, p. 315). In this context, it is proposed the abandon of the



current economic model and the adoption of a new one, based on economic, social and environmental maintenance and recovery.

Cultural change will be the only possible way to eliminate and change social outlines, since the entrepreneurial and economic changes, necessary to the sustainable development, will emerge from it (CORTESE, 2016, p. 121). Changing the focus from the infinite search for development is a basic action, in order to enable building a notion of sustainable socioeconomic consumption.

Such desired development is measurable exclusively by the verification of GDP, not considering any other aspect that composes social rationale. Other factors related to social welfare are also not considered, reflecting which are the values that really matter to the current socioeconomic model. Therefore, society has to search for development, and not only progress (SEN, 2000, p. 55-61). Such development must be related to the idea of sustainability which is aligned with the constitutional principles of State.

7. Entrepreneurial activities social role and over-indebtedness preventive guardianship

The principle of the social function of a company determines that the entrepreneurial activities is carried out not only according to its owner interests, who frenetically searches for economic results, but also to social interests (SANTOS; MENDES, 2016, p. 120). Differently from what is done in the private property, social function allows abandoning the liberal individualism, in favor of meeting social needs.

The necessity that companies perform, together with their economic function, a social function, is observed, so that wealth production, the main purpose of businessmen, comprises owners and not owners, besides draws attention to the interests that go beyond economic subject. Property social function is present in Art. 170 of the Brazilian Federal Constitution, whose economic guidelines determines that the valorization of human work and free



enterprise must be promoted, so that human dignity and social justice is guaranteed (BRASIL, 1988).

In this sense, when fighting for human being dignity and social justice, all entrepreneurial levels are comprised by the constitutional functionalization principle (CASSETARI, 2015, p. 513). Social functionalization and function impose to companies, among other behaviors, an effective promotion of a consumption by citizens that has to prevent, generally, over-indebted individuals.

In this context of valorization of individuals and promotion of dignity, businessmen are expected to promote a conscious consuming behavior (SILVA, 2008, p. 27). From this point of view, consumers cannot be seen as a toll to satisfy profit interests. They must be seen as citizens, with all guarantees and real needs applied to them.

From the companies' social function emerges the obligation of transparency, which states that creditors must be sincere, loyal and honest (GAGLIANO; PAMPLONA FILHO, 2016, p. 515). Then, is up to companies effectively inform to consumers about contract nuances, as well as provide real opportunities of choosing to consume or not, stimulating the reflection about consumers' real needs of goods or services eventually presented to them.

Companies are intended to offer the opportunity to consumers to reflect before contracting, using clear and objective communication. Companies have to advise citizens for consuming consciously (BAUMAN, 2008, p. 58). Based on the principle of companies' social function, consumers are not the only responsible for the consuming act. Such responsibility has to be shared with the State and entrepreneurial community, since consumers may exceed the usage of credit and consume more than their budget can afford.

8. Conclusion

Modern society is essentially characterized by constant consumption and indebtedness. When over-indebted people are set apart from market, they have



their citizenship and dignity set apart as well. In these situations, guardianship is a mandatory measure to be taken in an intended just society.

Currently, Brazilian National Congress is discussing about specific legislation, which can effectively prevent and conciliate over-indebtedness. However, national legislation already present rules that guide such guardianship, although these rules have not been accomplished yet.

State and citizens' actions must have human being dignity as a direction to be followed. Law is intended to defend and promoting welfare for individuals. Entrepreneurial activities present as social role the function of protecting and promoting dignity, as well as all the actors involved.

Good-faith people who overcome their indebtedness capacity must be judicial protected from over-indebtedness. The principle mentioned above is already present in the Brazilian Federal Constitution of 1988, but it still needs effectiveness.

However, its effective implementation depends on a cultural change, able to reshape society. Inserted in a society that reverence consumption and indebtedness, it is very difficult that companies which supplies credit agree to function respecting social aspects. Society has to promote a real revolution on its bases, so that people could see themselves as promoters of social justice and use solidarity to create a more rational society.

The principle of property social function comprises clear and honest actions of creditors. Besides, preventive guardianship is not enough to manage adequately all situations, so that it is essential that a fixing guardianship be performed, which can be judicial or extrajudicial.

The new contractual relation must be presented with more dignity and fewer costs to consumers who lives an over-indebtedness situation, in which Judicial Power is intended to establish the rules of this new obligation.



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