LUMEN ET VIRTUS

Education in the prison system as a starting point for the rehabilitation of inmates and their social reinclusion

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ABSTRACT

The general objective of this article was to problematize education in the prison system as a starting point for the rehabilitation of inmates and their social reinclusion. The specific objectives were: to address the evolution of penalties, focusing on the culmination in the deprivation of liberty; analyze the problems encountered for the application of what is provided for in the Penal Execution Law (LEP); to identify the factors that lead to the desocialization of the prisoner and how this influences his return to society and the recidivism rates. Thus, the scope of working with this theme arose because it is a recurring subject within society, causing discussions in the socio-political environment, as well as in the legal sciences and generating many controversies. The theoretical panorama that is outlined here was guided by an exploratory and deductive methodological proposal, based on information related to the theme addressed. From the perspective of its nature, it is an applied research, with bibliographic technical procedures. Valuing the prisoner as a human person, even in prison, is one of the ways to recover his criminal conduct. From the moment that the convict is shown that it is still possible to dream, giving him the opportunity, when released, to be reintegrated into society, we will be contributing to the reduction of recidivism rates.

Keywords: Prison education, Penal execution law, Brazilian prison system.

INTRODUCTION

The Brazilian prison system, today, thrives more and more in violence, promiscuity, idleness and, mainly, the lack of Human Dignity, which is a preponderant factor. In view of the bankruptcy of the Prison System, the importance of the right to remission of the sentence is proven, as this institute aims at rehabilitation, that is, to give the minimum of dignity and hope to the convict. It is known that since the earliest times, cruelty, torture and other punishments have not been resocializing as those who applied them proposed, they only generate more inhumanity and revolt, as the convicts live in true "deposits of people", without the minimum of Dignity (Greco, 2021).

Among the numerous innovations brought by the Penal Execution Law, the institute of remission of the sentence, or the act of repairing, compensating or even compensating for the damage caused, was not only a means of shortening part of the sentence to be served, but a commendable

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form of resocialization of the criminal, of re-educating him and preparing him for his reincorporation into society. It is known that the Prison System is in a precarious situation, with a lack of resources, overcrowding, which are primary factors for such contempt, and the inmates, victims of this system, end up staying in this "deposit" always waiting for a solution that never appears (Nucci, 2021)

The convicts cry out for help, because the sentence has taken away their freedom, but also their dignity, leaving them in the darkness of society, in the most horrendous situation that a human being can bear. The remission of the sentence has as its main objective, rehabilitation, and the lack of legal provision should not prevail, given that there is no legal prohibition, for the granting of remission of the sentence in the open regime (Zaffaroni; Pierangeli, 2019).

What is clearly perceived is a bankruptcy and destructuring of the prison system, sustained by the neglect of the public power, the lack of structure, overcrowding, the inexistence of an effective policy for the recovery and reintegration of this inmate. In this way, the present study proposed to answer the following research problem: what is the contribution of education in the prison system in the process of rehabilitation of subjects deprived of liberty?

That said, the general objective of this article was to problematize education in the prison system as a starting point for the rehabilitation of inmates and their social reinclusion. The specific objectives were: to address the evolution of penalties, focusing on the culmination in the deprivation of liberty; analyze the problems encountered for the application of what is provided for in the Penal Execution Law (LEP); to identify the factors that lead to the desocialization of the prisoner and how this influences his return to society and the recidivism rates.

Thus, the scope of working with this theme arose because it is a recurring subject within society, causing discussions in the socio-political environment, as well as in the legal sciences and generating many controversies. The Brazilian prison system, in a broad way, lives up to the criticisms, however, there is a huge field to be analyzed and to question the paradigm of state management of penitentiaries under the prism of outsourcing.

The theoretical panorama that is outlined here was guided by an exploratory and deductive methodological proposal, based on information related to the theme addressed. From the perspective of its nature, it is an applied research, with bibliographic technical procedures.

PRISON EDUCATION AS REHABILITATION

PENALTIES: CONTEXT AND EVOLUTION

The historical construction of Criminal Law can be divided into periods, namely: private revenge, divine revenge, public revenge, humanitarian and scientific revenge. Due to this fact, the historical study of criminal legislation must be done autonomously, separate from the study of the penal ideas of each era (Zaffaroni; Pierangeli, 2019).

When analyzing the idea of punishment, it could originally be linked to the feeling of revenge, as it arises privately, as a form of response, defense or retribution to an act committed against an individual. This happened because there was no constituted State that could regulate the existing relations of man in society. "Punishment, in its remote origin, meant nothing more than revenge, retaliation for the aggression suffered, disproportionate to the offense applied without concern for justice." (Mirabete, 2021, p.95).

