



The social function of punishment and the Brazilian penitentiary system

The social function of penalty and the Brazilian penitentiary system

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Submitted on: 02/28/2023

Approved on: 02/28/2023

Published on: 03/11/2023

DOI 10.51473/ed.al.v3i1.493

SUMMARY

This article was prepared based on the theme of the social function of punishment and the Brazilian penitentiary system, delimiting itself to the Brazilian penitentiary system. The study seeks to answer the problem question: Does the current Brazilian penitentiary system fulfill the social role of punishment? To this end, we started from the hypothesis that the penalty is intended to intimidate potential criminals, punishing and resocializing those convicted, in addition to promoting legal security for the accused and social defense. The relevance for such a study lies in the reality, frequently reported in the media, of the prison system, so that researching, studying and discussing aspects related to punishment and prisons is of interest to society in general, which yearns for greater security. The general objective of this study is to verify whether the Brazilian penitentiary system is capable of promoting the real function of punishment. Seeking to achieve the objective set and answer the problem question, this research was carried out using the bibliographic research technique. **KEY WORDS:** Pity. Prison. Society.

ABSTRACT

This article was elaborated from the theme the social function of the sentence and the Brazilian penitentiary system, delimiting itself to the Brazilian penitentiary system. The study seeks to answer the problem question: Does the current Brazilian penitentiary system fulfill the social role of punishment? For that, it was based on the hypothesis that the purpose of the penalty is to intimidate potential criminals, punishing and re-socializing the convicted, in addition to promoting legal security for the accused and social defense. The relevance of this study lies in the reality, often reported in the media, of the prison system, so that researching, studying and discussing aspects related to punishment and prisons is of interest to society in general, which yearns for greater security. The general objective of this study is to verify if the Brazilian penitentiary system is capable of promoting the real function of the penalty. Seeking to achieve the outlined objective and answer the problem question, the present research was carried out using the bibliographical research technique.

KEYWORDS: Feather. Prison. Society.

1. INTRODUCTION

Throughout the history of humanity, it appears that each civilization has always had a criminal questioning, initially, as a manifestation of the natural reaction of primitive man to preserve his species, his morals and his integrity, then as a means of retribution and intimidation, through the most cruel and sophisticated forms of punishment, until today, when it is intended to assert as a therapeutic and restorative function. With regard to detention, it is observed that it appears in history as a simply preventive measure, where it only later takes on a repressive character and becomes a type of penalty.

In this context, this article was developed on the topic of the social function of punishment and the Brazilian penitentiary system, with the Brazilian penitentiary system as its delimitation. The general objective is to verify whether the Brazilian penitentiary system is capable of promoting the real function of punishment.

As you can see, the way prisons operate has undergone changes over the years, both in the world and in Brazil, until reaching the standards we currently have. Given this, the question arises: Does the current Brazilian penitentiary system fulfill the social role of punishment? Taking as a hypothesis the condition that the penalty is intended to intimidate potential criminals, punishing and resocializing those convicted, in addition to promoting security

legal protection for the accused and social defense.

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In this context, this study is relevant, especially given that according to criminal policy, it is the convict's right to resocialization, promoted upon completion of the sentence. However, growing crime ends up indicating that the Brazilian prison system is not achieving its purpose, so it is justified to discuss issues related to the function of punishment.

The methodology used in the development of this research was based on the hypothetical-deductive approach method, carried out through bibliographic sources available in physical media and on the computer network, presenting the results obtained through a descriptive text.

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2.1 THE SOCIAL FUNCTION OF PENALTY

Penalties have a direct connection with the political and evolutionary movements of the State. According to Queiroz (2014), the discussion about the ends of the sentence is a political topic, since, from the State's perspective, it is one of the forms of political conflict management. And this is proven when observing the change in the nature of punishments, initially of a vengeful nature, that throughout the evolution of society, cruel and inhumane punishments ended up being banned, moving to the torture of the soul. Since "[...] the idea of retribution from society to the delinquent - from the classics - would then be replaced, by the positivists, by the idea of defending society against dangers." (BOSCHI, 2004, p. 108). Culminating with the interpretation that the right to punish is a way of maintaining power on the part of the State, and it is up to it to define how this will happen.

