



THE IMPACT OF PRE-PRISON IMPRISONMENT ON PENAL SELECTIVENESS AND MASS INCARCERATION IN BRAZIL

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Summary: This article investigates the impact of pretrial detention on the worsening of criminal selectivity and the phenomenon of mass incarceration in Brazil, focusing on the disproportionate consequences for vulnerable populations, especially black people and people living in poverty. Through a qualitative approach, the study uses a literature review and critical analysis of secondary data to understand how the application of pretrial detention reinforces the cycle of social and criminal exclusion, highlighting the racist and unequal structure of the Brazilian justice system. It starts with a theoretical analysis of the concepts of criminal selectivity and mass incarceration, advancing to a critical discussion on the effects of pretrial detention on the perpetuation of prison overcrowding and human rights violations. The research also presents reflections on the inadequacy of pretrial detention as a procedural tool and proposes legislative alternatives and public policies that aim to mitigate its impacts, such as the use of diverse precautionary measures and the prioritization of strategies that promote racial and socioeconomic equity in the penal system. It is concluded that pre-trial detention, instead of fulfilling its function of guaranteeing public order, reinforces the punitive culture and structural exclusion, demanding an urgent review of its applications and a reorientation of the criminal justice system.

Keywords: Early Detention; Penal Selectivity; Mass Incarceration; Vulnerable Populations; Criminal Justice in Brazil.

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Abstract: This article examines the impact of pretrial detention on the exacerbation of criminal selectivity and the phenomenon of mass incarceration in Brazil, focusing on its disproportionate effect on vulnerable populations, particularly Black individuals and those living in poverty. Using a qualitative approach, the study employs a bibliographic review and critical analysis of secondary data to understand the use of pretrial detention reinforces the cycle of social and criminal exclusion, highlighting the different structure of Brazil's justice system. Furthermore, it reflects the inadequacy of pretrial detention as a procedural tool and proposals legislative alternatives and public policies aimed at mitigating

its impacts, such as the use of alternative precautionary measures and prioritizing strategies that promote racial and socio-economic equity in the criminal justice system. The study concludes that pretrial detention, rather than fulfilling its purpose of maintaining public order, reinforces punitive culture and structural exclusion, underscoring the urgent need for its reform and a reorientation of the criminal justice system.

Keywords: Pretrial Detention; Criminal Selectivity; Mass Incarceration; Vulnerable Populations; Criminal Justice In Brazil.

Introduction

Criminal justice in Brazil finds itself in a scenario marked by prison overcrowding, with the country occupying the third position in the world ranking of incarceration, according to data from INFOPEN (2021). In this context, pre-trial detention, originally provided for as an exceptional measure in the Code of Criminal Procedure (art. 312), has been applied indiscriminately, reflecting the punitive nature of the penal system. This procedural instrument, instead of preserving fundamental rights, has become a mechanism that reinforces social and racial inequalities, exposing the weaknesses of judicial management in the country. Authors such as Adorno (1995) and Batista (2011) have already highlighted how the Brazilian penal system is selective and acts as a device of social control, especially over vulnerable populations. Thus, discussing the impact of pre-trial detention on mass incarceration is essential to understanding the dynamics of exclusion that permeate the justice system in Brazil.

The phenomenon of criminal selectivity is one of the central pillars of this problem, characterized by the disproportionate action of the justice system on certain social groups. Studies such as those by Zaffaroni (2011) and Baratta (2002) point out that criminal selectivity is not just a deviation or failure of the system, but a structural strategy that perpetuates inequalities. In Brazil, pre-trial detention has stood out as one of the main instruments that materialize this selectivity, contributing to the uncontrolled increase in the prison population, composed mostly of black people and low-income individuals. This reality is illustrated by the fact that approximately 66% of the Brazilian prison population is black, according to data from the Brazilian Public Security Forum (2023), indicating that prisons reflect structural racial and socioeconomic hierarchies.

The indiscriminate application of pre-trial detention reinforces the culture of incarceration, under the pretext of ensuring public order and preventing criminal repetition. However, the lack of clear criteria and the disrespect for the presumption of innocence, guaranteed by the 1988 Federal Constitution, have transformed pre-trial detention into an anticipated punishment, often disproportionate and ineffective. The criminal selectivity that permeates these judicial decisions not only exposes the

inequality of treatment between the rich and the poor, but also contributes to the perpetuation of social stigmas that hinder the social reintegration of the accused. This is the point at which this article problematizes: how pre-trial detention, when applied excessively, acts as one of the drivers of mass incarceration and the maintenance of social inequalities in Brazil.