From this perspective, according to Capez (2021), the use of self-composition, also known as revenge of a personal nature, was used by the offended party as a means of trying to resolve the dispute. Having this power of resolution, its own strength, exercised through a group or family, in order to act in disfavor of the criminal. The penalty did not obey the principle of proportionality, since in its application it was subordinated to the interests of the accused's family.

From such a practice, the need arises to try to make the punishment to be inflicted proportional to the act committed, and from this idea initially arises the law of talion. This law sought to make the punishment applied to the offender consistent with the crime committed. This fact becomes a milestone, because for the first time, a judicious way of punishing is brought into a legal system, linking the crime to its punishment (Achutti, 2016).

The law of talion was originally presented in the Code of Hammurabi, in 1780 BC, in the kingdom of Babylon, and aimed to prevent people from continuing to use self-protection as a way to respond to the harm suffered, taking justice into their own hands and respecting punitive criteria. This law became commonly known by the maxim: "an eye for an eye, a tooth for a tooth", that is, punishment is proportional to the harm caused (Beccaria, 2012).

This maxim, although extreme, was of great importance for creating the idea that the punishment of crimes should have criteria, foundations and rules to be followed. Thus, starting to establish a relationship between the penalty and the crime committed. The phase of divine vengeance is due to the decisive influence of religion in the lives of ancient peoples. "With the increase in the importance of religions for individuals, criminal law begins to suffer interference, being linked to criteria that would obey a certain religion and of a divine character." (Galvão, 2019, p. 66).

The civilizations of the ancient East had a penal legislation characterized by the religious nature of their laws, originating from the divinity. In this sense, the aggressor should be punished to placate the wrath of the gods and regain their benevolence. In this phase, the penalty begins to have a divine meaning, since the laws and punishments applied have a religious character (GALVÃO, 2013).

Criminal Law had great influence from the Greeks, having been the first civilization to concern and reflect on the foundations of the right to punish and on the purposes of punishment, especially the philosophers Plato and Aristotle. "In that period, the penal sanctions still had a sacral

character, but they already showed an advance in relation to the others" (Zaffaroni; Pierangeli, 2019, p.173).

From a greater social organization, the phase of public revenge was then reached. "In order to give greater stability to the State, the security of the prince or sovereign was aimed at by the application of the penalty, even if severe and cruel." (Mirabete, 2021, p.116). With the emergence of the State, penalties and punishments began to be approached in different ways, as it began to take the reins on how they should be applied, filling the normative gap that did not exist until then, and it was no longer up to people to determine how crimes should be punished (Greco, 2021)

The State comes as a regulatory force that exerts control over society. It is understood as something bigger, which starts to exercise its power over society. During the Middle Ages, we witnessed a process of nationalization of criminal justice. The State takes upon itself the function of maintaining justice and thus of the penalties and punishments applied. However, in that period, the idea of punishment applied ended up mixing with that of torture, and we witnessed a period where the penalties applied, despite being delimited, had as their main focus the body and the physical suffering of the offender (Zaffaroni; Pierangeli, 2019).

From the Middle Ages onwards, penal practices began to take unity, emerging through Roman, canonical and barbarian laws, which began to intertwine and influence each other. The process of nationalization of criminal justice, which occurred during the Middle Ages, gave rise to the so-called "Disciplinary Society", so named by Foucault (2001).

The humanitarian period begins at the end of the century. XVIII, where the laws begin to undergo reforms and how the administration of justice is exercised. From this period on, modern man began to become critically aware of the criminal problem, analyzing it philosophically and legally. The themes around which the new science develops are, above all, those of the foundation of the right to punish and the legitimacy of punishments (Galvão, 2019).

During this period another major change occurred, criminal laws began to have clearer definitions about the typified crimes, as well as the idea that criminal law could be used as a form of protection of what is most important to society. At this time, modern Criminal Law emerged, based on codes that attributed specific penalties to certain crimes, with a methodology for applying the law (Prado, 2019).

Its main source comes from contractualism, well represented by Locke. Loaded with the belief in the individual and his individual freedom, he allowed the transformation of the right to punish, leaving behind punishment based on the divine will or the lord to a law where punishment is carried out to the extent of the violation committed (Zaffaroni; Pierangeli, 2019).

With the reform of the penal system, the way the criminal is seen is also changed, when committing a crime the individual is seen as someone who breaks the existing social pact. As a

consequence of non-compliance, he is recognized as an enemy of society for breaking the laws in force (Foucault, 2001).

