



Human Rights and the penitentiary system in Brazil

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SUMMARY

This course conclusion work analyzes Human Rights and the relationship with the Brazilian prison system. In this way, it briefly discusses the history of Human Rights and the types of penalties that are applicable in the current legal system. It briefly discusses the prison sentence, which can be served in closed, semi-open and open regimes, as well as discusses the purpose of the sentence and its theories, namely: absolute, preventive and mixed. It analyzes the precarious situation in which Brazilian prisons find themselves and the lack of investment by the State. Furthermore, it discusses the inhumane conditions that prisoners live in, their failure to fulfill their resocialized role and a likely solution for this. Finally, regarding the research method, this will be hypothetical deductive, which uses in its design the collection of data from bibliographic sources available in physical media and on the computer network, with the aim of building a critical reflection on the present topic. **Key words:** Human rights. Penitentiary system. State.

ABSTRACT

The present course conclusion paper analyzes human rights and the relationship with the Brazilian prison system. Thus, it briefly addresses the history of human rights and the types of penalties that are appropriate in the current legal system. He briefly discusses the penalty of imprisonment, which can be fulfilled in the closed, semi-open and open regimes, as well as on the purpose of the sentence and its theories, which are: absolute, preventive, and mixed. It analyzes the precarious situation in which Brazilian prisons are located and the lack of investments by the State. Furthermore, it induces about the inhuman conditions that the convicts live together, the not fulfilling the resocialized role and a probable solution to this. Finally, regarding the research method, this will be hypothetical deductive, which uses in its design the collection of data in bibliographic sources available in physical media and in the computer network, to build a critical reflection on the present theme.

Keywords: Human Rights. Penitentiary system. State.

1 INTRODUCTION

This work presents a study on the Brazilian penitentiary system based on human rights, in which the importance of guarantees and rights of inmates is discussed, with a focus on resocialization, as such effectiveness is hampered for various reasons, such as lack of structure in prison establishments, as well as the State's failure to apply resources.

In this way, we seek to propose a reflection on respect for the human rights of the prisoner and on the possibility of his resocialization. Furthermore, human rights and their evident relationship with the prisoner and the State are presented, the latter being mainly responsible for the prison system.

Furthermore, the types of penalties and their sanctions are presented, as well as the main legislation in force in Brazil that deals with human rights, such as the Federal Constitution of 1988, the Penal Execution Law and the Penal Code. Finally, it is shown that the prisoner and society can be the most benefited in terms of the fulfillment of human rights. Thus, we will seek to analyze the real situation of the Brazilian prison system, with the aim of demonstrating that by guaranteeing the implementation of human rights we will have a less inhumane prison system.

twoTHE PENITENTIARY SYSTEM AND HUMAN RIGHTS

1

The Brazilian penitentiary system is currently in crisis, in which its prison establishments do not have infrastructure. Adequate facilities, such as overcrowded cells, which create inadequate conditions for serving the sentence. Thus, the Brazilian Penal Code and the Brazilian Criminal Execution Law govern crimes and their penalties, as well as the purpose of each penalty. Fernando Capez (2012, p 385-386) states that the penalty

[...] is the criminal sanction of a distressing nature, imposed by the State, in execution of a sentence, on the person guilty of committing a criminal offense, consisting of the restriction or deprivation of a legal asset, whose purpose is to apply punitive retribution to the delinquent, promote their social adaptation and prevent new transgressions through intimidation directed at the community.



The penalties are based on guilt and are divided into those involving deprivation of liberty, which are imprisonment, detention, simple imprisonment or a fine, and penalties restrictive of rights. When it comes to this subject, the custodial sentence is the one that best fits when it comes to the penitentiary system, as it is the one that affects the citizen's freedom. In this way, the prison sentence can be served in three different regimes (closed, semi-open and open). Detention can be served in semi-open and open regimes. Finally, simple imprisonment must be served in a special establishment, in semi-open or open regimes.

But before applying such sanctions, it is necessary to know the purpose of the penalty. It is known that punishment is one of the purposes, but according to some scholars, this is not the only effect. In this sense, there are three relevant theories on the subject, namely: absolute, preventive and mixed.

The Absolute Theory is not concerned with the social rehabilitation of the convict, but the penalty is the punishment of the unjust evil committed by the convict, in this case remitting the spirit of revenge. In preventive theory, punishment becomes a means to prevent the recurrence of crimes. Unlike the theory mentioned in the previous paragraph, the problem with this is that, in the present case, the penalty would no longer be proportional to the case committed, without considering the seriousness of the crime. And the mixed theory is the combination of the two theories mentioned above, with the penalty having a dual function, which is to punish the guilty party and to prevent the commission of the crime. This theory was adopted by the Brazilian Penal Code, which is proven in its article 59, caput.

Art. 59 - The judge, taking into account the culpability, antecedents, social conduct, personality of the agent, motives, circumstances and consequences of the crime, as well as the behavior of the victim, will establish, as necessary and sufficient for disapproval and crime prevention: [...].

