



OVERCROWDING IN THE BRAZILIAN PRISON SYSTEM: ITS CAUSES AND CONSEQUENCES

ORIGINAL ARTICLE

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ABSTRACT

In light of the current scenario, it can be observed that overcrowding in the Brazilian prison system is a consequence of serious structural complications that have worsened since its foundation during the colonial period, leading to the problems faced today, such as the supremacy of criminal factions, which substantially increase crime rates, and other factors like inadequate infrastructure, causing a major crisis in the prison system. Given this, the purpose of this article is to address the issue of prison overcrowding in Brazil, demonstrating its causes and possible solutions to alleviate this deficiency in the correctional system. Therefore, information and data were gathered, considering the insights of scholars on the problem of overcrowding in Brazilian prisons, with a basis in the fundamental rights inherent to every human being, as established in the Federal Constitution of 1988, aiming to answer the following research question: what are the causes and consequences of overcrowding in the Brazilian prison system? In this context, this article is proposed to facilitate a comprehensive examination of the prison system and highlight the causes and consequences that overcrowding imposes on inmates. The methodological approach employed was a bibliographic and descriptive review. At the end of the research, it can be concluded that the lack of state assistance and the disproportionate number of available spaces for the quantity of inmates are among the causes of this serious issue faced by Brazilian society.

Keywords: Prison System, Overcrowding, State Failure.



1. INTRODUCTION

Much discussion surrounds the prison situation in Brazil. It can be observed that the overcrowding in the Brazilian prison system is a consequence of serious structural complications that have worsened since its founding during the colonial period, leading to issues faced today, such as the dominance of criminal factions substantially increasing crime, among other factors such as infrastructure, causing a major crisis in the penitentiary system (GALLI, 2022).

In the face of this reality, the overcrowding of national prisons is considered a serious social problem that gradually intensifies in contemporary Brazilian society. According to data released by the National Council of Justice (CNJ), Brazil is considered the third country with the highest incarcerated population in the world, resulting in overcrowding (AMARO, 2022).

Given this situation, this research aims to present the issue of prison overcrowding in Brazil, demonstrating its causes and possible solutions to alleviate this deficiency in the prison system. Thus, this article seeks to provide an analysis of the topic, considering that, by discussing the issue, it is possible to identify the causes of this excessive growth and consequently seek the necessary means to reduce such a situation.

We have sought to gather information and data, considering the perception of scholars on the issue of overcrowding in Brazilian prisons, based on the fundamental rights inherent to every human being, as established in the Federal Constitution of 1988. The purpose is to address the following research question: what are the causes and consequences of overcrowding in the Brazilian prison system?

From this perspective, it is essential to highlight, initially, that the problem of prison overcrowding results from various factors. First, there is the growth of the Brazilian population and the government's neglect and inefficiency in providing all the necessary assistance to the population. This can be considered a contradictory attitude, given what is stipulated in the Federal Constitution concerning the rights and fundamental



guarantees enshrined in its provisions. In this context, Article 5, paragraph 1 of the constitution establishes:

Todos são iguais perante a lei, sem distinção de qualquer natureza, garantindo-se aos brasileiros e aos estrangeiros residentes no País a inviolabilidade do direito à vida, à liberdade, à igualdade, à segurança e à propriedade nos termos seguintes (BRASIL, 1988).

For this reason, this research was proposed with the aim of enabling a comprehensive reflection on the prison system and highlighting the causes and consequences that overcrowding brings to inmates.

In this regard, it is identified that these guarantees are regulated in the highest legal framework of a state, as observed in the Brazilian Constitution, which, however, does not correspond to reality. Due to the lack of assistance, there is a considerable increase in criminality among Brazilians, particularly affecting those living in peripheral regions where the absence of state support becomes even more evident (PIRES, 2019).

In the interim, as a result of these factors, prisons are overcrowded, contributing to negative consequences in the short, medium, and long term for Brazilian society (BRASIL, 2020).

Based on the above, the research is grounded in a descriptive bibliographical review, highlighting the origins of prisons, their purposes and modern aspects, the causes and consequences of prison overcrowding in Brazil, including: the precarious conditions in prisons, the purpose of punishment from a criminal law perspective, alternatives to incarceration, the situation of pretrial detainees, rehabilitation, and the consequences of overcrowding.