By committing crimes and thus disturbing life in society, the penalists of the time argued that the penalty should have as its objective the reparation of the harm caused. According to them, punishment should abandon the vengeful character or form of redemption of sins, and become a disincentive for other members of society to break the social pact (Foucault, 2001).

From the reforms and discussions fostered, the deprivation of liberty began to have a new meaning, starting to be used in a different way from what it was used during the Middle Ages, becoming a form of punishment for crimes, having a more humane character compared to the sanctions used until then (Greco, 2021).

Currently, as a result of this legal positivism that preached the reduction of Law to the study of current law, jurists have come to have a more humanistic perspective, concerned with the person of the convicted. With the popularization of the deprivation of liberty penalty, it persists to this day as the most used form of punishment around the world, causing great debates about the best way to punish. From this need to analyze the way to punish, several theories have emerged that deal with its true purpose (Nucci, 2021)

The prison sentence emerged as an alternative to the old afflictive punishments commonly used, which aimed to cause pain and bodily harm to the inmates. It is seen as a huge advance in Criminal Law, as it demonstrates the change of a punitive pattern, and thus the search for a more humane way of punishing oneself. From the eighteenth century onwards, there was a need to rethink the punishments to be applied. The most common crimes committed were no longer the same as those of the last century, blood crimes, such as murder and assaults, began to give way to theft, and swindling. This demanded new punishments from the State (Zaffaroni; Pierangeli, 2019).

However, with the reforms in criminal law, prison gained strength and ended up becoming the most used form of punishment. With the promise of being more humane and that it would not only aim at corporal punishment of the convict, the deprivation of liberty exercised control of the psychological and moral of individuals, and could thus be used as a form of reeducation. The unique power of justice and the instrumentalization of punitive penal control is now shared with a series of other institutions that start to act to ensure the correction of the individual, such as the police, surveillance, psychiatric, medical, and pedagogical institutions (Capez, 2021)

It was believed that the prison establishment should be a place where the convict would serve his sentence according to the sentence or criminal decision, in order to provide a reflection on his criminal conduct, in order to reintegrate him into society after a certain time. Currently, the prison is the target of constant criticism, especially in relation to its ability to re-educate and resocialize the prisoner. Foucault (2001) explains that prison is a social evil that depersonalizes and desocializes

men, not making them progress in their knowledge of themselves, nor making them better. The creation of the prison sentence, in a way, transforms human relations, justice and, Foucault (2001) adds, subjectivity and our relationship with the truth.

The prison ended up uniting different types of criminals in a closed environment, fulfilling a unitary punishment, in which several crimes are punished in the same way. In the same environment, thieves, kidnappers, murderers are present, without due separation, thus not developing the appropriate penalty for each crime. Foucault (2001, p. 53) teaches: "Prison as a whole is incompatible with this whole technique of penalty-effect, of penalty-representation, of penalty-general function, of penalty-sign and discourse. It is darkness, violence and suspicion."

The so-called deprivation of liberty penalties applied in Brazil are imprisonment and detention. Imprisonment is applied in case of intentional crimes. While detention is intended for both intentional and culpable. Currently, there is no essential difference between imprisonment and detention, and these terms are formal in nature, being used by law to determine the regimes for serving sentences (Nucci, 2021)

The practical unification of the types of custodial sentences does not, therefore, prevent individualization in the execution of the sentence and maintains the division established by Law No. 6146 regarding the sentence regimes: closed, semi-open and open. The prison sentence can be served in a closed, semi-open or open regime. Detention is served only in semi-open or open regimes (Capez, 2021).

The individual sentenced to the closed regime must serve his sentence in a maximum or medium security penal establishment. The convict of semi-open prison, on the other hand, serves his sentence in an agricultural, industrial or similar penal colony. The offender sentenced to the open regime is released unsupervised during the day, having to work or attend courses during this period, and at night and on days off, retire to Casa do Albergado or similar establishment. When the convicted individual is a woman, he is subject to a special regime, thus serving the sentence in his own establishment. The duties and rights inherent to the personal condition of the sentenced person must be observed, as well as, where applicable, the rules regarding custodial sentences (Greco, 2021).

The Brazilian Federal Constitution, in its article 5, L, guarantees inmates that conditions will be ensured so that they can remain with their children during the breastfeeding period. This right, regulated through the Penal Execution Law in its article 83, §2, which determines that all penal establishments intended for women must be equipped with a nursery where convicts can care for and breastfeed their children up to six months of age. Convicts over 60 years of age are also guaranteed the right to be held in establishments that are proper and appropriate to their personal condition (Zaffaroni; Pierangeli, 2019).