Throughout the history of humanity, it appears that each civilization has always had a criminal questioning, initially, as a manifestation of primitive man's natural reaction to preserve his species, his morals and his integrity; then, as a means of retribution and intimidation, through the most cruel and sophisticated forms of punishment, until the present day, when it is intended to assert itself as a therapeutic and restorative function. The pen has a very ancient historical evolution, "[...] whose emergence dates back to the beginnings of civilization." (OLIVEIRA, 2003, p. 23). Regarding the history of punishment, José Antonio Pagnella Boschi mentions that in the beginnings of humanity there was no "[...] among men any idea, even rudimentary of punishment, and they believed that it was their sins that provoked the wrath of the discontented gods through of the phenomena of nature, and can only be appeased with sacrifices." (BOSCHI, 2004, p. 94). It should be noted that, according to Enio Luiz Rossetto, in the ancient East, penalties were linked to religion. And he quotes "The Code of Hammurabi, [...] 23rd century BC. C., distinguished the punishment for free men and slaves, provided for the composition in some property crimes, with the return of up to three times what had been taken." (ROSSETTO, 2014, p. 4). And also the Code of Manu, in India, founded in the Hindu religion, between 12 and 13 centuries before Christ, where "[...] divine revenge dominates repression to satisfy the divinity offended by the crime." (ROSSETTO, 2014, p. 5). He complements by giving examples of cruel punishments common at that time, based on Shecaira and Corrêa Júnior (2002, p. 26) and ROSSETTO, 2014, p. 4), "throwing into fire (robbery in a fire), nailing a stake (murder committed against a spouse), bodily mutilation (such as cutting out the tongue, cutting out the breast, cutting off the ear, cutting off the hands, gouging out the eyes and take your teeth out)".

It is worth noting that torture sentences were also a reality in Brazil. In fact, Tiradentes can be considered an example of this practice, because, after being convicted, he received the punishment of being taken through public streets until he reached the point where the gallows where he was executed was installed. Furthermore, his family was not allowed to be buried, and his head was exposed hanging from a high pole, and the rest of his body was divided into four parts, which were distributed throughout the city, and remained there until they were completely consumed by time (OLIVEIRA, 2003).

A change in the view of punishment is observed in the Middle Ages, which, under the influence of the fall of the Roman Empire and the invasion of Europe by barbarian peoples, began to view punishment "[...] as reparation for the harm suffered by the victim and as a legitimate reaction of the offended party (revenge)". (ROSSETTO, 2014, p. 11).

From the second half of the century. XVII highlights the emergence where the penalty took on more humanitarian nuances, based on the argument that punishments should be milder and respecting the seriousness of the crimes committed. The idea during this period was not only to alleviate the harsh sentences that were being practiced, thus eliminating the distressing and disgraceful punishments, and mainly, to question the full domination of justice by the monarchy, which was exercised by the figure of the king of absolute way, being allowed to define the punishment he considered appropriate, transforming justice into something uncertain and without any guarantee that it would be respected.

In other words, over time, it was understood that the function of punishment could no longer be public revenge, a consensus emerged that the torture no longer caused the expected horror, therefore no longer serving the role of exemplary, punishing, because in every man, no matter how bad he was, there is some humanity that must be respected. "Finally the authorities realized the futility of the meticulous ceremonial spectacle displayed in the execution of the sentence and that the condemned person should no longer be the target of the punishments." (OLIVEIRA, 2003, p. 41).

Tatiana Viggiani Bicudo (2015, p. 110) explains that in the 18th century, "[...] Criminal Law was constituted as a theory, in light of the nascent State as a strong entity, whose function or role is to establish and maintain social order." "Punishment, in this context, assumes two relevant roles: preventing actions that disturb social peace and limiting the State's discretion in applying criminal reprimands." (BICUDO, 2015, p. 112). And going further, as the author highlights: "Torture is repudiated as a way of obtaining the truth, which must be achieved based on evidence and indications, the values of which will be previously defined by law." (BICUDO, 2015, p. 112).

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Once the State standardizes the penalty, it now has a social purpose and is appropriate to the crime. The penalty assumes the purpose of retribution, “[...] the author’s guilt must be compensated with the imposition of an evil, which is the penalty.” (BITENCOURT, 2003, p. 68). In the same sense, Gimbert Ordieg, cited by Bitencourt (2003, p. 65), “[...] understands that the penalty constitutes an elementary resource that the State has, and which it resorts to, when necessary, to make possible the coexistence in society.”