Therefore, to address this issue, it is necessary for the Federal Constitution and the subconstitutional laws in the Brazilian legal system to fulfill their original purpose, so that their legal provisions align with the reality of the Brazilian population.



2. THE BIRTH OF PRISONS, THEIR PURPOSES, AND MODERN ASPECTS

History tells us that over the centuries, there was a need to establish norms of conduct within a particular group or community to maintain social control among individuals. Thus, in each era, there were the presence of coercive and punitive means for those who did not obey the established rules in their environment (GALLI, 2022).

In other times, the way to punish wrongdoers involved physical punishments, including torture and execution. In such circumstances, these punishments occurred in public squares with the intention of demonstrating the ruler's power and consequently intimidating the population. They served as an "example" to the people, showing that those responsible for offenses would be subject to such punishments, and this reality persisted for several years (LÔBO, 2017).

According to Lôbo (2017), in the 18th century, more severe punishments were replaced by milder penalties, marking a humanization of the prison system. This led to the end of torture and the birth of prisons.

The philosopher Michel Foucault, in his work "Surveiller et Punir" (Discipline and Punish), describes this process of the revolution of the prison system:

Entre as penas e na maneira de aplica-las em proporção com os delitos, devemos escolher os meios que causarão no espírito do povo a impressão mais eficaz e mais durável, e ao mesmo tempo a menos cruel sobre o corpo do culpado (FOUCAULT, 1987. p. 94).

The first constitution of Brazil, enacted in 1824, in its Article 179, XXI, established that: "The jails shall be secure, clean, and well-aired, having different houses for the separation of the accused according to their circumstances and the nature of their crimes" (BRASIL, 1824).

Upon analyzing the constitutional text, one can identify a concern with the conditions in the prison establishments of that time, and the dignity of the individuals sentenced during the colonial period was respected in our Magna Carta.



Thus, it can be seen that over the centuries, there has been an evolution in society, reflected in the state's approach to punishment. Consequently, wrongdoers began to be viewed in a more humane manner, with penalties for their offenses that did not undermine human dignity, resulting in legislation with a focus on ensuring this protection (MACHADO, 2009).

Furthermore, contemporary prisons aim to remove individuals who violate established behavioral norms from society, with the period of serving the sentence being an opportunity for change and reintegration into society. In this way, the penalty serves not only as a retributive measure for the individual but also holds a fundamental role in their rehabilitation (ANDRADE, 2018).

However, when examining the practical aspects faced in the country, it becomes apparent that this purpose of imprisonment is not being achieved. It is common for prisoners to leave prison in worse condition due to the state's failure to provide the necessary assistance and methods that guarantee the opportunity for true rehabilitation.

In this context, contemporary penalties serve two purposes: retributive (or absolute) and preventive (or relative). As the names imply, retributive penalties seek to repay the harm caused by an individual's offense through sanctions, in other words, it is a form of "punishment" for the committed crime. On the other hand, preventive penalties are based on the intention to prevent further crimes, assuming that there is a penalty for each offense (MARTINS, 2015).

3. CAUSES AND CONSEQUENCES OF OVERCROWDING IN BRAZILIAN PRISONS

According to a study published by Silva *et al.* (2021), the incarcerated population in Brazil consisted of around 680,000 prisoners, while the prison capacity was approximately 440,000 inmates. Consequently, the deplorable conditions in prison facilities due to overcrowding cannot be denied, despite the legal provisions laid out in



Article 41 of the Penal Execution Law (BRAZIL, 1984), which enshrines the rights of prisoners.

As mentioned earlier, the cells are overcrowded, housing nearly twice the number of prisoners they can accommodate. There are numerous reports from inmates and their families citing poor hygiene, low-quality food, the emergence of diseases, and other issues (SILVA *et al.*, 2021).

Furthermore, according to the research by Silva *et al.* (2021), it is essential to highlight the mental health of these prisoners. Many are suffering from anxiety, panic attacks, and depression due to the inhumane conditions they experience within these prisons. The government's neglect is evident, as inmates receive no support, making the process of rehabilitation increasingly challenging.