When entering the field of Alternative Punishments, one is faced with an environment still permeated by uncertainties and that lives a constant search for the best way to punish oneself. The act of seeking a different way of punishing oneself, thus trying to abandon custodial sentences, arises from the inefficiency and inability of the latter to present good results in the fight against crime (Bittencourt, 2019).

Thus, it is necessary to understand the need for alternative punishments today, as well as to analyze and debate the topic in our daily lives. The understanding of the best way to punish oneself has proven to be changeable over the years, and thus, our own current understanding is already outdated, which demands great attention (Beccaria, 2012).

Thus, it is a new phase of Criminal Law, As the illustrious Foucault (2001, p.72) points out: "it is necessary that the criminal justice system punishes instead of taking revenge". For this, we must lose the belief that punishment is synonymous with suffering, that the punishment applied to the convicted has the objective of causing pain and regret in the prisoner.

In Brazil, Law No. 7,209 inserted and Law No. 9714 expanded in the Penal Code the system of alternative (or substitutive) penalties of a general nature, instead of proposing alternation only for certain crimes in the Special part of the repressive statute. The substitute penalties were called penalties restricting rights and classified in article 43 (Zaffaroni; Pierangeli, 2019).

Law 9714/98, called the Law of Alternative Penalties, introduces into the Brazilian Penal Code, penalties restricting rights that come to act in our legal system, being present in article 43 of the Brazilian Penal Code, being: pecuniary payment, loss of goods and values belonging to the convicted, provision of services to the community or public entities and temporary interdiction of rights (Carvalho, 2018).

Listed in article 43, item I of the CP, the pecuniary payment consists of the payment in cash to the victim, their dependents or to a public or private entity with a social purpose. The amount to be paid is set by the judge, being stipulated from 01 to 360 minimum wages. This amount to be paid will be deducted from the conviction eventually reached in the civil reparation action, if they are the same beneficiaries (article 45, § 1, of the Penal Code). If the beneficiary agrees, the pecuniary payment may consist of a payment of another nature (article 45, § 2, of the Penal Code) (Zaffaroni; Pierangeli, 2019).

The loss of assets and values belonging to the convicted person in favor of the Penitentiary Fund appears in article 43, item II. Through this provision, the amount will be capped at the amount of damage caused or the proceeds obtained by the agent or third party with the commission of the crime, whichever is greater (article 45, § 3, of the Penal Code) (Beccaria, 2012).

The provision of services to the community or public entities consists of a form of punishment, assigning free tasks to the convict, as long as they are in accordance with their aptitudes.

This type of penalty can only be applied when the substituted sentence is longer than six months. Compliance must be at the rate of one hour of task per day of conviction. Its fixation must be carried out in such a way as not to harm the normal working day. If the substituted sentence is longer than one year, the convicted person may, if he wishes, work more hours per day, serving the sentence in a shorter time, up to the limit of half the time initially stipulated (article 46, § 1, of the Penal Code) (Carvalho, 2018)

Article 47, I to IV, of the Penal Code, brings us the penalties of Temporary Interdiction of Rights, namely: the prohibition of profession or public activity, as well as of elective mandate, the suspension of the license to drive vehicles or the prohibition of frequenting certain places. Article 48 of the Penal Code also brings one more limitation on the weekend, where there is an obligation for the convicted person to stay, on Saturdays and Sundays, for 5 hours a day, in a shelter or other suitable establishment. Strictly speaking, the limitation of weekends should be classified as a custodial sentence, and not as a restriction of rights, as it affects the freedom of the individual in certain periods, in the same way as imprisonment and detention in an open regime (Zaffaroni; Pierangeli, 2019).

Penalties restricting rights are substitutive, that is, they do not apply by themselves, immediately, but only in substitution of custodial sentences, in the cases listed by law. In the case of a legal entity, the penalties restricting rights are the partial or total suspension of activities, the temporary interdiction of the establishment, work or activity and the prohibition of contracting with the Public Power, as well as obtaining subsidies, subsidies or donations from it (Law 9.605/98, article 22) (Batista, 2017).

The provision of services, in the case of legal entities, is an autonomous penalty, and may consist of funding environmental programs and projects, execution of works to recover degraded areas, maintenance of public spaces or contribution to public environmental or cultural entities (Law 9.605/98, article 23) (Prado, 2019).

