



## The (in)effectiveness of custodial sentences in the resocialization of convicts in the system Brazilian penal

*The (in)effectiveness of the deprivation of liberty sentence in the rehabilitation of the convicted  
in the Brazilian penal system*

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### SUMMARY

The custodial sentence represents one of the most forceful instruments of power state to deal with crime. However, throughout history, this approach has proven to be permeated by contradictions and ineffectiveness. The prison crisis, combined with the increase in recidivism and criminality, reveals that the custodial sentence fails to fulfill its fundamental objectives. In this study, the general objective is to critically analyze the effectiveness of custodial sentence in its resocializing function. The methodology used was documentary, exploratory and bibliographical research. It was concluded that the custodial sentence freedom, in its current form, is anachronistic, ineffective and incompatible with the objectives of a Democratic State of Law.

**Keywords:** Prison sentence, resocialization, rehabilitation, prisoner.

### ABSTRACT

The deprivation of liberty sentence represents one of the most forceful instruments of the state power to deal with crime. However, throughout history, this approach has been permeated by contradictions and inefficiency. The prison crisis, added to the increase in recidivism and crime, reveals that the deprivation of liberty sentence fails to fulfill its fundamental objectives. In this study, the general objective is to critically analyze the effectiveness of the deprivation of liberty sentence in its resocializing function. As a methodology, documentary, exploratory and bibliographic research was used. It was concluded that the deprivation of liberty sentence, in its current format, is anachronistic, ineffective and incompatible with the objectives of a Democratic State of Law.

**Keywords:** Prison sentence, resocialization, resocialization, prisoner.

## 1 INTRODUCTION

The custodial sentence, referred to as imprisonment, represents one of the instruments more forceful measures of state power to deal with crime. Its purpose is to remove temporary right of movement of the individual who committed a crime, aiming to promote resocialization of those who, through their actions, transgressed social norms. However, over the course of history, this approach has proven to be riddled with contradictions and ineffectiveness. Since the early days of society, the practice of incarcerating individuals has shown poor results with regard to social reintegration, causing more harm than good.

It is observed that many of those who receive custodial sentences already carry I have a trajectory of moral degradation, which raises the following question: how can a individual who enters a penitentiary system marked by violence and degradation, return to society restored and prepared for a dignified life? The prison environment, dominated by criminal factions and inhumane conditions, transforms the experience of punishment into a vicious cycle of criminality.

In this context, society seems to forget that, unlike life sentences or death penalty, the reality is that one day the prisoner will return to society. If the objectives of the penalty — punishing and reintegrating — are not achieved, the question then arises: what is the meaning of pity?

The precepts contained in Article 1 of the Penal Enforcement Law (Law 7,210/84) declare that criminal enforcement must provide conditions for the harmonious social integration of convicted. However, the prison crisis, combined with the increase in recidivism and crime, reveals that custodial sentences fail to achieve these fundamental objectives. This occurs in part due to the lack of effective and fair application of legal guidelines, generating consequences both at the individual and social levels.

If the purposes of punishment were relevant to society, we would have more alternatives. effective, such as basic education and vocational courses within prisons. However, the reality is distorted; prison assumes a punitive function, relegating to re-education an illusory character. The supposed security provided by punishment camouflages the essence of penalty, which should be to promote resocialization.

In this study, the general objective is to critically analyze the effectiveness of the custodial sentence freedom in its resocializing function. The specific objectives are: to investigate the disconnection between the theory of law and current practice in Brazilian penitentiaries, questioning whether the current prison system promotes rehabilitation or, on the contrary, functions as a

"school of crime". The intention is to highlight that the urgency of changes in this area is a need to build a safer society.

## 2 THEORETICAL FRAMEWORK

### 2.1 PENALTY THEORIES AND PENITENTIARY SYSTEM MODELS

When investigating the applicability of the custodial sentence, a question arises fundamental: is this punishment capable of achieving its legal and social purposes? To answer this this inquiry, it is essential to carry out an analysis of the theories of punishment existing in law criminal, in addition to identifying which theory is adopted by our legal system.