Therefore, it is clear that the penalty can have the purpose of retribution and prevention. However, in Brazil, the penalty is divided into: prevention, retribution and resocialization. In other words, it must not only punish, but recover, educate and resocialize the convict. As for prisons and sentencing regimes, the Penal Executions Law - LEP (Law No. 7,210/84) stands out, which states in article 82 about penal establishments, noting that these are intended for those who are subject to measures provisional, to those who have been released or are temporarily detained.

Art. 82. Penal establishments are intended for convicts, those subject to security measures, provisional prisoners and ex-prisoners.

§ 1 - The woman will be taken to her own establishment, adapted to her personal condition.

§ 2 The woman and the person over sixty years of age, separately, will be sent to their own establishment, appropriate to their personal condition. (Wording given by Law No. 9,460, of 1997)

§ 3 - The same architectural complex may house establishments for different purposes as long as they are properly isolated. Personal condition.

Furthermore, people who are sentenced to the closed regime must be kept in penitentiaries. Therefore, in accordance with article 34 of the Brazilian Penal Code, they may be subject to work during the day, but within the establishment, however external work, in services or public works, is permitted.

The Penal Code establishes the rules for the semi-open regime, in which, according to article 35, the convict is subject to work during the day, in an agricultural or industrial colony or in some establishment that is similar to those mentioned. External work is possible, as is attendance at supplementary, professional and secondary or higher education courses.

The open regime is based on discipline and a sense of responsibility, as it will carry out authorized activities, outside the establishment and without supervision, but must remain secluded during the night and on days off, in accordance with article 36 of the Code Criminal.

Thus, article 144 of the 1988 Federal Constitution (BRAZIL) states that

Art. 144. Public security, the duty of the State, the right and responsibility of all, is exercised to preserve public order and the safety of people and property, under the aegis of the values of citizenship and human rights, through the bodies established by the Union and the States.

However, Brazil is currently completely far from what is stipulated by law. This disparity occurs precisely because of the lack of penal establishments or, alternatively, the lack of vacancies in these establishments. A reality that is the main cause of overcrowding and neglect of inmates.

Articles 1 and 3 of the LEP (BRAZIL) state that:

Art. 1 The objective of criminal execution is to implement the provisions of a criminal sentence or decision and provide conditions for the harmonious social integration of the convicted person and the interned person.

[...]

Art. 3 The convicted and interned will be guaranteed all rights not affected by the sentence or the law.

Single paragraph. There will be no racial, social, religious or political distinctions.

two

Furthermore, the Federal Constitution of 1988 (BRAZIL) states in its article 5, item XLIX, that "[...] prisoners are guaranteed respect for their physical and moral integrity." Thus, even though he is convicted, he continues to have some of his rights guaranteed, such as the right to life, health, food, housing, clothing, among others.

Furthermore, social assistance is another important guarantee that must be guaranteed to the prisoner, as it supports the prisoner.

and prepares him for his return to social life. The assistance, in addition to preparing for the return to social life, also aims to support the prisoner's family.

Human rights come into play in this context, which has a great influence on the Federal Constitution. Human rights can be characterized as rights inherent to every person and can be called fundamental rights, as they are fundamental to satisfying the main needs of human beings, enabling the person's dignity to be respected.

Erival da Silva Oliveira (1996, p. 24) states that

Human rights are reservations, restrictions or impositions on political power, written in declarations, legal provisions and private and public mechanisms, carried out to ensure respect and achieve the conditions of life that enable all human beings to maintain and develop their peculiar qualities of intelligence, dignity and conscience, and allow the satisfaction of their material and spiritual needs.

An example of human rights is the right to life, which, although it may seem obvious, is the main characteristic for the person to acquire all other rights, being constitutionally provided for, making the State one of those responsible for guaranteeing this right. Therefore, it is clear that human rights are essential for a person to have a dignified life, and without the existence of such rights, human beings are unable to live and develop.

The concept of human rights directly links it to the principle of human dignity, as this principle has the idea that every person must have an ideal minimum so that they can live with dignity. This principle is set out in the Federal Constitution (1988), article 1, which states that "the Federative Republic of Brazil, formed by the indissoluble union of the States and Municipalities and the Federal District, constitutes a Democratic State of Law and has as its foundations: [...] III - the dignity of the human person;"

The dignity of the human person has characteristics similar to those of human rights, therefore, it is important to highlight the characteristics of the topic in question, the main ones being: historicity, competition, unavailability, inalienability, irrevocability, imprescriptibility, indivisibility, interdependence, complementarity and universality.

From this, among the international treaties that deal with human rights, it is clear that the Declaration of Human Rights was influenced by other diverse declarations, and that today, mainly because of the influence of the Vienna Convention, which regulated the treaty processes, it is composed of international protection treaties that aim at an agreement between countries on issues related to human rights.

Richard Bilder (1992, p. 3-5) states that

The international human rights law movement is based on the view that every nation has an obligation to respect the human rights of its citizens and that all nations and the international community have the right and responsibility to protest if a state does not fulfill its obligations. International Human Rights Law consists of a system of international norms, procedures and institutions developed to implement this conception and promote respect for human rights in all countries, worldwide. [...] Although the idea that human beings have inherent fundamental rights and freedoms has long emerged in human thought, the conception that human rights are the proper object of international regulation, in turn, it's quite recent. [...]