Given this situation, this article is justified by the need to deepen the debate on the impact of pretrial detention, with an emphasis on the consequences for vulnerable populations, especially black and poor people. Brazil's history is marked by structural inequalities that permeate the justice system, perpetuating cycles of exclusion. As Almeida (2019) argues, structural racism is one of the central foundations of penal selectivity, which explains why black and poor people are the greatest victims of incarceration policies. The analysis of this topic, therefore, is essential to understand the persistence of inequalities in the criminal justice system and to propose alternatives that can reduce the harmful effects of pretrial detention on these populations.

The main objective of this article is to critically analyze the impact of pretrial detention on the worsening of criminal selectivity and mass incarceration in Brazil, with a focus on black and poor populations. The aim is to explore how this practice, far from ensuring public order, serves to reinforce the punitive culture and aggravate social and racial inequalities. In addition, the work aims to discuss legislative alternatives and public policies that can mitigate these impacts, contributing to a more fair and equitable justice system.

The methodology used is based on a qualitative approach, with a bibliographic review and critical analysis of secondary data. The literature review includes reference works on criminal selectivity and mass incarceration, such as the works of Zaffaroni (2011), Baratta (2002), Adorno (1995) and Batista (2011), as well as contemporary studies on structural racism, such as Almeida (2019) and Santos (2021). The data used were collected from official reports, such as those from INFOPEN and the Brazilian Public Security Forum, as well as relevant case law and scientific articles. The objective is to construct a dense and well-founded analysis that highlights the weaknesses of the Brazilian justice system and points out ways for its reformulation.

1. Contextualization: Early Detention and the Brazilian Penal System

1.1 Concept of early arrest

Pre-trial detention, legally known as preventive detention, is a precautionary measure provided for in Article 312 of the Brazilian Code of Criminal Procedure, characterized as a form of deprivation of an individual's liberty before a final conviction is handed down. This measure is based on the protection of public order, economic order, the guarantee of the application of criminal law or the convenience of criminal investigation. Its exceptional nature is supported by the principle of the presumption of innocence, enshrined in Article 5, LVII, of the 1988 Federal Constitution, which requires rigorous judicial analysis for its application. Despite this, the practice demonstrates a frequent and often disproportionate application, distorting its exceptional nature and highlighting the inequalities inherent in the Brazilian criminal system.

Preventive detention is distinguished from other types of precautionary detention, such as temporary detention and arrest in flagrante delicto, by its specific purposes and requirements. While preventive detention seeks to prevent risks to public order, the application of criminal law or criminal proceedings, temporary detention, regulated by Law No. 7,960/1989, is intended to facilitate investigations in cases of serious crimes, with a limited time limit and specific conditions for its decree. On the other hand, arrest in flagrante delicto, provided for in art. 302 of the Code of Criminal Procedure, occurs when the individual is caught committing or has just committed a crime, and is a more immediate measure and less subject to judicial interpretation.

However, pretrial detention often exceeds the limits imposed by law. Studies indicate that, in many cases, it is decreed as a way of anticipating the sentence, disregarding constitutional principles and procedural guarantees. Oliveira's (2020) analysis reveals that Brazilian judges often use pretrial detention automatically, based on generic arguments about the seriousness of the crime or public outcry, without meeting the specific criteria established by the Code of Criminal Procedure. This practice reinforces criminal selectivity, disproportionately impacting marginalized populations.

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Criticism of the excessive use of pre-trial detention is not new. Zaffaroni (2011) argues that pretrial detention is a reflection of the punitive model of the Latin American penal system, which favors incarceration as a solution to public security issues. In Brazil, this approach results in a scenario

alarming: of the more than 800,000 prisoners in the country, around 30% are pre-trial detainees, according to INFOPEN (2021). These data demonstrate a procedural practice that disregards constitutional precepts, contributing significantly to the worsening of the problem of mass incarceration.

Another relevant issue is the lack of uniformity in the application of pretrial detention among different social groups. As Batista (2011) points out, there is a clear selectivity in the Brazilian penal system, in which pretrial detention is more frequently decreed against black, poor individuals and those without access to adequate legal defense. This structural bias reflects the institutional racism and economic inequality that permeate the justice system, contributing to the reproduction of stigmas and social exclusion.