In this context, it is crucial to note that the judiciary should contribute to reducing the incarcerated population in Brazil by providing convicts with alternatives to imprisonment based on the severity of the crime committed. What is observed in prisons is a significant number of prisoners incarcerated for minor thefts, who could have their custodial sentences replaced with other alternative penalties.

Article 44 of the Brazilian Penal Code deals with non-custodial sentences and the conditions under which sentence substitution is allowed. Thus, based on the Brazilian Penal Code, if the judiciary starts applying non-custodial sentences for less serious crimes, replacing custodial sentences, the number of inmates in Brazilian prisons would significantly decrease, thereby alleviating the problem of overcrowding (BRAZIL, 1940).

Regarding the overcrowding issue in Brazil's penitentiary system, one of the causes is the "pre-trial detainees." According to data released by the organization Permanent Damage, approximately 41% of prisoners are being held provisionally (BRAZIL, 2020).

As per Brazil (2020), these individuals are detained with inmates who have already been sentenced until their trial, and in some cases, after spending a considerable



amount of time in detention, they are deemed innocent, potentially serving a longer sentence due to the time they have already spent incarcerated awaiting trial.

In the state of Rio de Janeiro, 54.4% of inmates had their freedom deprived for a more extended period than prescribed, resulting in adverse consequences for both the individual and the state. Keeping an individual in detention poses an unavoidable risk since they will be in contact with various prisoners (BRAZIL, 2020).

Furthermore, there is a growing reality of the presence of parallel power within Brazilian prisons, and it is challenging to remain in this realm without establishing connections. Consequently, a wrongful conviction can lead to countless losses for the individual and society. If an innocent person enters the system, they are more likely to become involved in criminal activities during their incarceration.

The process of rehabilitation aims to reintegrate detainees into society by providing the necessary means to prevent them from resorting to a life of crime. These means include encouraging employment through vocational training programs in correctional facilities, in addition to education, which is a right of the prisoner stipulated in the Penal Execution Law. It is important to highlight Article 10 of the Penal Execution Law: "Assistance to the prisoner and the intern is the duty of the State, with the aim of preventing crime and guiding the return to social coexistence" (BRAZIL, 1984).

According to Zaffaroni *et al.* (2003), the reintegration of individuals should be carried out through tactics implemented within the prison system, using the principle of "re," which encompasses resocialization, reeducation, reintegration, repersonalization, reindividualization, reincorporation, among others. Concerning the application of sentences, this ideal enables an improvement in the complexity of the prison system and its ethical aspects, ensuring human rights.

With the issue of overcrowding, the resocialization of detainees becomes a much more challenging endeavor, as the state does not provide the assistance guaranteed by the Penal Execution Law (BRAZIL, 1984) and the Federal Constitution (BRAZIL, 1988). Furthermore, the reality of prisons becomes worrying, as the majority of these



prisoners come from peripheral communities, some with only incomplete primary education. Due to these factors, it becomes difficult for them to find employment, considering the societal prejudice against offering jobs to ex-convicts (MACHADO; GUIMARÃES, 2014).

However, as Prates (2021) points out, despite being far from ideal, some measures have been taken to provide assistance to these prisoners. In this regard, we have the creation of the (APAC) Association for the Protection and Assistance of the Convicted.

It is evident that, despite the crucial and necessary initiatives, the problem is far from over. According to Galli (2022), as long as the government fails in its constitutional obligation to provide legal guarantees to prisoners and improve the Brazilian penitentiary system, the issues of overcrowding and an increase in the crime rate are likely to worsen.

Several negative consequences arising from overcrowding can be observed. According to Andrade (2018), this disproportion between the number of available spots and the number of inmates results in riots and escapes, poor health conditions, difficulties in the resocialization of these individuals, and consequently, a struggle to leave criminal life behind, as they have no prospects for the future. This is due to the state not providing the necessary means for a change in their lives, such as incentives for work and education for these inmates.

In this context, as stated by Martins (2015), the intended purposes of punishment are undermined, particularly concerning resocialization, as there is no ideal environment for the reeducation of individuals deprived of their liberty.