It is observed that the penalty, for many years, had the purpose of repression, later taking on a prevention function. Currently, reprobation is used in conjunction with social prevention, so that an attempt is made to prevent the offender from committing crimes again. In this sense, the prison sentence takes on a new purpose, understanding that it is not enough to punish the individual, but for the sentence to fulfill its role of social control, it is necessary to guide him within prison so that he can be reintegrated into society in a sustainable manner. effective, thus preventing recurrence.

2.2 PENITENTIARY SYSTEM: ITS EVOLUTION AND CURRENT TIME

Prisons have been present in societies since ancient times, and their characteristics have changed depending on the evolutions undergone by the function of sentences themselves. Initially, detention had a solely preventive character, that is, it sought to isolate the criminal delinquent from society and thus eliminate the possibility of this individual committing new transgressions. It was only later that it was realized that detention could have a repressive character, becoming a type of penalty. As for the penitentiary system, it was created with the intention of complying with crimes committed, but in a legal way and not as it had been practiced at the beginning of the history of civilization. About prisons in ancient times, Oliveira explains that little is known

[...] of primitive prisons, to prevent escape, the prison appears located in the palaces of the kings, in the premises of the temples, in the walls that surrounded the cities; There were even holes used in the form of septic tanks, where the condemned person was sent to be exposed and tortured. There it rotted among the worms. (OLIVEIRA, 2003, p. 47).

John Howard, dedicated his life to studying prison improvements, considered that “[...] the penitentiary model to be followed was that of *Rasphius* it is *Spinhius* of Amsterdam, highlighting the fact that it was the taxes applied to tobacco and drinks that made it possible to pay salaries in prison administration.” (BICUDO, 2015, p. 99). Howard idealized a penitentiary system based on confinement, moral reform through religion, daily work, where the hygienic and nutritional conditions necessary for a dignified human life were present (BICUDO, 2015).

Oliveira (2003) explains that the English criminalist and philosopher, Geremias Bentham, based on Howard studies, presented a model of form prison establishment, known as Panopticon. This system was characterized by a cellular prison, in a radial form, where a single person could monitor the interior of the cells.

According to Bitencourt (2017), in 1790, a new prison regime began: the Philadelphian system, imposing absolute isolation, without work or visits, encouraging only the reading of the Bible. Bitencourt (2017, p. 31) explains that:

A law ordered the construction of a cellular building in the garden of the Walnut Street (preventive) prison (built in 1776), with the aim of applying solitary confinement to convicts. However, the complete cellular system was not applied; isolation in individual cells was imposed only on the most dangerous; the others were kept in common cells; These, in turn, were allowed to work together during the day. The strict law of silence was applied.

Regarding this penitentiary model, Foucault highlights that:

Alone in his cell, the inmate is left to himself, in the silence of his passions and the world around him, he descends into his conscience, interrogates it and feels the moral feeling awaken within him that never entirely perishes in the heart of man. (FOUCAULT, 1987 *apud* OLIVEIRA, 2003, p. 55-56).

In 1821, the Auburn system appeared in New York, unlike the construction of Walnut Street in 1776, this system now allowed work and meals to take place in a common environment; however, it was prohibited visits, leisure and physical exercise. And in 1934 a system emerged that adopted the form of paid work and the regenerative meaning of punishment, it was the Montesinos System (Spain) (BITENCOURT, 2017). According to Bitencourt (2017, p. 40),

Montesinos' penitentiary action has its roots in a genuine feeling towards others, demonstrating an open attitude, which allows the inmate's moral reform to be stimulated. He had firm hope in the possibilities of reorienting others, without turning into harmful naivety; he found the perfect balance between the exercise of authority and the pedagogical attitude that allowed the prisoner to be corrected.

In Switzerland there is also a type of semi-open prison, where convicts were paid, worked outdoors, in a rural area, on a large farm with reduced surveillance. Later, the open prison model emerged. It was a simple residence, where the prisoner only goes to sleep at night, weekends and holidays, being able to work or study all day, still used today in Brazil, known as Hostel (OLIVEIRA, 2003).