In the Special Prevention Theory, the aim is to inhibit criminal behavior through interventions aimed at the offender, aiming to prevent him from reoffending in illegal acts (Rieger, 2024). According to Von Liszt (2005), this theory focuses on the resocialization and reeducation of condemned, as well as in the neutralization of individuals considered incorrigible.

Special Prevention should not be seen as an end in itself; its essence lies in the resocialization of the prisoner during incarceration, so that the execution of the sentence contribute to the objectives of negative Special Prevention. In turn, the latter characterized by the neutralization of the offender through segregation in prison, removing him from social interaction and, thus, preventing the commission of new crimes (Lima, 2022).

Zaffaroni (2021) argues that social advocacy aligns with this approach, presenting a more pragmatic character, although it may seem more severe. This occurs because it is impossible to defend oneself against conduct that has not yet begun or whose occurrence is uncertain. The metaphor of the social organism illustrates this view, but it shows that punishment does not benefits everyone; a minority that holds power benefits.

The author states that social sciences demonstrate that secondary criminalization, understood as the repressive-punitive action of state agencies, tends to deteriorate further more the criminalized individual, exacerbating the prisoner's suffering (Zaffaroni, 2021).

Furthermore, there was a belief that "good" individuals should protect themselves from evil beings. considered dangerous, which justified their incarceration. In this context, neutralization was conceived as a form of penal servitude, where the prisoner would be compelled to work in a way that utilize its workforce in the best possible way. It also proposed to remove from it civil rights and impose disciplinary sanctions, such as cell segregation under conditions inhuman.

In contrast, the Positive Special Prevention Theory argues that the penalty must have a resocializing and educational character, aiming at the reintegration of delinquents and the eradication of reprehensible behavior. Here, the focus is on future goals, seeking to prevent recurrence criminal through treatment aimed at reformatting the personality of the convict. This theory is based on concepts such as resocialization, reeducation, reinsertion, repersonalization, reindividualization and reincorporation (Dugatto & Rodrigues, 2025).

The idealization of the resocialization of criminals influenced both penal theory, with the emergence of the correctional school, as to the legal positivity in the reaction system to criminality through custodial sentences. The Penal Enforcement Act expresses, in its articles 1 and 10, the intention of rehabilitating the prisoner:

Art. 1º The purpose of criminal enforcement 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 internee.

Art. 10. Assistance to prisoners and internees is the duty of the State, with the aim of preventing crime and guiding their return to society.

The legislator aimed, by establishing such purpose in the Penal Enforcement Law, to benefit both society — by reducing recidivism and the number of delinquents — and the prisoner, who will be able to reintegrate into society on equal terms with other citizens.

However, in practice, this theory faces severe criticism and difficulties in achieving its goals. objectives, becoming a utopia. Upon entering the prison system, the individual emerges in a worse condition, with a more damaged nature. The purpose of resocialization is compromised by the moral degradation faced by the prisoner in a cruel and inhuman.

The penitentiary approach fails in three main respects: first, its absolute ineffectiveness in the face of precarious living conditions in prisons; secondly, the problems that offender faces in relation to his fundamental rights due to the application of the penitentiary treatment; and third, the lack of adequate resources and trained personnel to implement effective prison treatment (Martinho; Moraes; Campos, 2021).

The Mixed or Unifying Theory, in turn, is the one that is currently in force. Brazilian Penal Code. This theory seeks to integrate the purposes of punishment into a single concept, merging the functions of the theories discussed. Thus, the penalty must punish the offender for his actions, prevent new crimes and promote the resocialization and reeducation of the convicted. Inácio Carvalho Neto (1999) describes this reality by stating that “of the criticisms opposed to these theories so-called mixed or eclectic theories emerged, which try to merge them, mixing the concepts preventive with retributive” (Carvalho Neto, 1999, p. 15).

Paulo José da Costa Jr. (2000) also notes that there is an adherence to the eclectic theory of penalty, characterized as a unification of relative and absolute theory, where the ends intimidating and retributive intertwine, resulting in a resocializing character. For him, "In modern times, an eclectic position has been adopted regarding the functions and nature of punishment. Thus, the retributive and intimidating functions of punishment seek to reconcile themselves with the function resocializing effect of the sanction" (Costa Jr., 2000, p. 117).