Furthermore, pretrial detention, when applied disproportionately, undermines the credibility of the justice system and violates human rights. Studies conducted by the Brazilian Public Security Forum (2023) indicate that prison overcrowding, aggravated by pretrial detention, generates degrading conditions in prisons, violating international standards on the treatment of prisoners, such as the Mandela Rules. This scenario highlights not only the failure of the penal system to fulfill its basic functions, but also its role in perpetuating structural violence.

Temporary detention, although less common, also has significant criticisms. Its use is limited to serious crimes and the investigative period, but in practice it is often used as a form of psychological pressure to obtain confessions, as reported by Santos (2021). Despite its strictly limited term, there are cases of abuse in its application, especially against individuals who are not aware of their rights or have access to an effective technical defense.

Arrests in flagrante delicto have a different dynamic, as they do not require judicial authorization and are ordered immediately after the crime is confirmed. Although they may seem more objective and less subject to arbitrary judicial interpretations, their execution can also be selective. Almeida (2019) highlights that the police approach that results in arrests in flagrante delicto is often influenced by racial and social stereotypes, which contributes to the maintenance of structural inequalities in the penal system.

Thus, the analysis of pretrial detention and its related modalities demonstrates how the Brazilian penal system operates unequally, reproducing social and racial hierarchies. The abuse of pretrial detention, in particular, not only violates constitutional principles, but also contributes to the perpetuation of mass incarceration and the worsening of prison conditions. This reality demands an urgent review of procedural practices and public policies, in order to align the Brazilian penal system with the precepts of justice and equality enshrined in the Federal Constitution.

By understanding the differences between preventive, temporary and flagrant detention, it becomes clear that the main challenge lies in the careful and balanced application of these instruments. Although legally provided for as exceptional measures, practice reveals a mismatch between the legal ideal and social reality, highlighting the need for structural changes in the Brazilian penal system.

1.2 Legislative and jurisprudential developments

The analysis of pre-trial detention in the Brazilian context necessarily involves understanding the changes promoted by Law No. 13,964/2019, known as the Anti-Crime Package, which brought significant innovations to the Code of Criminal Procedure (CPP). This reform aimed to reinforce procedural guarantees and balance the application of pre-trial detention, particularly preventive detention, in line with the constitutional principles of the presumption of innocence and proportionality. One of the main changes was the inclusion of art. 310, §4, in the CPP, which determined that the judge, upon receiving the report of arrest in flagrante delicto, must assess the need for conversion to preventive detention in a reasoned manner, avoiding generic decisions that disregard the legal criteria.

Another important step forward was the introduction of Article 282, §6, which prioritizes the application of precautionary measures other than imprisonment, such as electronic monitoring and house arrest, reinforcing the idea that pretrial detention should be a measure of last resort. However, in practice, there is still resistance to implementing these changes, partly due to the punitive culture that permeates the Brazilian justice system.

Case law also plays a crucial role in the interpretation and application of rules regarding pre-trial detention. Recent decisions by the Supreme Federal Court (STF) and the Superior Court of Justice (STJ) have sought to

balance the protection of fundamental rights with the need to maintain public order. The STF, in the judgment of Habeas Corpus No. 126,292, reaffirmed that preventive detention must be based on concrete elements, and the abstract gravity of the crime is not enough. This position is reiterated in HC No. 188,820, in which the court reinforced the need for a detailed analysis of the adequacy and proportionality of the measure.

The STJ, in turn, has been addressing issues related to prison overcrowding and abuse in the imposition of pretrial detention. In decisions such as Resp No. 1,932,566, the court highlighted the importance of alternative measures to imprisonment and condemned practices that result in the indiscriminate use of pretrial detention, especially in cases involving defendants with no criminal record or belonging to vulnerable groups. These decisions reveal an attempt to mitigate the effects of criminal selectivity and mass incarceration, although the results are still limited.

However, the effectiveness of legislative changes and case law decisions faces challenges in practical application. According to data from the CNJ (2021), more than 40% of prisoners in Brazil are pre-trial detainees, highlighting the gap between the normative discourse and the reality of the penal system. This discrepancy reinforces the need for a collective effort to overcome the culture of incarceration and build a more fair and equitable justice system.

1.3 The role of pre-trial detention in the penal system

Pre-trial detention fulfills both declared and hidden functions within the Brazilian penal system, proving itself both as a legitimate legal instrument and as a mechanism of social control. In its declared function, pre-trial detention seeks to safeguard public order, criminal investigation and the application of criminal law. These purposes are detailed in art. 312 of the Criminal Procedure Code, which makes its application conditional on the presence of concrete evidence of authorship and materiality of the crime, in addition to specific risks, such as the possibility of the accused fleeing or repeating the crime.