The criminal fine can be imposed as a single penalty, as a cumulative penalty (and fine), as an alternative penalty (or fine), and also as a substitute. In the case of a sentence equal to or less than one year, the custodial sentence may be replaced by a fine or a sentence restricting rights. If it exceeds one year, the custodial sentence may be replaced by a fine plus a restrictive sentence or by two restrictive penalties (article 44, § 2, of the Penal Code, as amended by Law 9.714/98). Therefore, the rule of article 60, § 2, of the Penal Code, which limited the penalty that could be replaced by a fine to six months, is tacitly revoked (Zaffaroni; Pierangeli, 2019).

THE CRISIS OF THE BRAZILIAN PRISON SYSTEM

Today, there are several criticisms when it comes to the subject of the Prison System. Many scholars, such as Nucci (2021), Greco (2021), among others, have heated and tireless discussions about its true effectiveness and many even talk about its failure. The conditions, the treatments to which prisoners are subjected, as well as the precariousness of prison institutions, all lead to call into question the purpose of the deprivation of liberty, which is to resocialize, that is, to reintegrate that particular individual in the best possible way into society, something that will generate several questions when dealing with the possibility of seeking the non-negative effects of imprisonment on the convict (Greco, 2021).

It is true that, lately, the deprivation of liberty sentence has been falling short with its final objective, which is to reintegrate the individual in the best possible way into society, that is, to resocialize him. However, for criminals with a high degree of dangerousness, whose segregation is indispensable, it continues to be the best option depending on the specific case. Therefore, it is unacceptable to keep people in prison who do not bring a real condition of risk and threat to society, which should be avoided whenever possible (Mirabete, 2021).

The Brazilian prison system denotes the true institutionalization of violence with the ineffectiveness of guaranteeing the minimum existential rights of the convicts, as well as the complete failure of the state repressive apparatus to fulfill the functions of prevention and resocialization of the convicts, affirmed in Law No. 7210/84, which provides for Penal Execution. At this juncture, we note that Brazilian prison is a reflection of the punitive proposal adopted by the retributionist theory (Zaffaroni; Pierangeli, 2019).

As can be seen from Bittencourt's (2019) explanations, by demonstrating the various problems faced in prisons, the resocializing development of sentences is neutralized, stigmatizing the individual with disrespect for human rights. Within this, criminal justice lacks legitimacy at the real level and ends up being the only function of punishment, that of criminal reprobation, as adduced by the retributionist theories.

Among the types of punishment established in the legal-criminal sphere, the most widespread consists of the deprivation of liberty which, according to the Law of Penal Executions, should serve as an instrument for the reintegration of individuals into society. (Távora; Alencar, 2020). More than establishing the duties of the convict and establishing the rules of the criminal execution process, the aforementioned law reinforced, in its infra-legal text, the constitutional guarantees to any citizen, and fundamental rights for human survival must be respected (Mirabete, 2021).

These are premises for the discontinuity of criminal conducts, so that the individual who committed the criminally typified conduct acquires, during the execution of the sentence, the conditions to return to social life in a state in which it is possible to develop his life based on lawful

means. To this end, the penal establishment must be equipped with a structure that provides education and work, so that the prisoner, at the end of his sentence, is prepared for community life (Prado, 2019).

In prisons, as is well known, there are many problems registered. However, without a doubt, the problem of overcrowding in the prison system deserves greater attention among the various problems that affect the system. Well, overcrowding, taking as an example, allows offenders with less offensive potential to have a daily contact with criminals with a high degree of dangerousness, which leads us to imagine that prison is becoming not a measure of rehabilitation adopted by the state, but a true school of the evolution of crime (Zaffaroni; Pierangeli, 2019).

With overcrowding, the conditions of comfort and hygiene are the minimum possible that we can imagine, subhuman conditions that only increase tensions between prisoners, giving rise to violence, rebellions, riots, escape attempts and in not rare cases even cause deaths. In addition, to carry out the maintenance of prisons, for the Brazilian government it is expensive, because the state will have to inject a lot of money, but on the other hand, in fact what we have today are incarcerated people subjected to increasingly crowded cells and a fight against criminal action and their recidivism without much success (Mirabete, 2021).

The situation in which the Brazilian prison system finds itself is chaotic and there is no perception of improvement in this situation in the short term. The failure of prisons brings to discussion the inability of the state to promote the fight against violence and the resocialization of inmates, the main objective of penal execution (Capez, 2021).

