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# The resocialization of prisoners in Brazilian society[1]

*The resocialization of the prisoner in Brazilian society*

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**SUMMARY**
This study reflects on the Brazilian prison system and the resocialization of prisoners, the current situation in Brazilian prisons is catastrophic, prisons and prisons are overcrowded and in terrible conditions, this situation affects the entire society, receiving people who have just left these places when they enter or worst. All citizens have the right to dignity and respect, even when they have committed a crime. In this context, it becomes increasingly important to adopt policies that effectively promote the resocialization of inmates, having as fundamental instruments the Penal Execution Law and its two axes: punishment and resocialization. Otherwise, a "fictitious" situation of misery will persist, resulting in the recurrence and discredit of the aforementioned legal norms. The work presented here deals with the reintegration of offenders into society, its positive and negative aspects, and explains the situation in prisons, in addition to the impact of the Criminal Execution Law on the subject, the need and importance of the reintegration of inmates and of society as a way of helping to recover the system as a whole.
**Key words:**Dignity, Reintegration, Criminal Execution Law.

## ABSTRACT
This study reflects on the Brazilian prison system and the rehabilitation of prisoners, the current situation in Brazilian prisons is catastrophic, prisons and prisons are overcrowded and in terrible conditions, this situation affects the whole society, receiving people who have just left these places when they enter or worst. All citizens have the right to dignity and respect, even when they have committed a crime. In this context, it becomes increasingly important to adopt policies that effectively promote the resocialization of detainees, having as fundamental instruments the Penal Execution Law and its two axes: punishment and resocialization. Otherwise, a "fictitious" picture of misery will persist, resulting in the recurrence and discredit of the aforementioned legal norms. The work presented here deals with the reintegration of delinquents into society, its positive and negative aspects, and explains the situation in prisons, in addition to the impact of the Criminal Execution Law on the subject, the need and importance of the reintegration of detainees and of society as a way to assist in the recovery of the system as a whole.

**Keywords**: Dignity, Reintegration, Criminal Execution Law.

## 1INTRODUCTION

Respectively, this work intended to show that currently the Brazilian prison situation has been much discussed, and for a long time some have been talking about the bankruptcy of the Brazilian prison system, due to several factors that exist in our prison system.

And for a better understanding of the subject, the concept of punishment and theories about the function of punishment will be outlined. It is still necessary to carry out a brief study of resocialization as a means of serving the prison sentence.

Individuals who commit aggression against the legal system are judged through due process and criminal conviction based on sufficient authorship and materiality of evidence. The rule is a guarantee of freedom for all individuals.

It is worth mentioning that in Brazil the objective is to serve a sentence that restricts the prisoner's freedom and reintegrate into society. Therefore, such an individual, during the execution of his sentence, must have access to the means that make re-education possible, which ensures his adaptation to social life at the end of his sentence.

However, in addition to the violation of rights in prisons, he also points out the inefficiency of the prison resocialization system, since on average 90% commit crimes again.

The Brazilian Penal Execution Law (Law No. 7,210 of July 11, 1984) is the most complete in the world, rights also regulated in article 5 of the 1988 Federal Constitution, more specifically in section XLIX.

In addition to section We question what has happened to our prison system as a whole, as there is a real intention to resocialize inmates, but we see that this mission does not just depend on the state, it is work that must be taken into account.

1 This article was presented to the Course Completion Work I discipline of the Law course at Faculdade Santo Agos-of Vitória da Conquista, with partial evaluation requirement. Advisor: Solange Barreto Chaves

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society, the prisoners' families and, above all, the prisoner's interest in resocialization.

## 2. THE BRAZILIAN PENITENTIARY SYSTEM

The first existing prison was opened in 1850, and today it is called Complexo Frei Caneca in the State of Rio de Janeiro. It was based on the Penitentiary System of*Auburn Prison*of New York, which was built in 1818, which was marked by rigidity, the prisoners could not talk to each other, not even when they were together, which is why it became known as the "Silent System", due to the great rigidity imposed on the prisoners. prisoners, as Mirabate points out (2004, p. 386).