Mirabette and Fabbrini (2024) reinforce that punishment, by its nature, is retributive and, therefore, it has a moral aspect. Its purpose is not restricted to prevention, but extends to education and correction. It is through this combination that the penalty can achieve its objectives theoretical that is proposed.

Romeu Falconi (2002) shares this perspective when he states that supporters of theories called UNITARY use some principles from each school. For these authors, the ideal is a double-purpose penalty, aiming at the social reuse of someone who once committed a crime. This is the concept of mixed theories, which accept punishment as retribution, because the criminal committed a harmful act; they consider it as a means of re-educating the criminal.

Thus, it is understood that the Mixed Theory seeks, in the application of punishment, a foundation of a utilitarian nature (preventing new crimes and resocializing the offender) and a basis for moral order (repaying the harm caused), with the aim of the State achieving social security, protect legal assets, promote compliance with the law, warn potential offenders, and ensure the re-education and resocialization of the convicted person.

## 2.2 HUMAN RIGHTS OF PRISONERS AND THEIR LEGAL GUARANTEES

Fundamental rights are consolidated in the constant struggle against domination, exploitation and all forms of aggression against human dignity. It is a search permanent demand for fairer and more supportive relationships. From this perspective, even individuals deprived of liberty maintain their human rights guaranteed, with the exception of freedom in yes. In addition, prisoners have some specific prerogatives, such as the right to silence, which arises from the principle of non-self-incrimination.

The Penal Enforcement Law (Law No. 7,210/1984), in its article 3, is clear in stating that the prisoner is guaranteed all rights not affected by the sentence or by the law itself. The the sole paragraph of the aforementioned article reinforces that there should be no distinction of nature

racial, social, religious or political in the treatment of prisoners. This legislation, although advanced in its normative content, it lacks full application in the daily life of the Brazilian prison system.

The resocialization of prisoners is one of the central principles of the Penal Enforcement Law. In articles 10 and 11, it is established that assistance to prisoners is a duty of the State, with the aim of aim of preventing new crimes and guiding the convict's return to social life. This assistance also extends to graduates and includes several dimensions: material, health, legal, educational, social and religious.

More clearly, articles 40 and 41 of the same law outline the rights of prisoners. Article 40 imposes on all authorities the duty to respect the physical and moral integrity of convicted and provisionally detained. Article 41 lists a set of guarantees fundamental rights, such as the right to adequate food, clothing, paid work, social security, assistance in the mentioned areas, visits, equal treatment, communication with the outside world, legal defense and even the annual issuance of a penalty certificate comply. These rights aim to ensure a minimum of dignity and enable reintegration future social status of the prisoner.

However, when we look at the reality of the Brazilian penitentiary system, we realize that it is known that these rights are far from being guaranteed. Prisoners live, in part, subjected to subhuman conditions, exposed to diseases, overcrowding and lack of adequate care (Rieger, 2024).

Prisons often function as "schools of crime" due to the forced coexistence between perpetrators of crimes of different natures and severities. Furthermore, there is a lack of effective public policies aimed at professionalization and education within the units prisons (Lima, 2022).

It is essential that Article 1 of the Penal Enforcement Act be applied. It establishes that the execution of the sentence must ensure punishment for the crime and preparation for the return of the condemned to society. Resocialization, in this context, must be seen as an obligation concrete action of the State. It is about reducing recidivism rates through actions that promote rehabilitation through formal education, professional training, psychological monitoring and construction of a new social consciousness.

Punishment, therefore, must cease to be a retributive instrument and begin to fulfill its purpose. transformative function. As long as the rights guaranteed remain on paper and are not implemented in practice, the prison system will continue to fail in its constitutional mission and humanitarian.

## 2.3 GENERAL ASPECTS OF PRISON EXPERIENCE

When analyzing the current system of custodial sentences, it is clear that there are several flaws that compromise the achievement of its objectives. It is important to emphasize that these flaws, with criticisms of the classical penal system, have persisted since prison became the main form of punishment in the criminal context.

Both the criticisms and the inconsistencies of the current system contribute to the non-resocialization of inmates, leading, in many cases, to desocialization, which represents a complete impossibility of reintegration into society. When we examine the structure of the system prison and the application of the custodial sentence, it is essential to establish a connection with the human rights that permeate this reality.