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However, in practice, pre-trial detention often transcends these formal functions, assuming a hidden role as an instrument of social control, especially against marginalized populations. This reality is widely analyzed by authors such as Nilo Batista (2011), who argues that the penal system

operates as a selective device, focused on containing certain social groups, especially black and poor people. Criminal selectivity is evidenced by the greater likelihood of pre-trial detention for defendants belonging to these populations, even for less serious crimes, such as theft and petty trafficking.

Furthermore, the indiscriminate use of pretrial detention reflects and reinforces the criminalization of poverty in Brazil. Research by the Brazilian Public Security Forum (2023) shows that individuals with low incomes and without access to qualified legal defense are more likely to remain in pretrial detention for long periods, even in situations where precautionary measures would be more appropriate. This dynamic reveals that, instead of protecting society, pretrial detention often acts as a mechanism of social exclusion, reproducing structural inequalities.

The logic of social control is also evident in the discourse that justifies pre-trial detention on the basis of “maintaining public order.” This expression, often used in court decisions, is criticized for its vagueness and for allowing broad and subjective interpretations, which can be influenced by racial and social prejudices. As Foucault (1987) notes, the penal system not only punishes, but also regulates behavior and reinforces social hierarchies, with pre-trial detention being an effective tool in this process.

On the other hand, pre-trial detention is also a response to public outcry and media pressure in high-profile cases. This external influence often results in decisions based more on the desire to demonstrate efficiency in combating crime than on an objective analysis of the circumstances of the case. In his work on punitive power, Zaffaroni (2011) warns of the risks of judicial decisions based on public security discourses, which tend to legitimize authoritarian practices and expand the scope of the penal system.

In this sense, the hidden role of pretrial detention highlights a mismatch between its legal purpose and its practical application. The Brazilian penal system, by prioritizing pretrial detention as the standard response to crime, neglects fairer and more effective alternatives, such as precautionary measures. This punitive approach not only perpetuates mass incarceration, but also undermines the credibility of the justice system by treating citizens unequally based on their racial origin and socioeconomic status.

Thus, the analysis of the role of pretrial detention in the penal system reveals its duality as a legal tool and a mechanism of social control. To overcome these contradictions, a paradigm shift is essential that prioritizes proportionality and respect for fundamental rights, ensuring that pretrial detention is applied judiciously and in accordance with constitutional principles.

2. Criminal Selectivity in Brazil

Criminal selectivity in Brazil is a widely discussed phenomenon in the field of critical criminology, highlighting how the criminal justice system operates unequally by disproportionately punishing certain social groups. This characteristic is closely linked to processes of stigmatization and social control, which reflect the country's structural inequalities. The analysis of this topic requires a grounded theoretical approach, with emphasis on the concepts developed by Zaffaroni and Baratta, in addition to a discussion of the racial and socioeconomic impacts that make criminal selectivity a central problem in the debate on criminal justice.

2.1 Definition and theoretical foundations

Criminal selectivity, according to Zaffaroni (2011), is intrinsic to the penal system, manifesting itself from the formulation of laws to their practical application. In his work *In search of lost feathers*, the author highlights that criminal law, far from being neutral, is structured in such a way as to privilege the interests of the dominant classes, directing the punitive focus to the most vulnerable sectors of society. For him, "the penal system is not intended to control crime in general, but to manage the marginalized segments of the population".

Baratta (2011), in *Critical Criminology and Criticism of Criminal Law*, complements this view by arguing that the criminal justice system functions as a mechanism of social labeling, where individuals belonging to the lower classes of society are stigmatized as "dangerous". This labeling reinforces social exclusion and legitimizes control practices, transforming the penal system into a tool for maintaining existing inequalities. Baratta emphasizes that "the hidden function of the penal system is the reproduction of social and economic hierarchies, masked by the discourse of protecting society".

Criminal selectivity is also directly related to the concept of social stigmatization, widely debated by Erving Goffman (1963). According to him, stigma operates as a social mark that reduces the individual to negative characteristics, dehumanizing them and justifying their exclusion. In the criminal context, this dynamic is evident in the association of certain groups with criminality, such as young black people from the outskirts of the city, who are often portrayed as "threats" by the media and justice institutions.

This selectivity is evident at every stage of the criminal process. From the police approach, where skin color and place of residence become criteria for suspicion, to the trial, where the absence of a qualified technical defense results in a greater likelihood of conviction, the selective standards of the criminal justice system reflect Brazil's exclusionary social structures.