Faced with the deficiencies presented by penal establishments and the irrationality in the way in which custodial sentences were served, from the 18th century onwards, a new penal philosophy was sought, ultimately proposing penitentiary systems that corresponded to these new ideas.

From the Philadelphia System, founded on the absolute cellular isolation of the condemned, we moved on to the*auburn*, which advocated joint work in absolute silence, and arrived at the Progressive System. This consisted, in the Irish system, of the execution of the sentence in four stages: the first of absolute cellular confinement, the second of night isolation with work and study during the day, the third of semi-freedom with work outside prison and the fourth in conditional release. . Even today, the progressive system is adopted in several legislations.

On the contrary, due to the negligence of the prison system, when the convict enters the prison, he is perceived by society as having marginal attitudes of contraction and development of criminal tendencies, but faced with this problem, we realize that a large part of the blame is borne by society, as there are several forms of repression against offenders, it is not enough to just lock offenders in cells as if they were animals, and therefore it is important to adapt measures to overcome this fact.

Therefore, to change this situation, it is necessary for society to end the illusion that punishment must be a severe and painful punishment. It is necessary to show society that there is a function of punishment where it will be fulfilled in accordance with the legal regulations.

Currently in Brazil we can observe the greatest disregard for social problems and because of this contempt, the prisoner leaves prison without a job, without a family, without dignity and it becomes a vicious circle in which the prisoner has no chance of social reintegration. We soon discover that during prison or why not say that the failure of a prison sentence cannot rehabilitate anyone, it only serves to reinforce the condemned person's negative values.

Therefore, they differ from the guarantees provided by the Penal Execution Law (LEP).

> Art. 25. Postgraduate assistance consists of:
> I - In guidance and support to reintegrate him into a life of freedom II -
> In concession
> Sole paragraph: The deadline set out in section II can only be extended once, if the social worker's statement proves that she is trying to get a job.

Regarding the resocialization of the prisoner, the author Bittencourt states social reintegration: The resocialization of the prisoner means a process
They are communicative and interactive between the individual and society. It is not possible to resocialize this without, at the same time, questioning the social normative set in which we intend to integrate it. Otherwise, we would wrongly assume that the social order is perfect, which is debatable at best.

Prison, as a general penalty, is not an ancient institution, and the historical reasons for keeping a person in custody were, firstly, the desire to compensate society, through deprivation of liberty, for the damage caused by their improper conduct; later to force her to contain her antisocial impulses, more recently the theoretical purpose of rehabilitating her. Currently, no expert understands that detention centers carry out rehabilitation and correctional activities assigned to them by society. The phenomenon of incarceration or acculturation of the inmate.

The criminalized potential of the prison environment, conditioning a future criminal career (contagion phenomenon), the effects of stigmatization, the transfer of sentences and other characteristics of the entire institution prevent any possibility of effective treatment, and the numbers of relapses are significant. Furthermore, the lack of funds, equipment and trained personnel exacerbates this dire scenario.

In the same sense, the common legislator in art. 3rd degree in Law:

> Art. 3, of the LEP. Those convicted and interned will be guaranteed all rights that are not affected by the sentence and the law. A single paragraph. There will be no racial, social, religious or political distinctions. (BRAZIL, Law 7,210/84, Art. 3)



The Federal Constitution itself already declares it fundamental in its article 5th XLIX, providing for the guarantee to prisoners of respect for their physical and moral integrity.

## 3. THE HISTORICAL EVOLUTION OF FEATHERS

The initiation of punishment is confused with the origin of humanity, it has the same function of restraining and punishing the violation of rules that are established by society over time. Since primitive man, punishments have been meted out to those who did not follow the rules.

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Rulers used violent punishments as a form of control to keep people under their control. fear control. The punishment of private revenge was the oldest in history according to historical records and soon became a public, state and centralized concern.

Blood revenge intended to atone for the evildoer's act through another equally violent action to take revenge on the affected clans, provoking wars that usually involved innocent people. As time passed, punishment became theological in nature with the aim of appeasing supposed deities as a way of obtaining blessings from the gods. So-called sacrifices were created, the purpose of which was to avoid the wrath of the gods.