The overcrowding of cells, the precarious health, the lack of hygiene, the food inadequate and unsanitary conditions, in addition to the isolation of prisoners, constitute a violation serious violation of human rights (Martinho; Moraes; Campos, 2021). Furthermore, the absence of government initiatives to implement public policies that aim to remedy neglect and The abandonment of the Brazilian prison system is alarming.

The Brazilian prison system consists of a set of establishments intended to the fulfillment of the custodial sentence, the purpose of which should be the reeducation of the convicted, promoting the restoration of his conduct and the reversal of criminal practices. In However, studies indicate that the number of inmates exceeds the number of available spaces (Dugatto & Rodrigues, 2025).

Prison riots can be interpreted as a form of protest, seeking to draw the attention of both the State and society to the humiliating conditions to which prisoners are subjected. However, it is also important to consider the competition for power between criminal organizations within prisons.

It is essential that society adopts a more humane perspective towards incarcerated. The State and society must be aware that neglect and abandonment to which prisoners are subjected in our prisons, result in a double jeopardy. Such a situation is contrary to Article 5, item XLIX, of our Constitution, which ensures that prisoners have their physical and moral integrity respected.

### 2.3.1 Recidivism of former inmates as a consequence of the ineffectiveness of resocialization in penitentiary system

The term "egress", as defined by the Penal Execution Law (LEP) in its article 26, refers to: "I – the definitive release, for a period of 1 (one) year from the departure of the establishment; II – the conditionally released, during the probationary period." This definition is fundamental to understanding the context of the resocialization of individuals who have served their sentences.

The high rate of recidivism is compelling evidence that the custodial sentence freedom fails in its function of social reintegration. Society, which should be a space welcoming to graduates, it often rejects them, excluding them instead of encouraging them to reintegrate. As a result, the only alternative available is delinquency, leading to integration in organized crime (Rieger, 2024).

Although Brazil does not have transparent statistical data on recidivism, it is understood that crime rates remain high. The current prison system has shown its ineffectiveness in rehabilitating and resocializing convicts, contributing to a cycle negative that reinforces harmful values.

The inhumane conditions faced in prisons, such as overcrowding, mistreatment, inadequate food, and violence, both among inmates and by officers prisons, generate trauma (Martinho; Moraes; Campos, 2021). According to Yarochevsky (2005), the belief that an individual who has survived these circumstances will be able to resocialized is naive.

Another point to be discussed is the contradictory purpose of the prison sentence. How is it possible punish and shape appropriate social behavior? How do you re-educate someone who has never had access to education or a healthy environment during deprivation of liberty?

Yarochevsky (2005) argued that Brazilian criminal legislation must rethink the treatment of recidivism, considering its devastating consequences. The author argues that as long as prison is seen as the only solution to crime control, Recidivism will be inevitable, since prison becomes a "factory for delinquents".

Given this situation, the urgency of reforming the penal system is highlighted, through the adoption of alternative penalties. Damásio (1999) mentions that these penalties do not cause stigma, avoid impunity, represent an insignificant burden to the State, reduce the deficit of vacancies in the prison system, removing the convicted person from the harmful prison environment, keeping them within their family and community, thus reducing the recidivism rate.

Thus, alternative sentencing demonstrates significant potential to reduce recidivism rates, showing that incarceration, far from being a solution to crime, often perpetuates the problem (Lima, 2022). If the severity of penalties were the effective response to combat crime, the introduction of the death penalty as a rule would have already eliminated delinquency under the threat of its imposition. Thus, it becomes imperative reflect on new approaches that seek the rehabilitation and reintegration of former inmates into society.

### **2.3.2 Work as a form of resocialization for prisoners**

Resocialization, in the current Brazilian context, seems to be a distant goal and unattainable, due to the precarious reality of our prison system. One of the main obstacles that prevent the effectiveness of resocialization initiatives is the perception that the work, as a tool for this purpose, does not fit into the reality experienced by inmates. Prisoners are left to their own devices, except in critical situations, such as riots, which highlight the neglect, obscurity and failure of the penitentiary system, attracting attention both the State and society.