After brief considerations about punishment and prison in a broad sense, we turn to the Brazilian penitentiary system, presenting its evolution throughout history, up to the present day.

2.3 PENITENTIARY SYSTEM IN BRAZIL

In Brazil, the Royal Charter of 1769 addresses for the first time the issue of “prison”, which was installed in Rio de Janeiro, and was a house of correction, in which the City Council also operated (PORTO, 2008). In 1784, in São Paulo, even before the regulation of prison sentences, which occurred in 1830, when the Brazilian Criminal Code; Rioters, fugitive slaves and pre-trial detainees awaiting trial used to be incarcerated in an establishment called Cadeia de São Paulo, located in Largo de São Gonçalo, currently known as Praça João Mendes. Just like in Rio de Janeiro, this property also housed the City Council on the top floor (PORTO, 2008).

Porto (2008) explains that the Criminal Code of 1830 regularized the sentences of work and simple imprisonment, and the Penal Code of 1890 abolished the death penalty, thus creating the penitentiary regime with a correctional character aiming at the reintegration of the prisoner into society. . According to Brito (2022, p. 32), the Criminal Code of the Empire, from 1830, regulated some institutes, dealing with

[...] of galley and prison sentences, banishment and exile, as well as fines, already foreseen as a concern for compensation to the victim. He also discussed prison work and the death penalty, permitted at that time, which would be carried out by hanging, after the population paraded the condemned man, and his sentence was read out loud. As for application, he outlined the approach to individualization, when he was concerned about the penalty imposed on women, those under 21 and those over 60, who could have their death and galley sentences commuted to imprisonment with labor.

Motta (2011, p. 81) explains that “In Brazil, the prison sentence is adopted by the Penal Code of 1830; however, the model of institution proposed by the code would only be put into practice from 1850 onwards.”

Regarding the Penal Code of 1890, Souza and Japiassú quote João Batista Pereira who expresses:

Having abolished the death penalty and suppressed life and infamous sentences, he replaced all the penalties in the arsenal provided by the 1830 Code with cell imprisonment, according to Walter Crofton's Irish progressive system. The great novelty of the 1890 revision is the singleness of punishment, the type of which is the cellular prison, at once intimidating, repressive and penitentiary, which became the key to the vault of the entire repressive system. (PEREIRA apud SOUZA; JAPIASSÚ, 2018, p. 38).

“The first Brazilian prison was opened in 1850 and called Casa de Correição da Corte, better known today as Complexo Frei Caneca, in Rio de Janeiro.” (PORTO, 2008, p. 14).

This prison followed the model of Auburn, in the state of New York, which became known for its unique feature of having a single cell. This model consisting of individual cells ended up becoming unfeasible due to the growing increase in the prison population given the limited prison space (BITENCOURT, 2017).

The Brazilian penitentiary system was based on the Irish system, which emerged after the Pennsylvanian and Auburn systems. According to the Irish system, insertion and stay in prison occurred in three stages: initial (isolation), joint work and conditional release (MOTTA, 2011).

Motta (2011) also reports that the Casa de Correição da Corte, in Rio de Janeiro, had as a punitive technique the mandatory work in workshops during the day and isolation in the cell at night. The purpose of the work was to extract the maximum strength from the inmates, forcing them to practice good habits. However, Porto highlights that “[...] the work does not

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it was defined as punishment for the criminal, but as an indispensable agent for the transformation of the individual.” (HARBOR, 2008, p. 14). The objective of isolating prisoners was to break their links with crime, through an environment that provided reflection.

When dealing with the issue of work while serving a sentence, Rossetto (2014) clarifies that Throughout history, the labor activity of the incarcerated corresponded to three major ideologies: religious in nature, work as punishment and work as a fundamental element for the resocialization of the prisoner.

The religious vision understood that work was fundamental for the moral regeneration of the offender, removing idleness, sin and crime, a situation that became evident from the 18th century onwards. The interpretation of work as an element of punishment itself, that is, a punishment within punishment, was the aspect that justified the emergence

of prison with work, as a type of punishment different from simple imprisonment (without work), as provided for in the Criminal Code of 1830 (SOUZA; JAPIASSÚ, 2018).