The Brazilian penitentiary system is bloated. Data from the Ministry of Justice indicate that the country has the fourth largest prison population in the world, surpassing the mark of 600 thousand inmates, reaching a rate of 300 prisoners for every 100 thousand inhabitants. According to a report by the National Penitentiary Department (Depen, 2021, p.06):

> There are no clues that the incarceration of this huge contingent of people, whose profile analysis points to a majority of young people (55.07% of the population deprived of liberty is up to 29 years old), to an overrepresentation of blacks (61.67% of the prison population), and to a population with precarious access to education (only 9.5% have completed high school, while the national average is around 32%) is producing any positive result in reducing crime or building a cohesive and adequate social fabric.

The same Department indicates a deficit of more than 180 thousand vacancies throughout the country. The growing incarceration combined with the lack of structure and poor management lead to all the problems mentioned above, making the resocializing role of the deprivation of liberty sentence desired by Criminal Law and Criminal Procedure unfeasible (Depen, 2021).

Recover, resocialize, readapt, reinsert, socially re-educate, rehabilitate, are words that generally describe the role of punishment and the state's duty towards the individuals affected by it.

Unfortunately, the reality in the country is totally different, and it can be said that in some cases the role achieved by the sentence is the opposite, thus causing the so-called desocialization of the prisoner (Mirabete, 2021).

As previously mentioned, information is routinely reported about the terrible conditions to which several inmates are subjected on a daily basis. There are cases that, due to their dimension of irregularities and lack of respect for human dignity, which have gained national and even international proportions – we will continue to address some of these cases (Nucci, 2021).

Among the problems found in the prison units are prison overcrowding, precarious structure of the units, lack of proper hygiene, proliferation of the parallel power of criminal organizations, in addition to numerous reports of flagrant disrespect for human rights. With rare exceptions, the general picture is worrying and today prisons are true "schools of crime", where the chances of rehabilitation of convicts are minimal (Greco, 2021)

What prevails within Brazilian penal establishments is the syndrome of penal dysfunctionism, in which the repressive apparatuses of the State were organized without considering the Brazilian reality and all the social ills that lead to the expansionism of the criminal law. In this sense, the legal-criminal apparatus has already been illegitimately instituted because it is unable to fulfill the primary function of resocialization and containment of social violence. According to the lessons of Zaffaroni and Pierangeli (2019, p. 125) "The Brazilian penal system is born bankrupt by essence because it is rooted in the bias of exaggerated punishment".

It is said that prison is a machine of human reproach in the most brutal way, which subjugates the very condition of humanity of the convict. Inmates live in inhumane conditions, in overcrowded cells, holding up to four times the number of people they should, without minimum hygiene conditions, in an environment conducive to the proliferation of pathologies, without access to minimally adequate food (Carvalho, 2018)

In this context, Brazilian penal establishments have high rates of overcrowding, which propagate violence and the complete suppression of human rights. Contemporary incarceration deviates from its purpose as an ideal panopticon, with a view to exercising control over inmates, and approaches human torture, with oppression of rights, poor living conditions, and an instrument subject to the control of commanding factions, which propagate rebellions within the establishments (Mirabete, 2021).

Thus, the prison system is one of the great mishaps faced today in our country. The crisis is public and notorious, with recurrent news about overcrowding, rebellions, mistreatment, corruption, among other problems present in it. The increase in the number of incarcerations in Brazil has not been accompanied by a greater availability of vacancies in the prison system, and few prisons are built to meet the demand for new convictions (Nucci, 2021).

The overcrowding in prisons characterizes a serious affront to the fundamental rights of the prison population, made up mostly of people with low income and low education. It is a great challenge for the Brazilian state to restructure the prison system in order to enforce the provisions of the law of penal executions. The deficit of vacancies in prison units appears as one of the most serious problems to be faced, as it forces inmates to pile into inappropriate and unhealthy cells (Achutti, 2016).

Prison overcrowding makes it difficult or even impossible to resocialize and care for prisoners, which gives rise to strong tension, violence and constant rebellions. We emphasize that the Penal Execution Law, in its article 88, determines that the execution of the sentence must be in an individual cell, with a minimum area of six square meters. The aforementioned legal provision also provides that there must be compatibility between the physical structure of the prison and its capacity (Nucci, 2021).

The inadequate treatment of prisoners, in addition to violating their conquered rights, increases marginality, violence with inhumane treatment, as well as prison comes to be seen as the school of crime, a place for violent criminals and bad people, in addition to inferiorizing them before society, which in addition to judging does not give support (Mirabete, 2021).

Therefore, it only reinforces what has been said in this topic that the incarcerated today are treated like animals, thus losing their dignity so well treated and respected by the CRFB – Constitution of the Federative Republic of Brazil of 1998. These deficiencies have to be found in the administration, in the lack of public policies of the Brazilian state in prison relations (Brasil, 1988).