Countries like China and Egypt used punishments that included mutilation, amputation, flagellation, and slave labor. Between the 7th and 6th centuries BC. theocratic thought loses space to political thought, and written laws such as the Drakon Code appear in Athens, bringing a balance between state power and individual freedom. For Plato, the function of punishment was to change the individual, and the person being punished would be an example for others. Aristotle, his disciple, saw the pen as a means to achieve an intended moral goal. With the beginning of the Middle Ages, the Germanic law of the barbarian peoples had great influence. The penalty was marked by the small chance given to those punished, who had to prove their innocence, for example, by immersing themselves in boiling water.

Canonical Criminal Law was very influential due to the power of the Catholic Church and was applied in civil courts. It had a retributive character, but with a certain interest in correcting offenders. For medieval man, everything was derived from God, so punishment, in addition to being a punishment for sin, was intended to save the soul.

Cessare Baccaria criticized torture as a form of punishment, which was abolished in Europe in the 17th century and is now a heinous crime under Brazilian law. The 1988 Federal Constitution, in its numerous expressed and implicit principles, provides guarantees that prohibit arbitrary government action.

The 1988 Federal Constitution, in its numerous expressed and implicit principles, provides guarantees that prohibit arbitrary government action.

In terms of punishment, the Magna Carta explicitly introduces the principles of legality, presumption of innocence, individualization, the principle of proportionality/reasonableness and humanization. The principle of legality says: in art. 5th, II and XXXIX CRFB/88, *in verbs*:

> II. No one is obliged to do or refrain from doing anything, except by virtue of law
> XXXIX, "there is no crime without a previous law that defines it, nor a penalty without a prior legal commission.

This principle, therefore, limits the penalty in an objective sense, a person must commit an illegal act provided for in criminal law, and subjectively, the individual must cause the typified result, even if negligently, as provided in art. 19, of the Penal Code: "Only the agent who caused it through fault, at least, is responsible for a result that makes the penalty particularly severe".

The principle of presumption of innocence is found in the Federal Constitution in article 5, LVII, which says: "No one is presumed guilty until the final judgment of a criminal conviction". Therefore, it hangs over all individuals, without guilt, until they are convicted of intent or guilt in some crime.

The principle of individualization of punishment, based on art. 5th, XLV CRFB/88, as well as articles 59 and 68 of the CP, each INDIVIDUAL will be analyzed by a judge who will take into account actions, culpability, personality and other subjective aspects of the sentencing process (sentence dosimetry). This principle also applies to the non-transfer of the sentence from one convict to another. The beginning of proportionality/adequacy aims to give the offender a fair and reasonable punishment in accordance with the crime committed, which does not violate the provisions of the Federal Constitution of Brazil and the Penal Code.

In the system of justice, it would be the oldest concept of punishment to point out that it "confers the function of reestablishing the order of justice". In the redemption of the accused, it was understood that "whoever serves the sentence will receive good", that is, "if he is punished with justice, he will become better" and "will be freed from evil", thus, the penalty is purification or liberation that the criminal himself must want. "The third concept of punishment, citizen protection, shows from one perspective that punishment is: "a) a motive or stimulus for citizen behavior; b) a physical condition that renders the perpetrator incapable of causing harm."

The dignity of the human person, any law or act that does not respect this principle becomes unconstitutional and this principle affects all other declared principles relating to the application and enforcement of criminal law in the country. The principle of In*Dubio Pro Reo*, which establishes that no one can be convicted if there is no evidence of their authorship of an unlawful act, and the principle of*Non Bis in Idem,*which prevents a convicted person from being punished twice for the same crime.

So we have, in theory, in Brazil we have one of the most advanced legal regulations in terms of punishment, what prevents the practice of such an order is the lack of resources to implement it.