2.2 Racial and socioeconomic breakdown

The disproportionate impact of criminal selectivity on black and poor populations in Brazil is a direct reflection of the structural racism and socioeconomic inequalities that characterize the country. Silva Júnior (2019) points out that the racial composition of the Brazilian prison system is indicative of a criminalization of poverty and color: "The data reveal that more than 60% of the prison population is black, demonstrating how the penal system reproduces the historical racial hierarchies of our society."

This phenomenon is widely discussed by Santos (2021), who highlights how structural racism permeates all Brazilian institutions, including criminal justice. He argues that "criminal selectivity is not a deviation or a failure of the system; on the contrary, it is the essence of the functioning of a system designed to perpetuate racial and social inequalities." Police approaches and preventive arrests, for example, preferentially target young black people living in urban peripheries, perpetuating cycles of poverty and exclusion.

Almeida (2019), in his work *Structural Racism*, explores how the history of slavery and racial segregation in Brazil influences contemporary practices in the justice system. He emphasizes that "criminal selectivity operates as a continuation of the forms of control exercised over the black population since the formal abolition of slavery, updated in the discourse of fighting crime". For Almeida, the relationship between poverty, race and crime is a social construction that sustains mass incarceration.

Furthermore, the Brazilian penal system often neglects the contexts of vulnerability that lead poor and black individuals to become involved in situations of conflict with the law. Studies show that most pre-trial detainees are accused of property crimes or drug trafficking-related crimes, often motivated by conditions of extreme poverty. However, as Silva Júnior (2019) observes, "Brazilian justice is relentless with petty crimes while showing leniency towards white-collar crimes, perpetuating inequality."

The impact of criminal selectivity can also be seen in unequal access to legal defense. Individuals with greater purchasing power have the resources to hire experienced lawyers and build a robust defense, while the poor depend on government legal aid, which is often overburdened and inefficient. This disparity results in higher conviction rates for the most vulnerable, reinforcing the exclusionary nature of the criminal justice system.

In short, criminal selectivity in Brazil is a phenomenon that transcends legal issues, reflecting the structures of power and exclusion that characterize Brazilian society. Analysis of this issue requires not only a critique of the functioning of the justice system, but also a reflection on the historical and social roots of the inequalities that it perpetuates.

2.3 Criminal selectivity statistics

Statistical analysis of criminal selectivity in Brazil reveals the depth of inequalities that permeate the criminal justice system. Using data provided by INFOPEN (National Penitentiary Information System), it is possible to identify patterns and trends that confirm the disproportionality of incarceration in relation to racial, social and economic groups. This information, when subjected to critical analysis, demonstrates how the application of laws and penalties reinforces social hierarchies and marginalizes the most vulnerable groups.

According to INFOPEN, Brazil has the third largest prison population in the world, with more than 800,000 people incarcerated in 2022. Of this total, approximately 66% are black, while the black population represents 56% of the country's total inhabitants (IBGE, 2021). This racial overrepresentation in the prison system is a clear indication of the impact of structural racism on the functioning of the penal system. Furthermore, 51% of prisoners do not even have the

complete primary education, highlighting the correlation between low levels of education, poverty and incarceration.

The data also show that a large proportion of prisoners in Brazil are under pre-trial detention, meaning they have not yet been definitively tried. According to a 2019 survey by INFOPEN, approximately 30% of the country's prison population is made up of pre-trial detainees. This statistic highlights the abusive use of pre-trial detention as a common practice in the penal system, aggravating mass incarceration and violating the principle of the presumption of innocence. Keeping individuals in degrading conditions for long periods before trial highlights the failure of a model that prioritizes incarceration as an immediate response to social problems.

An analysis of the offenses that lead to incarceration is also revealing. According to INFOPEN, approximately 28% of prisoners are incarcerated for crimes related to drug trafficking, with the majority of these cases involving small amounts of narcotics. This trend reinforces criticism of the selective criminal justice system, which focuses efforts on incarcerating small-time drug traffickers or users, instead of directing resources to combat organized networks and large-scale trafficking. This practice not only criminalizes poverty, but also ignores the social and economic roots that lead to involvement in illicit activities.

Another relevant aspect is the overcrowding of Brazilian prisons. The national penitentiary system operates with an occupancy rate of 167%, according to 2021 data from INFOPEN, which means that there are almost two people occupying the space intended for one. This overcrowding affects pre-trial detainees and those convicted of minor crimes most severely, often young black people from urban outskirts. As Silva Júnior (2019) rightly points out, "prison overcrowding is the physical reflection of penal selectivity, which makes prison the preferred destination for poor black youth in Brazil."