Recover, resocialize, readapt, reinsert, socially re-educate, rehabilitate, are words that generally describe the role of punishment and the state's duty towards the individuals affected by it. Unfortunately, the reality in the country is totally different, and it can be said that in some cases the role achieved by the sentence is the opposite, thus causing the so-called desocialization of the prisoner (Mirabete, 2021).

Capez (2021, p. 169) conceptualizes recidivism as being "the situation of someone who commits a criminal act after having been convicted of a previous crime, in a final and unappealable sentence". As previously analyzed, punishment in Brazil has a double purpose: retributive and preventive.

With the practice of a new criminal offense, thus characterizing recidivism, it reveals that the sentence did not fulfill its role. It was not sufficiently "frightening" in its punishment, as well as it did not satisfactorily resocialize its recipient, since he returned to delinquency. Due to this reason, recidivism is a generic aggravating factor, since, as the previous sentence did not fulfill its role, proving to be insufficient, a more severe punishment is now necessary for those who committed a new offense (Galvão, 2019)

Recidivism, as it is an aggravating factor, affects the second phase of the application of the custodial sentence. It is of a personal nature, that is, it is related to the figure of the agent who committed the crime, and not to the fact itself. In addition, it does not communicate with co-authors and participants (Nucci, 2021).

In Brazil, according to a survey carried out by the Institute of Applied Economic Research, one in four ex-convicts return to practice and be convicted of a new crime within a period of 5 years. Leaving the legal concept present in arts. 63 and 64 of the Penal Code, the rate of return to prison, without, however, a conviction – pretrial detainees, for example – reaches 70% (Capez, 2021)

When it comes to reintegration, rehabilitation of the individual into Brazilian society, through all that has been demonstrated above about the prison situation in Brazil, it is known that the environment to which the incarcerated are subjected is not the most recommended and appropriate. However, this is the reality with which we have to face and work for a better prison system. As a possibility to obtain a better Brazilian prison system, this is developed through the implementation of small attitudes of improvement to restore dignity to inmates, these small attitudes can collaborate for effective social reintegration (Mirabete, 2021).

EDUCATION WITHIN THE PRISON SYSTEM AS A PROPOSAL FOR REHABILITATION

The 1988 Constitution, known as the Citizen Constitution, was the Brazilian Charter that, throughout history, worked in a more significant way on the provision of Second Generation Fundamental Rights. In the current Constitution, social rights are listed in article 6 and, among them, is Education (Brasil, 1988).

In addition, articles 202 to 214 of the Legal Diploma are dedicated to the theme, emphasizing that Education is a right of all and a duty of the State and the family, to be promoted and encouraged by society, with the purpose of the development of the person, his preparation for the exercise of citizenship and his qualification for work. In addition, the Right to Education is recognized by the Universal Declaration of Human Rights of 1948, which provides as follows:

> Article 26. 1. Every human being has the right to education. Education will be free, at least in the elementary and fundamental grades. Elementary education will be mandatory. Technical-professional instruction will be accessible to all, as well as higher education, which is based on merit. 2. Education shall be directed towards the full development of the human personality and the strengthening of respect for human rights and fundamental freedoms. The education shall promote understanding, tolerance and friendship among all nations and racial or religious groups and shall assist the activities of the United Nations in the maintenance of peace. 3. Parents have legal priority in choosing the type of instruction that will be given to their children [...].

Both the provision made in the Declaration and in the Brazilian Constitution have a broader scope and point to education as a form of personal development and relationships in society. In view of this correct interpretation, Education has been on the agenda with regard to helping the

rehabilitation of inmates. Despite its presence throughout the Brazilian constitutional history, the right to Education was granted to certain groups and was subject to a series of restrictions (Assis, 2022).

Education inside prisons, for example, for a long period of time served only as a containment of people. From the year 1950 onwards, education began to be inserted within the walls of the prison, with a proposal for the requalification of prisoners. There are many advantages that the insertion of educational and cultural activities provides to inmates (Nucci, 2021).

The numbers are clear: according to a survey carried out by the National Survey of Penitentiary Information – INFOPEN (2024) released by the Ministry of Justice, referring to the year 2019-2021, among 10 inmates, 6 are illiterate or literate with incomplete elementary education. Considering elementary school, the percentage rate of Brazilian inmates who have not completed high school is 75%. In the state of Bahia, the number of illiterate prisoners has reached the mark of 10% of the prison population, and the percentage of those who have not reached high school is 84%. The weight of statistics is even greater when education appears in the most relevant legal documents in Brazil and in the world as a tool for personal development and personal relationships, but stands out in a negative way within the walls of the prison (Infopen, 2024).