**4. CONCEPT OF PENALTY**

According to the indoctrinator Guilherme Souza Nucci, he wrote in his commented penal code that:

> It is the sanction imposed by the State, through criminal action, on the criminal as retribution for the crime perpetrated and prevention of new crimes. The preventive character of the penalty is divided into two aspects (general and special), which are subdivided (positive and negative): a) general negative: meaning the intimidating power that it

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represents the whole of society, the recipient of the criminal law; b) general positive: demonstrating and reaffirming the existence and efficiency of criminal law; c) special negative: meaning intimidation of the perpetrator of the crime so that he does not act in the same way again, sending him to prison, when necessary; d) special positive: which is the proposal to resocialize the convict, so that he or she can return to social life when the sentence is over or when, due to benefits, freedom is brought forward. According to the current Brazilian normative system, the penalty does not fail to have all the characteristics exposed in a broad sense (punishment + intimidation and reaffirmation of criminal law + resocialization): art. 59 of the Penal Code mentions that the judge must set the penalty in such a way that it is necessary and sufficient for the reprobation and prevention of the crime. (Edition 22.24 Jan 2022.)

Given the definitions given by some Brazilian legal dictionaries, penalties are conceptualized as "the loss or reduction of legal assets imposed by law and imposed by the judiciary on those who committed a criminal offense. In Brazil, they can be: deprivation of liberty, freedom; legal restrictions; beautiful". (SANTOS, Washington dos. Brazilian Legal Dictionary. Belo Horizonte, ed. Del Rey, 2001, p. 182.)

According to the order of justice, it shows how to make variations of concepts based on the reasons given to them. Because it can vary in three aspects; First Order of Justice; Second Salvation of the Defendant; Third Protection of Citizens. In the system of justice, it would be the oldest concept of punishment to point out that it "confers the function of reestablishing the order of justice".

In the redemption of the accused, it was understood that "whoever serves the sentence will receive good", that is, "if he is punished fairly, he will be better off" and "will be freed from evil" (ibid., by the way); thus, punishment is the purification or liberation that the criminal himself must want. "The third concept of punishment, citizen protection, shows from one perspective that punishment is: "a) a motive or stimulus for citizen behavior; b) a physical condition that renders the perpetrator incapable of causing harm" ".

## 5. CLASSIFICATIONS OF PENALTIES

### 5.1 Deprivation of liberty sentences

Even given the contribution to the abolition of corporal punishment (torture, mutilation), the prison sentence did not correspond to the purposes of correcting the prisoner. In the system, deprivation of liberty and its end represent a true contradiction. However, there is peace in the world of criminal science, the claim that punishment is justified by its necessity. Because without punishment, coexistence in today's society would be impossible. Punishment is the basic resource that the State has and resorts to when necessary to make coexistence between men viable.

Even an ordinary person knows the concept of the triple aim of punishment: a prisoner is put in a prison to be punished, intimidated, and most importantly, executed**.**The difference between solitary confinement and detention is that the most serious offenses are punishable by imprisonment, while detention is reserved for less serious offenses.

Thus, a closed prison sentence, the most severe in our penal system, can begin to be served, which can never happen with a prison sentence. Only in case of non-compliance with the conditions imposed by the judge can the convict be sentenced to prison in a closed regime under the regression regime. The custodial sentence must be served in a closed, semi-open or open regime (art. 33, caput, part 1).

In the closed regime, the inmate serves a prison sentence (§ 87.º CP), subjects him to day work and isolation during the night rest period (§ 34.º § 1.º CP), but in practice this nighttime isolation with the requirements required for individual cells (art. 88 of the LEP) is nothing more than a mere expression of the will of the Brazilian legislator. With prisons overcrowded, it will never be possible to isolate prisoners during the dead of night**.**

In a semi-open regime, it will be carried out with work and study during the day, in an agricultural or industrial colony or similar establishment and placed in collective cells at night (art. 33, § 1, b and 35 of the CP). In this regime, outside work is permitted, even in the private sector, unlike what happens in the closed regime. The external service can be granted by the judge during the sentence itself or later by the executing judge from the beginning of the sentence.

In the open regime, based on the convict's self-discipline and sense of responsibility (art. 36 caput CP), he must work outside the establishment and without supervision, attend courses or carry out other permitted activities, spend the night for rest and days off, day off (art. 36 of the Penal Code), and must prove which deserves acceptance of this regime, without prejudice to the purposes of serving the sentence under penalty of transfer to another stricter regime (art. 36, §2 of the Penal Code).