Therefore, it can also be seen that, in the case of international treaties, the human rights protection system has four dimensions, which include the celebration of consensus on the need to adopt projects to protect human rights; in addition to the relationship between the legal duties that international laws impose on States; the creation of protection bodies and the creation of strategies to monitor the implementation of rights already guaranteed. The Federal Constitution was impacted by international treaties on human rights, however it was only in 1989, already in the current Federal Constitution, that the first human rights treaty was ratified, which was the Convention on torture and other cruel, inhuman and degrading treatments.

In this exposed context, we enter into the relationship between human rights and the penitentiary system. As already mentioned, there is a custodial sentence in our legal system, which aims to punish the individual and resocialize them.

Within this theme, it is clear that the State has the responsibility to combat crime, applying the appropriate penalties in each case. Foucault (2011, p. 79) argues that one must

[...] make the punishment and repression of illegalities a regular function, extending to society; not punish less, but punish better; to punish perhaps with a lessened severity, but to punish with more universality and necessity; insert the power to punish more deeply into the social body.

3

Therefore, for the State to punish well, the constitutional guarantees of the convict must be respected. Such guarantees are provided for in the Universal Declaration of Human Rights, the Federal Constitution and the Criminal Execution Law.

Thus, it is expected that the State will apply punishment in a way in which the conviction resocializes the convicted person, so that they can return to live in society, but this is not what happens. In fact, it can be said that the model of the current Brazilian system socially excludes the poorest, thus not aiming at the common good for society and the prisoner.

This reality occurs because of omission and non-compliance with laws by the State and other bodies responsible for the system. These are the causes of the main problems in these places, whether structural, such as precariousness of penitentiaries, overcrowding, or administrative problems. This means that prison units do not fulfill their role of recovering convicts for social life.

But there are still other factors that greatly harm the dignity of the prisoner, such as poor nutrition, which is a basic precept for promoting health, and the lack of quality of this food favors the increase in diseases among prisoners.

The Criminal Execution Law in article 41 (BRAZIL), provides for the rights of the prisoner and among these are the rights to food, health care, education, among others. Therefore, one can observe the extent of the disregard for those incarcerated, with, in most cases, all of these rights being violated. It is worth highlighting the understanding of the issue of the bankruptcy of this system, let's see:

The failure of our prison system has been pointed out, rightly, as one of the biggest problems of the Brazilian repressive model, which, hypocritically, sends convicts to penitentiaries, with the proclaimed purpose of rehabilitating them to social life, but already knowing that, upon returning to society, this individual will be more unprepared, out of touch, insensitive and, probably, more willing to commit other crimes, even more violent in relation to the one that led him to prison. (MIRABETE, p. 89, 2008)

However, despite the penitentiary system being bankrupt, there are strategies that can help resocialize the prisoner. The LEP brings some rights so that such resocialization can be carried out, as is the case with work, a right guaranteed to the prisoner. But for it to work, it is necessary to adopt strategies that take into account the personal development of the prisoner, helping him to re-enter society.

Education is also an alternative in the attempt to re-educate the prisoner. Because education is based on their literacy, precisely because of their low level of education, and, in many cases, such education is combined with the purpose of professional qualification so that they can have the possibility of entering the job market after completing of pity.

Therefore, it is clear that the State has a duty to comply with what is set out in the law, as well as provide resocialization practices and, above all, provide the prisoner with a decent living condition. So that the period in which he is imprisoned does not make him more dangerous, but that this time can have a resocializing effect, making the prisoner able to return to live in the community.

CONCLUSION

Prisoners have guarantees and rights to be respected, but the reality is very far from what is found in the law. The precariousness of prisons, overcrowding in cells, mistreatment, lack of hygiene and living conditions, lack of medical assistance, among other problems, highlight the neglect and violation of practically all the rights that Prisoners have a guarantee, guaranteed in treaties on Human Rights, the Federal Constitution and the Criminal Execution Law.

Therefore, we sought to analyze the human rights contained in treaties and in our legal system. Because such rights are essential to the existence of human dignity, regardless of their actions.

Furthermore, there is much to be done in relation to the prison system and the human rights of inmates, starting with the repair and construction of penitentiary establishments, as well as the State's enforcement of laws. Thus, resocialization is the main point, both as a new opportunity for convicts and for the effectiveness of security in society.

Finally, the current reality of the prison system was discussed, analyzing the violation of citizens' rights to verify whether it acts as a factor in the resocialization of the condemned, always in light of the constitution, treaties and laws in force on the respective topic. In this way, it is understood that this restructuring of the penitentiary system will be carried out, complying with the provisions of the Brazilian legal system, mainly with regard to human rights.

However, it depends on the State wanting to change this situation, applying public resources to guarantee education, work, health, among other rights, to inmates, as a way of effectively resocializing inmates.

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