It is worth noting that individuals in custody are under state authority with the aim of serving their sentence, compensating society for the harm caused, and theoretically emerging from the penitentiary system as better individuals, ready and capable of engaging in lawful activities.



4. FINAL REMARKS

Due to the mentioned facts, this research sought to elucidate the problem of prison overcrowding in Brazil, demonstrating the causes and possible solutions to alleviate this deficiency in the prison system. Thus, based on the fundamental rights inherent to every human being, as set forth in the Federal Constitution of 1988, through the presented study, an attempt was made to investigate and answer the following question: what are the causes and consequences of prison overcrowding in the Brazilian prison system?

In light of the presented, it can be observed throughout the research the enormous deficiency of the Brazilian prison system. In the 21st century, we still find a prison system that is far from the one envisioned in the legal framework, and despite the evolution over time, becoming a more humanitarian system, it is far from becoming ideal.

It is important to emphasize that the lack of attention from the State regarding this situation can further exacerbate the problem of overcrowding and lead to serious consequences in the short, medium, and long term. Detainees do not receive the necessary assistance, and there is a strong risk of a continued worsening of the situation.

Therefore, as outlined in this research, we can conclude that custodial sentences can be replaced by other alternative non-custodial sentences, which would consequently reduce prison overcrowding. In addition, reintegration programs should be implemented, aiming at the reintegration of these individuals into society through the provision of vocational courses and access to education in prison facilities that aim to prepare them for the job market as a way to provide alternatives that keep them away from criminal activities.

Thus, through actions such as those mentioned above, it will be possible to better utilize the Brazilian penal system in order to achieve the programmatic norms, rights, and fundamental guarantees provided in the codes and treaties to which Brazil is a



party and consequently to reintegrate its citizens and prevent the problem of prison overcrowding from continuing to have a negative impact on Brazilian society.

REFERENCES

AMARO, Daniel. Brasil tem a terceira maior população carcerária do mundo. **Jornal Edição do Brasil**, 2022. Disponível em: [https://edicaodobrasil.com.br/2022/12/16/brasil-tem-a-terceira-maior-populacao-carceraria-do-mundo/#:~:text=De%20acordo%20com%20dados%20do,Estados%20Unidos%20e%20da%20China](https://edicaodobrasil.com.br/2022/12/16/brasil-tem-a-terceira-maior-populacao-carceraria-do-mundo/#:~:text=De%20acordo%20com%20dados%20do,Estados%20Unidos%20e%20da%20China.). Acesso em: 09 abr. 2023.

ANDRADE, Paulo Vitor. **Sistema carcerário brasileiro**. Trabalho de Conclusão de Curso (Bacharel em Direito) – Núcleo de Trabalho Científico do Curso de Direito da UniEvangélica, Anápolis, 2018. Disponível em: <http://repositorio.aee.edu.br/bitstream/aee/671/1/Monografia%20-%20Paulo%20Vitor.pdf>. Acesso em: 09 abr. 2023.

BRASIL. Código Penal. **Lei nº 2.848** de 7 de dezembro de 1940. Diário Oficial [da República Federativa do Brasil, Brasília. Disponível em: https://www.planalto.gov.br/ccivil_03/decreto-lei/del2848compilado.htm. Acesso em: 09 abr. 2023.

BRASIL. Conselho Nacional do Ministério Público. A visão do ministério público sobre o sistema prisional brasileiro. **Revista do Sistema Prisional**. Brasília – DF: CNMP, v.4, 2020. Disponível em: https://www.cnmp.mp.br/portal/images/banner_cidadao/Revista_do_Sistema_Prisional_-_Edi%C3%A7%C3%A3o_2020.pdf. Acesso em: 09 abr. 2023.

BRASIL. Constituição (1824). **Constituição política do império do Brasil**. Disponível em: https://www.planalto.gov.br/ccivil_03/constituicao/constituicao24.htm. Acesso em: 09 abr. 2023.

BRASIL. Constituição (1988). **Constituição da República Federativa do Brasil**. Brasília: Senado Federal, 1988. Disponível em: https://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm. Acesso em: 09 abr. 2023.

BRASIL. Lei nº 7.210, de 11 de julho de 1984. **Institui a lei de execução Penal**. Brasília: DF, 1984. Disponível em: http://www.planalto.gov.br/ccivil_03/leis/l7210.htm. Acesso em: 09 abr. 2023.