The work of prisoners was not conceived as a way of aggravating the sentence or harm the prisoner, but rather as a means aimed at the social reintegration of the prisoner. This practice seeks to empower you by contributing to the transformation of your character and personality. Under the economic perspective, work allows the inmate to generate income, while at the same time who uses idle time for their personal and professional development.

The fundamental guidelines established by the United Nations are supported by the Penal Execution Law, which, in its article 31, determines: "Art. 31. The sentenced to a custodial sentence is obliged to work to the extent of his abilities and capacity. Sole paragraph. For the provisional prisoner, work is not mandatory and may only be carried out inside the establishment" (Brazil, 1984).

Work within prison units is therefore mandatory for convicts, always respecting individual abilities. The legislator specified that the obligation of work applies to the convicted prisoner, leaving the provisional prisoner the option of carrying out work activities within the establishment.

The internal work regime is the norm for those sentenced to a custodial sentence, according to their skills, established by means of a classification exam, without disregard the possibility of training through professional courses (Faria, 2012).



As Mirabette and Fabbrini (2024) point out, work in prisons can take on industrial, agricultural or intellectual nature, aiming at the reintegration of the prisoner into society. This purpose justifies the need for the work to take into account the personal characteristics of each individual, avoiding violations of the principle of individualization of punishment.

As provided for in article 32 of the Penal Enforcement Law, its sole paragraph restricts the crafts to low-value products, except in tourist regions, where there is greater potential economic for artisanal production. However, in many prison units, crafts is limited to the creation of decorative utensils with low commercial turnover and profitability, the which ultimately does not contribute to the training of the convicted person. In this scenario, the practice crafts in non-tourist places become a way to occupy the inmate's time (Martinho; Moraes; Campos, 2021).

Considering the mandatory work for convicts, Mesquita Junior (2005) emphasizes that refusal to participate will not result in direct punishment, but will have negative repercussions on obtaining benefits. It is essential that work activities meet the legal and humanitarian requirements in order to prevent the re-education proposal from becoming counterproductive, fostering feelings of antipathy and revolt in individuals already subjected to adverse conditions.

Therefore, it is essential that the Brazilian prison system rethinks its strategies. resocialization, promoting an environment that favors real personal development and professional of prisoners, associated with practices that respect their dignity and potential human.

### 2.3.3 Resocialization of prisoners through study

Although the term *exclusion* is broad and associated with poverty, disability, minorities racial and unprotected, these groups are not always rejected by society. One individual in a situation of extreme economic vulnerability, for example, may still maintain some social inclusion. On the other hand, the excluded are those who do not have access to basic rights such as education, health and housing, or those who, even when away from social life, as is the case in the case of the prisoner, he expresses the desire to reintegrate into society.

The exclusion of prisoners becomes even more evident given the shortage of vacancies and the lack of alternative practices aimed at resocialization, which makes access to work difficult and education within prison units. In addition, there are structural and physical limitations, such as the lack of adequate spaces for educational activities and technical training. Sum-

if this is due to the rigidity of security systems, which prevents the effective implementation of projects educational (Lima, 2022).

Given this reality, it is essential to promote practices that facilitate the reintegration of prisoners. in society in the labor market. These actions must be developed by different sectors of society — educational institutions, private companies, professional associations, religious organizations and non-governmental organizations — and they need to be grounded in three main axes that, when articulated, make an effective resocialization policy viable (Dugatto & Rodrigues, 2025).

The first axis consists of professional qualification and human formation. It is the development of programs that offer technical training and rehabilitation actions psychosocial, combined with basic education based on human and social values. The objective is to prepare the prisoner for his return to society, promoting his citizenship and inclusion productive, in accordance with the constitutional principle that establishes education as a right of everyone and a duty of the State and the family, and should be encouraged with the support of society.

The second axis is related to ethical and moral formation through education. The proposal is to offer the prisoner the opportunity to develop internal ethical principles, reflecting on their conduct and experiencing fundamental values for social coexistence. The education, in this sense, must foster understanding of the relationship between the individual, society and nature, highlighting that every social transformation begins with the inner change of each being human (Lima, 2022).