*A*Law 10,792/2003 changed the criminal execution law, establishing the so-called differentiated regime, a special prison discipline regime, characterized by greater isolation of the prisoner and greater restrictions on the prisoner from the outside world. Which applies to the definitive convict as to the provisional prisoner, through judicial authorization, as a disciplinary sanction, with a maximum period of 360 days or as a preventive and precautionary measure for the hypotheses determined in art. 52§§1st and 2nd of the Criminal Enforcement Law.



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*5.1.1 penalties restricting rights*

A sentence restricting rights is a criminal sanction imposed instead of the deprivation of personal liberty that consists of the suppression or restriction of one or more rights of the convicted person. It's a kind of alternative punishment. It applies to crimes of lesser responsibility, with milder penalties. It is related to the principle of proportionality. Sanctions restricting rights are: financial security, loss of goods and valuables, provision of services to the public or public entities, temporary prohibitions of rights and restrictions on weekends, as provided in art. 43, CP.

> Art. 43, CP – Penalties restricting rights are: I
> – Cash benefit;
> II – Loss of goods and values;
> III – (vetoed)
> IV – Provision of services to the community or public entities; V –
> Temporary interdiction of rights;
> VI – Weekend limitation

*5.1.2 Requirements for replacement*

> Art. 44, CP – Penalties restricting rights are autonomous and replace those depriving liberty, when:
> I – A custodial sentence of no more than four years is imposed and the crime is not committed with violence or serious threat to the person or, whatever the penalty applied, if the crime is culpable; II – The defendant is not a repeat offender of an intentional crime;
> III – the guilt, antecedents, social conduct and personality of the convicted person, as well as the reasons and circumstances indicate that this replacement is sufficient.
> § 3 If the convicted person is a repeat offender, the judge may apply the substitution, provided that, in light of a previous conviction, the measure is socially recommended and the recurrence has not occurred due to the commission of the same crime.

It is worth mentioning that for the crimes of extortion (§ 158 of the Penal Code) and theft (§ 157 of the Penal Code), the sentence cannot be commuted. In terms of bodily harm, it is generally not a deprivation of liberty judged by a summary ceremony.

**5.2. Penalty of monetary benefit**

According to art. 45, § 1, CP, the pecuniary benefit consists of the payment of money to the victim, their dependents or public or private entity with social purposes, in the amount set by the judge, at least 01 (one) minimum wage or greater than 360 (three hundred and sixty) minimum wages. The amount paid will be deducted from the value of any judgment in the civil reparation action if the beneficiaries agree.

It is worth highlighting Article 17 of the Maria da Penha Law (In cases of domestic and family violence against women, the application of a fine in the value of the basic food basket or other pecuniary benefits is prohibited, as well as the replacement of the penalty, which means the isolated payment of a fine), prohibition of the basic food basket and pecuniary benefits, but it could be, for example, a community benefit.

**5.3 Penalty for providing services to the community**

The provision of services to the public or public entities is punishable by a prison sentence of more than six months (Article 46 of the CP)

> Art. 149 LEP: The executing judge will be responsible for:
> I – Determine a community or state entity or program, duly accredited or affiliated, with which the convicted person must work free of charge according to their skills;
> II – Determine the summons of the convicted person, inform him about the matter, the days and time on which the punishment should begin;
> III - change the form of execution to adapt to changes that occur during the working day.

The person who determines where the sentence will be applied will be the executing judge. Remembering that: § 1, Art. 149: The work will have a workload of 8 (eight) hours per week and will be carried out on Saturdays, Sundays and holidays or on business days so as not to harm the normal working day, at times fixed by the judge;

> § 1 are assigned according to the convict's abilities and must be carried out at the rate of one hour of work per day of sentence, so that they do not put the normal working day at risk. the doctrine understands that § 1 Art. 1 letter 149 was revoked by art. 46, §3.

Who supervises: Art. 150 CP: The entity benefiting from the provision of services will submit a detailed report on the condemned person's activity to the executing judge on a monthly basis, as well as, at all times, notification of misconduct or disciplinary infraction, to the receiving entity itself.