As Rossetto (2014, p. 39) explains:

The 1890 Code provided for sentences of cellular imprisonment characterized by cellular isolation with work obligations to be carried out in a special establishment (art. 45); imprisonment carried out in fortresses and war zones or military establishments (art. 47); prison with compulsory work, ordered for vagrants and capoeiras to be collected in agricultural penitentiaries or military prisons (art. 48); disciplinary imprisonment for minors up to 21 years of age and carried out in special establishments (art. 49); the banishment penalty abolished in 1891; that of interdiction, suspension and loss of public employment and fine (art. 43, 46, 56, 57 and 58). Established a limit of thirty years for the execution of a custodial sentence (art. 55). The Constitution of the Republic of 1891, therefore, subsequent to the CP, prohibited galley, banishment and death penalties, except for legislation in times of war (art. 72, §§ 20 and 21).

More recently, nowadays, prison work is identified as fundamental to the process of resocialization of inmates; based on the assumption that “[...] if the prisoner’s socialization is essentially prevention of recidivism, there are well-founded hopes that that capacity will contribute decisively to the prisoner being able to lead his future life without committing crimes.” (RODRIGUES, 2002, p. 95). Still on this aspect, Foucault states in his book *Discipline and Punish* that:

Penal labor must be conceived as being in itself a machinery that transforms the violent, agitated, thoughtless prisoner into a piece that plays its role with perfect regularity. The prison is not a workshop: it is, it has to be in itself a machine of which the prisoner-workers are at the same time the cogs and the products; it “occupies” it. (FOUCAULT, 2014, p. 235).

In Foucault's understanding, work must be one of the essential parts of the transformation and progressive socialization of inmates (FOUCAULT, 2014). This is similar to Marcão's perception on the subject, for which work is not a help, but rather an organism that prevents idleness, stating that “[...] the work of the convict has a dual purpose: educational and productive.” (MARCÃO, 2007, p. 26).

Due to the increase in the number of prisoners, in 1904 the idea of building the São Paulo State Penitentiary arose, following Ramos de Azevedo's project, which was inaugurated in 1920, with capacity for 1,200 prisoners, corresponding to the prison population of São Paulo. State at that period. This Penitentiary had work workshops, an infirmary and individual cells, in addition, it also had individualization criteria, with convicts being divided into three wings, one of which was intended exclusively for political prisoners. This prison model caught the attention of scholars from Brazil and around the world, serving as a parameter for the construction of other prisons in Brazil. However, even though they were considered model prisons, the principle of classifying inmates, separating them according to the severity of the crimes committed, was not respected (PORTO, 2008).

In the 1950s, agricultural criminal institutes were created in Brazil, seeking, in this way, to meet the judicial individualization of punishment. In this model, inmates worked in the field during the day and were taken to collective cells at night (PORTO, 2008).

In the 1960s, the Brazilian penitentiary architectural structure no longer followed European and American standards, assuming a version focused on the reality of Brazil. This prison evolution ended up implementing the Pavilion prison system, in which the pavilions were isolated from each other, making it difficult for rebellions to spread. The different forms of prison construction in Brazil have always followed Bentham's idea in 1800, known as the Panopticon, which consists of the possibility of a general view of all units through a central control environment (PORTO, 2008). Regarding this construction model, Rossetto (2014, p. 31) explains that

Bentham was the creator of the architectural project called panopticon, panopticon. A ring-shaped building, which was divided into small cells that opened both inside and outside. A tower was designed in the center of the courtyard where a guard would be located. The guard's gaze could cross the entire cell, see everything without anyone, on the contrary, being able to see him.

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Seeking to standardize the architectural projects of Brazilian prisons, on November 9, 2011, Resolution no. 9, by the National Council for Criminal and Penitentiary Policy, establishing guidelines for the construction of prison units in Brazil. The recommendations expressed in Resolution no. 9, were adopted as a standard project by the Ministry of Justice and the National Penitentiary Department, and this has been the parameter adopted by States in the construction of prison establishments since then (BRASIL, 2011).