Furthermore, statistics reveal a striking disparity in the treatment of white-collar crimes compared to property and drug-related crimes. While the former, usually committed by individuals from the upper classes, rarely result in imprisonment, the latter are a priority target of penal policies. Data from the National Council of Justice (CNJ)

point out that less than 1% of those incarcerated are charged with financial or corruption crimes, confirming the system's tendency towards leniency towards economic elites.

A critical analysis of these statistics allows us to question the effectiveness of the penal system in fulfilling its stated functions, such as maintaining public safety and social rehabilitation. Instead, the numbers point to a system that operates as a mechanism of selective social control, aimed at marginalizing and imprisoning vulnerable groups. As Baratta (2011) notes, “the data demonstrate that the penal system is not only selective, but deeply discriminatory, reaffirming the structural inequalities it was intended to combat.”

In short, statistics from INFOPEN and other reliable sources illustrate the structural flaws in the Brazilian penal system, highlighting the central role of criminal selectivity in perpetuating mass incarceration. Racial disproportionality, the focus on petty crimes, and prison overcrowding are symptoms of a punitive model that needs to be rethought, prioritizing social justice and equal rights.

3. Mass Incarceration in Brazil

Mass incarceration is one of the most serious manifestations of structural inequalities in Brazil. The prison system, far from acting as a rehabilitation mechanism, is configured as an instrument of social exclusion, disproportionately affecting vulnerable groups, especially black and poor people. The following is an analysis of the general panorama of incarceration in the country, the effects of pre-trial detention in this scenario and the cycle of social and penal exclusion that it perpetuates.

3.1 Overview of incarceration in the country

Brazil is the third country with the largest prison population in the world, behind only the United States and China. Data from INFOPEN (2021) reveal that the Brazilian prison system houses more than 800,000 people, a number that represents an increase of 171% in the last 20 years. This exponential growth is directly related to the repressive policies adopted in the country, especially since the 1990s, with the intensification of the "war on drugs". According to Adorno (1995), the strategy to combat drugs, by prioritizing

repression of small-time drug dealers and users, reinforces the criminalization of poverty and encourages mass incarceration.

Furthermore, Batista (2011) points out that these policies are marked by a selective punitive logic, which favors incarceration as the main response to social conflict, ignoring alternative penalties and resocialization measures. The impact of these policies is evident in the composition of the prison population: more than 28% of prisoners are incarcerated for crimes related to drug trafficking, many of them without a criminal record and with small amounts of drugs. This scenario reveals a policy that not only fails to combat large-scale trafficking, but also reinforces social inequalities by treating drug use as a criminal issue, rather than a public health issue.

Prison overcrowding is another reflection of mass incarceration. According to INFOPEN (2021), the system operates with an occupancy rate of 167%, which means that there are almost two people occupying the space intended for one. The degrading conditions in which prisoners live violate basic principles of human dignity and represent a significant obstacle to resocialization.

3.2 Effects of early imprisonment on increasing incarceration

Pre-trial detention, although justified in specific cases by the Code of Criminal Procedure, has been used abusively and disproportionately, directly contributing to the worsening of mass incarceration. As Aury Lopes Júnior (2021) highlights, pre-trial detention in Brazil often deviates from its precautionary function, assuming the character of early punishment, especially against low-income individuals.

This practice has a direct impact on prison overcrowding. Pretrial detainees represent approximately 30% of the prison population, according to data from INFOPEN (2021). Many of these individuals remain detained for long periods, awaiting trial in precarious conditions, which reinforces human rights violations. An emblematic case is that of Rafael Braga, who was preventively arrested in 2013 for carrying a bottle of disinfectant during a protest. Rafael's arrest illustrates how criminal selectivity and the excessive application of pretrial detention converge to criminalize vulnerable groups, particularly young black people from the outskirts of cities.

Furthermore, pretrial detention violates constitutional principles such as the presumption of innocence and due process. The practice transforms the exception into the rule, creating a system in which imprisonment is used as an automatic response to conflict, without considering individual circumstances or precautionary alternatives. As Zaffaroni (1989) argues, this approach instrumentalizes the penal system as a tool of social control, rather than a mechanism of justice.