Finally, the third axis refers to the development of social and behavioral skills. It is necessary to provide the prisoner with learning experiences that promote improvements in their interpersonal posture, focusing on awareness of their actions and the consequences of their actions. Theoretical-experiential training methodologies can contribute to the improvement of social relations, helping to build more positive attitudes empathetic and collaborative.

These three pillars were fundamental for the creation of the Protection and Assistance to Convicts (APACs), as well as for the formalization of partnerships between the Executive Branch, through the State Secretariats of Justice, Citizenship and Human Rights, and various civil entities with the purpose of implementing resocialization practices and social reintegration of prisoners (Rieger, 2024).

In this context, the reduction of the sentence through study is more advantageous to the prisoner. According to the legislation, every 12 hours of study, distributed over at least three days, generates the remission of one day of the sentence. On the other hand, to achieve the same remission through

of work, three days of work activity are required, with daily shifts between six and eight hours (according to article 33 of the Penal Execution Law), which totals at least 18 hours of work to obtain a one-day reduction in the sentence.

## FINAL CONSIDERATIONS

Since its origin, the penalty has had as its primary purpose punishment, characterized by cruel, inhuman and disproportionate practices. In the past, physical punishment, torture and other degrading forms were accepted as a response to crime.

With the advancement of humanity and Enlightenment ideas in the 18th century, a movement to humanize Criminal Law, with the proposal of rational, proportional penalties and aimed at the prevention and reintegration of offenders. However, despite theoretical advances and normative, the Brazilian reality shows that the custodial sentence, as it is applied today, it fails to achieve its main resocializing function.

The Brazilian penal system is showing itself to be bankrupt by insisting on a model of incarceration which, in addition to being ineffective, perpetuates exclusion and marginalization. Prison, instead of offering a environment of social reconstruction, becomes a school of crime, where forced coexistence, lack of opportunities and subhuman conditions reinforce criminal behavior.

Recidivism, which affects around 70% of ex-prisoners in Brazil, is clear proof of the inefficiency of prison sentences as a mechanism for social reintegration. Instead of returning to society a rehabilitated individual, the prison system returns an even more human being stigmatized and distant from the real possibilities of inclusion.

Upon entering prison, the prisoner loses his physical freedom and social and family ties. and professionals, starting to adapt to a new social order imposed by the dynamics inmates of the prison. When he returns to society, he finds a society that rejects him, making their reintegration even more difficult. The custodial sentence, therefore, becomes a instrument of permanent exclusion, which aggravates the problem instead of solving it.

Furthermore, Brazilian prisons face an alarming structural overload, with overcrowded units, without minimum infrastructure to guarantee human dignity, very less adequate conditions for fulfilling the resocializing purpose of the sentence. The physical suffering gives way to psychological suffering, marked by loneliness, lack of meaning and the lack of prospects, which undermines any real claim to re-education.

It is no longer possible to sustain the illusion that incarceration, by itself, transforms the delinquent into a citizen. The investment in physical resources in the penitentiary system, without a

structural reformulation, will not bring the expected results. The solution to the crisis of the system Brazilian penal system is not in expanding the repressive apparatus, but in adopting measures effective, rational and humane measures that seek viable alternatives to incarceration, in cases in which imprisonment is not justified by the seriousness of the crime.

In this context, it is necessary to rethink the role of custodial sentences, replacing it, whenever possible, with alternative penalties with real educational potential, such as compulsory work in a closed regime, compensation for damages caused, inclusion in courses professional and educational training, as well as the expansion of APACs, a model that already demonstrates significant results in terms of resocialization.

Finally, it is understood that the necessary transformation goes beyond the prison system. It is we need to rethink the social bases, with a better distribution of public resources, access universal access to quality education, comprehensive protection for children and adolescents, and policies effective public policies for social inclusion. Crime is, in part, the result of inequality and social neglect, and combating it requires a response that goes beyond punishment.

The custodial sentence, in its current form, is anachronistic, ineffective and incompatible with the objectives of a democratic state governed by the rule of law. While the penal system insisting on an exclusionary, punitive and inhumane model will continue to fail in its mission essential: promote justice, resocialization and security for all.

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