One of the challenges related to the prison system concerns the resocialization of inmates at the end of their sentence. The concept of resocialization of the convicted person is always to modify the subject who transgressed a certain law. In this way, the prison system seeks ways of socialization. Resocialization aims to humanize



of the prisoner's passage in the prison institution, implying its theoretical essence, in a humanist orientation, starting to focus on the person who committed the crime as the center of scientific reflection. With this, the aim is to mold the prisoner in a more humane way so that his passage through the prison system implies its theoretical essence, in a humanistic orientation, which, according to José Ribamar da Silva, starts to focus on the person who committed the crime as the center of reflection (SILVA, 2003). For Damásio Evangelista de Jesus, the resocialization model indicates that:

A resocializing model as a rehabilitative system, which indicates the idea of special prevention of the custodial sentence, which should consist of a measure that aims to resocialize the person in conflict with the law. In this system, prison is not an instrument of revenge, but rather a means of more humanitarian reintegration of the individual into society. (JESUS, 2011, p. 95).

The prison sentence determines a new purpose, with a model that points out that it is not enough to punish the individual, but to guide him within prison so that he can be reintegrated into society effectively, thus avoiding recidivism. The social reintegration of the individual who committed the infraction; progression in the execution of the sentence is permitted, according to the behavior of the convicted person, starting from the most rigorous regime to the mildest regime, with the regimes being closed; semi-open; and, open, not necessarily, the sentenced person starts in the closed regime (SILVA, 2003).

However, the Brazilian prison system is marked by what Andrade (2015) calls "inverted effectiveness", since there is a clear structural contradiction between the declared or promised functions that the system does not perform, but which persist with symbolic effectiveness; and real functions that it implements without being declared. This is because it is a system that is structurally incapable of fulfilling the functions that legitimize its existence, such as promoting the protection of legal assets; combat and prevent crime, through punishment, in order to intimidate potential criminals, punishing and resocializing those convicted, in addition to promoting legal security for the accused and social defense.

Brazilian prisons present alarming numbers of recidivism, which is considered one of the major problems to be resolved in this system. A high percentage of inmates return to the prison system after having previously served a sentence (BITENCOURT, 2017).

Thus, prison confinement is a problem of serious proportions and entails harmful consequences for everyone involved, both prisoners, family members, and prison workers. Therefore, it does not represent a legitimate response to problem situations; on the contrary, it itself presents characteristics of a public problem. Taking into account the real situation of penitentiaries in Brazil today. Regarding prisons, Carvalho mentions that:

The prison, as a social institution, can be observed as a 'miniature society', which has its own structure, individuals, cultures, etc. However, even with specific organizational patterns that regulate its ability to meet the ends and social needs that give meaning to its existence, its rhythms and transformations are also determined by the conditions, factors and influences that project it into the broader scenario. of human actions and relationships. (CARVALHO, 2011, p. 33).

Numerous factors have contributed to Brazil's penitentiary system reaching a highly degraded situation. Among the most serious points, abandonment, lack of investment and neglect on the part of public authorities stand out. This combined with the lack of properly qualified personnel to modify the conception of prison rooted in Brazilian culture, as a place where individuals need to pay more than their sentences, their sins, through intense suffering.

CONCLUSIONS

As you can see, the way prisons operate has undergone changes over the years, both in the world and in Brazil, until reaching the standards we have today. In reality, the prison system emerged as a substitute alternative to what was considered an inhumane form of punishment, in which the death penalty and torture were imposed; is far from actually fulfilling the role for which it arose, because the conditions of the penitentiary system

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Brazilian society are far from fulfilling their purpose, which is the recovery of the convict and his resocialization. Therefore, it appears that the prison system, the environment where the sentence is carried out, is more than a protection system, where rights are respected and through which the criminal is punished and the conditions are offered to him so that he can return to fit and capable society; It is a system of human rights violations, reversing the principles of its function. In addition to the problem of overcrowding, several others present and frequent in Brazilian prisons can be listed, such as rebellions, drug trafficking, access to cell phones and also the numerous irregularities reported on several occasions in various media outlets. In fact, it is observed that the prison system, sometimes considered as preventive, has numerous flaws, the perspective of those in State custody is somewhat uncertain. The system is ineffective, therefore, offering conditions for resocialization is the State's duty. It cannot be denied that the purpose of applying the



Unfortunately, more precisely, its effectiveness does not correspond to society's desires, namely the protection of individual and public security.

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