3.3 Cycle of social and criminal exclusion

The consequences of pre-trial detention go far beyond the incarceration itself, perpetuating a cycle of social exclusion that affects not only the individuals in prison, but also their families and communities. Prolonged detention, often without trial, disrupts homes, breaks family ties and generates social stigmatization, making it difficult for individuals to reintegrate into society after their release.

The impact on the job market is significant. Individuals who have been through the prison system face extreme difficulties in finding formal employment, due to the stigma associated with a criminal record. This economic exclusion exacerbates social inequality and increases the chances of recidivism, creating a vicious cycle in which poverty fuels crime and vice versa.

Recidivism, in turn, reflects the inability of the prison system to fulfill its rehabilitative function. According to Batista (2011), incarceration not only fails to prepare individuals for social reintegration, but also exposes them to conditions that often intensify their marginalization. Pre-trial detention, by inserting individuals into the prison system even before a final conviction, worsens this cycle, perpetuating the inequalities it was intended to combat.

The cycle of penal and social exclusion also deeply affects the families of prisoners. The absence of the incarcerated individual financially destabilizes households and psychologically impacts family members, especially children, who often face difficulties in school and social exclusion due to the stigma associated with imprisonment. As Wacquant (2001, p. 65) notes, the contemporary penal system not only reproduces but also amplifies structural inequalities, functioning as a "social exclusion machine."

In short, mass incarceration in Brazil, intensified by the abusive use of pre-trial detention, is a complex phenomenon that requires a holistic approach.

multidimensional for its understanding and overcoming. The penal system, as can be seen, not only fails to promote justice and security, but also perpetuates a cycle of exclusion that reinforces the social and racial inequalities that exist in the country.

4. Critical Analysis and Intervention Proposals

Pre-trial detention in Brazil, while a precautionary measure that should be used exceptionally, has become a widely used practice, deviating from its original purposes. The following are criticisms of the current model, prospects for legislative changes and proposals for public policies that can reverse the negative impacts of this institution on the penal system and society.

4.1 Criticism of early detention

Pre-trial detention violates fundamental constitutional principles, the most prominent of which is the principle of the presumption of innocence. This principle, provided for in Article 5, LVII, of the Federal Constitution, guarantees that "no one shall be considered guilty until a final criminal conviction has been handed down". However, pre-trial detention, especially when applied disproportionately and on a widespread basis, subverts this guarantee by treating the accused as guilty even before conviction. As Lopes Júnior (2021) emphasizes, the reversal of the presumption of innocence transforms pre-trial detention into a mechanism of pre-trial punishment, disregarding the fundamental rights of the accused.

Furthermore, the practice of pretrial detention reinforces a punitive culture, which sees incarceration as the primary solution to public safety problems. This approach neglects the need to prevent crime through social and educational policies, preferring repression as an automatic response to social conflict. Zaffaroni (1989) strongly criticizes this stance, pointing out that the penal system acts as an instrument of selective social control, punishing the less favored and reinforcing structural inequalities.

Another problematic aspect is the use of pre-trial detention as a coercive tool to obtain confessions or plea bargains. This practice, although informal, creates a dynamic in which the accused's freedom is conditioned on his submission to the criminal process, violating the rights to full defense and adversarial proceedings. The excessive use of pre-trial detention, in these terms, not only delegitimizes the system

of justice, but also contributes to mass incarceration and prison overcrowding.

4.2 Perspectives for legislative change

One of the main alternatives to pre-trial detention is the adoption of various precautionary measures, as provided for in Law No. 12,403/2011. These measures include the use of electronic ankle bracelets, provisional release with conditions, and the prohibition of contact with certain people or places. These tools allow for the protection of society and the progress of criminal proceedings without the need for prior incarceration, and are widely used in other countries.

In Canada, for example, the justice system prioritizes alternative measures, using pretrial detention only in extremely serious cases. According to Silva (2019, p. 18), "The adoption of non-custodial measures has significantly reduced the prison population, without compromising public safety". In Germany, the focus is on the principle of proportionality, with strict control mechanisms to prevent abuse in the use of pretrial detention.

International experience shows that reducing the use of pretrial detention does not lead to an increase in crime. On the contrary, countries that prioritize alternative measures observe greater efficiency in the justice system and better rates of reintegration into society. In order for Brazil to align itself with these practices, it is necessary to reform the Code of Criminal Procedure, further restricting the cases in which pretrial detention can be applied and strengthening the mechanisms of judicial control over its decree.