FOUCAULT, Michel. **Vigiar e punir**: história da violência nas prisões. Petrópolis: Editora Vozes, 1987.



GALLI, Talita. **Uma análise do sistema prisional brasileiro**: problemas e soluções. Centro de Liderança Pública - CLP, 2022. Disponível em: <https://www.clp.org.br/uma-analise-do-sistema-prisional-brasileiro-problemas-e-solucoes/#:~:text=Ainda%20que%20bem%20amparado%20na,consumo%20de%20drogas%20nas%20unidades>. Acesso em: 09 abr. 2023.

LÔBO, Daniella Couto. **Michel Foucault**: a sociedade punitiva e a educação. Tese (Doutorado em Educação) – Universidade Católica Pontifícia de Goiás – PUC, Goiânia, 2017. Disponível em: <http://tede2.pucgoias.edu.br:8080/bitstream/tede/3844/2/DANIELLA%20COUTO%20L%C3%94BO.pdf>. Acesso em: 09 abr. 2023.

MACHADO, Nicaela Olímpia; GUIMARÃES, Issac Sabbá. A Realidade do sistema prisional brasileiro e o princípio da dignidade da pessoa humana. **Revista Eletrônica de Iniciação Científica**. Itajaí, Centro de Ciências Sociais e Jurídicas da UNIVALI. v. 5, n.1, p. 566-581, 1º Trimestre de 2014. Disponível em: <https://www.univali.br/Graduacao/Direito-Itajai/Publicacoes/Revista-De-Iniciacao-Cientifica-Ricc/Edicoes/Lists/Artigos/Attachments/1008/Arquivo%2030.Pdf>. Acesso em: 09 abr. 2023.

MACHADO, Vinicius da Silva. Entre números, cálculos e humanidade: o princípio constitucional da individualização da pena e o mito da punição humanizada. 2009. Dissertação (Mestrado em Direito, Estado e Constituição). Universidade de Brasília, Brasília. Disponível em: https://repositorio.unb.br/bitstream/10482/4044/1/2009_ViniciusdaSilvaMachado.pdf. Acesso em: 09 abr. 2023.

MARTINS, João. **Das teorias da pena no ordenamento jurídico brasileiro**. JusBrasil, 2015. Disponível em: <https://joamartinspositivado.jusbrasil.com.br/artigos/147934870/das-teorias-da-pena-no-ordenamento-juridico-brasileiro>. Acesso em: 09 abr. 2023.

PIRES, Roberto Rocha Coelho (org.). **Implementando desigualdades**: reprodução de desigualdades na implementação de políticas públicas. Rio de Janeiro: Ipea, 2019. Disponível em: https://repositorio.ipea.gov.br/bitstream/11058/9323/1/Implementando%20desigualdades_reprodu%C3%A7%C3%A3o%20de%20desigualdades%20na%20implementa%C3%A7%C3%A3o%20de%20pol%C3%ADticas%20p%C3%ABlicas.pdf. Acesso em: 09 abr. 2023.

PRATES, Camilo. **APAC** - associação de proteção e assistência aos condenados. Jus.com.br, 2021. Disponível em: <https://jus.com.br/artigos/88362/apac-associacao-de-protecao-e-assistencia-aos-condenados>. Acesso em: 09 abr. 2023.

SILVA, Camila Rodrigues da *et al.* Com 322 encarcerados a cada 100 mil habitantes, Brasil se mantém na 26ª posição em ranking dos países que mais prendem no mundo. **Jornal O Globo - G1**, 2021. Disponível em: <https://g1.globo.com/monitor-da>



violencia/noticia/2021/05/17/com-322-encarcerados-a-cada-100-mil-habitantes-brasil-se-mantem-na-26a-posicao-em-ranking-dos-paises-que-mais-prendem-no-mundo.gh.html. Acesso em: 09 abr. 2023.

ZAFFARONI, Eugenio Raul *et al.* **Direito penal brasileiro** - teoria geral do direito penal, v.1. 2. ed. Rio de Janeiro: Revan, 2003, p. 489-660.

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