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## 6. INMATE REHABILITATION

Our federal constitution expressly establishes the state's responsibility towards all citizens and guarantees fundamental rights and duties, which also apply to the prison population that is part of the Brazilian penal system. In order not to violate rights that were not affected by the conviction, prisoners must have their rights preserved and undergo social integration within prison units. The need to punish is certain and it is up to the State to reestablish order, investigating the facts and punishing those responsible. However, this punishment must go beyond a simple criminal sanction or monetary fine, as the punishment must not only be thought of, but also believed that the offender will change and his new attitudes will be different from before prison.

Criminal execution aims to implement the provisions of the penalty or criminal decision, as set out in article 1 of the Penal Law, while article 10 of this law aims at the social reintegration of the prisoner and the prevention of recidivism through assistance, education, work and discipline. Theoretically, the main reason for the custodial sentence would be the recovery of the offender to return to society, even with such rates the State sought alternatives to fulfill the resocializing function of the sentence.

Those who have already served their sentence can request the judge who sentenced the sentence to declare the court that the sentences imposed have been completed or extinguished, to guarantee the secrecy of the trial records, to rehabilitate that citizen so that he can live without restrictions in society . It is the convict's right, which arises from the assumption that he is capable of living in society.

Rehabilitation may be requested within two years from the date of cessation or completion of the sentence, taking into account the probationary period of suspension and probation, if not revoked.

In the case of probation or parole lasting more than two years, correction cannot be granted, as one of the conditions of the request for correction is the completion or remission of the sentence. This can only occur after the period for proving these benefits has ended. In the case of multiple convictions, it is not possible to request the rectification of one of them, only after all sentences have been served. To grant rehabilitation, it is necessary to reside in the country during these two years (art. 94 item II, of the CP), in addition, during this time the applicant behaves decently in public and private and compensates for the damage caused by the crime or prove the impossibility of doing so (art. 94, item III).

The rehabilitation request procedure, as well as the specification of the supporting elements of the requirements, is set out in the CPP in article 743. The request has the right to be formulated by the convict, since his request is personal and non-transferable, and the The process ends with your death, no one can interfere, it does not transfer the possibility of continuing to your heirs. He is competent to consider the sentencing judge's request for rehabilitation rather than execution.

Rejection of rehabilitation can be requested again at any time, as long as it is complied with. to the necessary requirements of article 94 of the CP. Rehabilitation can be canceled ex officio by the judge or at the request of the Public Prosecutor's Office, if the rehabilitated person is convicted as a repeat offender, as long as the penalty is not pecuniary (article 95 CP). With regard to recidivism, it is necessary that the subsequent crime is not committed after the deadline in article 64, incl. of CP. The judicial administrator after rehabilitation may exercise the optional role, role or mandate, also reacquire paternal power, guardianship, guardianship, except in relation to the child, guardianship or guardianship of the perpetrator. You can finally live freely in society.

## CONCLUSION

In closing, we ask ourselves what is happening to our prison system due to the increasing number of prisoners, who is to blame? Society, the State, the prisoner, his family or everyone has their share of the blame. A society with so many problems such as unemployment, disrespect, drugs, crime, family breakdown, social inequality, poverty, mortal sins, lack of love for others. Issues that increase violence.

It can be said that it is not enough to just punish individuals. It is necessary to take important measures to guide the convict so that he can reintegrate into society. The State must provide full support to these individuals so that they can return to values and principles, return to family life and, above all, to society, and thus avoid recurrence.

We observed that it can be understood that currently the State itself does not have productive mechanisms capable of guaranteeing the work and professionalization of all arrested agents without the involvement of the entire society, which has a huge share of responsibility in the face of this problem. There are several ways to repress offenders because, as analyzed, we cannot just focus on confinement as the primary point, restricting the right to freedom, incarcerating them in cells as if they were animals.

We understand that it is extremely necessary to resocialize to avoid recidivism, however our prison system is far from resocializing, it is necessary to train everyone involved so that resocialization is seen not only as a good for the prisoner, but for society in general , we live in a time in which insecurity, violence and crime are increasing in our society and we must believe that with resocialization we will be able to think about social peace.



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