4.3 Public policy proposals

In addition to legislative changes, it is essential to invest in public policies that reduce the penal system's reliance on incarceration as the primary response to crime. One of the pillars of these policies must be the strengthening of alternative measures, such as community service programs and penal mediation mechanisms. In addition to relieving pressure on the prison system, these measures promote individual accountability without disrupting their social and family ties.

Another area of action is investment in resocialization programs. The lack of effective policies in this area contributes to high recidivism rates, perpetuating the cycle of social and criminal exclusion. As pointed out by

Wacquant (2001, p. 34), "[...] prison, instead of correcting, increases social inequalities, reproducing a system that criminalizes poverty". In this sense, initiatives that provide education, professional qualification and psychological support for those leaving the prison system are fundamental to breaking this cycle.

Furthermore, it is necessary to directly address the structural roots of criminal selectivity. This implies implementing racial equity and poverty reduction policies in the justice system, including mandatory training for judges, prosecutors and police officers on issues related to structural racism and human rights. Almeida (2019) emphasizes that racial discrimination is a central component of the functioning of the penal system, requiring specific actions to mitigate it.

Finally, the creation of mechanisms for social control over the institutions of the justice system is essential to ensure transparency and accountability in the application of precautionary measures and penalties. Community councils, independent audits and the participation of civil society can play a crucial role in this process, ensuring that the justice system operates in accordance with constitutional principles and human rights. **Final Considerations**

The Brazilian criminal justice system, throughout its history, has revealed nuances of an instrument that, under the pretext of safeguarding social order, perpetuates historical and structural inequalities. Pre-trial detention, a central figure in this analysis, stands out as a mirror of the contradictions of a system that claims to guarantee rights, but which, in practice, erects insurmountable barriers for the most vulnerable. Under the guise of legality, it reveals a punitive logic that transcends constitutional guarantees, a symbol of selective justice, which protects some while imprisoning others in a cycle of exclusion.

The study showed that, although pre-trial detention is conceived as a precautionary measure, intended to ensure the application of the law and public order, its distorted application turns into prior punishment, violating the principle of the presumption of innocence. This distortion reveals a system that often reverses the burden of proof, placing the responsibility of proving his innocence on the shoulders of the accused. This is where penal selectivity manifests itself in its cruelest form, a mechanism that stigmatizes black, poor and peripheral bodies.

fueling mass incarceration that reinforces the social and racial hierarchies of our society.

When examining the statistics, we can see that Brazil occupies a shameful position in the world ranking of incarceration, highlighting the impact of the "war on drugs" policies and the abuse of pretrial detention. Prison overcrowding is the visible consequence of this policy, but the scars left by the prison experience transcend the walls of penitentiaries, affecting families and communities and perpetuating the cycle of social exclusion. As explained by authors such as Adorno (1995) and Batista (2011), mass incarceration is more than a response to crime; it is a tool of social control, deeply rooted in a context of structural inequalities.

On the other hand, the legislative reform proposals and public policies presented throughout this paper point to ways to break with this punitive logic. The adoption of alternative precautionary measures, such as the use of electronic ankle bracelets and provisional release, demonstrates that it is possible to protect society without resorting to excessive incarceration. Furthermore, notable international experiences, such as those of Canada and Germany, show that more humane and proportionally applied practices can bring greater balance between social protection and individual rights.

Policies for racial and socioeconomic equity in the justice system are emerging as indispensable measures to combat the structural racism and inequality that permeate the penal system. The ongoing training of public agents, investment in resocialization programs, and the creation of mechanisms for social control over the institutions of the penal system are strategies that, if effectively implemented, can reverse the scenario of exclusion and marginalization promoted by criminal selectivity.

More than proposing practical solutions, this study sought to spark deep reflections on the role of the penal system in a society marked by inequalities. Pre-trial detention, as an element analyzed, is merely a cog in a system that, to be truly fair, needs to be deconstructed and reconstructed in light of human rights and human dignity. As Zaffaroni (1989) emphasizes, the legitimacy of the penal system does not lie in its capacity to punish, but in its capacity to rescue.

Therefore, it is our responsibility to question the naturalization of incarceration as a solution to social problems and to have the courage to demand structural changes that break with punitive and discriminatory logics. May the future of criminal justice in Brazil be guided by the redress of inequalities, the promotion of inclusion and the construction of a society where freedom and dignity are unshakable pillars.

This work does not end here. It is an invitation to continue the debate, to take transformative action and to build a justice that finally deserves to be called justice. May reading these pages inspire not only criticism, but also hope and commitment to a more just, supportive and egalitarian society.

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