Also according to the report issued by Infopen (2024), the number of prisoners who participate in educational activities in the State of São Paulo, including school education and complementary activities, is only 20%. When it comes to Brazil, the mark reaches 12% of the prison population.

Although the percentage in Bahia is below expectations in the face of a prison population of 84% of people who have not completed high school, the rate is the third highest in Brazil, surpassed only by the states of Espírito Santo (23%) and Tocantins (25%) (Infopen, 2024).

The Penal Execution Law (LEP), Law 7.210 of 1984, despite being prior to the Brazilian Constitutional Charter in force today, presented itself as an advanced legislation in the human rights agenda, envisioning rehabilitation as an important purpose of criminal sanction. According to the legal diploma:

> Article 10. Assistance to prisoners and internees is the duty of the State, aiming to prevent crime and guide the return to living in society.
> Sole Paragraph. The assistance extends to the graduate.
> Article 11. The assistance will be: [...] IV - educational; [...] (BRAZIL, Law No. 7,210, of July 11, 1984).

Section V of the said legislation is dedicated to the Educational Assistance of the prisoner and points out, as of article 17, that such assistance will include the school instruction and professional training of the prisoner and the internee. Article 18 of the LEP also informs that primary education is mandatory, and must be integrated into professional training. Still on the subject, the Brazilian

Constitution provides, in its article 208, item I, that the State's duty with Education will be carried out through compulsory and free basic education from four to seventeen years of age, also ensuring its free offer to all who did not have access to it at the appropriate age (Brasil, 1984).

Criminal Execution is understood to have a mixed or hybrid nature, which presupposes that it will be both the legal and administrative responsibility of the State, although the most current doctrinal understanding reinforces that the jurisdictional legal nature is preponderant in relation to the administrative nature, which appears in a residual function (Mirabete, 2021).

The judiciary is responsible for determining the progress of the process and the necessary commands for execution, while the State is responsible for carrying out the sentence in penal establishments. The responsibility of the State to its citizens is not diminished by a sentence. When one of these is arrested and assigned to serve a sentence, he will certainly lose some rights, such as, for example, the right to move freely due to the very consequence of the deprivation of liberty, but he does not lose his rights as a citizen reached by the guarantees of the Legal System (Távora; Alencar, 2020).

Despite the clarity of the legislation regarding the right to Education within penal establishments, its effectiveness is only possible in the presence of human and material resources for learning. In addition, education has, in this case, an even greater purpose than school instruction itself, since it can be used in a truly transformative way in the lives of people who did not have the opportunity to study (Greco, 2021).

Educational instruction is not limited to activities within a classroom, especially in the context of prison. What should be ensured to inmates through education is the possibility of creating critical and reflective thinking, intellectual and creative autonomy and the capacity for analysis and interpretation. School study has an undoubted importance, but transformative education goes far beyond what is said by the teacher, it is much more about the student's ability to understand (Nucci, 2021).

CONCLUSION

The present work sought to know and present the little explored, but very important theme about prison education as a proposal for the resocialization of the convict in the Brazilian prison system. From the origins of the penalty, the awareness of the need to readjust or restructure the prison system and criminal policy, the factor of resocialization, readaptation or even reintegration of the convict into society, was and still is the main point, always leading scholars and legislators to search for norms that can be effective in what is proposed when talking about the subject.

It is noticeable that the Brazilian prison mass is exhausted, and the scrapped prison system and the coercive measures imposed by the system, which would be to reintegrate them into society,

make them hostages of subversive conducts within the Prison Institutions. The remission must also cover convicts who are in an open regime, and the Legislator, when instituting the Law, did not extend such benefit to those who are serving their sentence in an open regime. It was noticed throughout this monographic work that the right to redeem the sentence in the open regime, not provided for by the Legislator, can indeed be granted, as there is no law that prohibits such benefit.

In view of the problems faced by the convicts, it is worth mentioning that there is the feasibility of applying the remission of the sentence in the open regime in view of the constitutional principles applicable to the execution of the sentence, and in view of the subtlety of the Legislator in not providing such benefit to those who serve their sentence in the open regime, it is possible through Hermeneutics, through the Theory of Implicit Powers and other institutes, previously highlighted throughout this work, to grant in the open regime the right to remission, since it is glimpsed here, the resocializing meaning of work, in order to guarantee their dignity and equal treatment before the law.

Preventing recidivism is extremely important, because in addition to avoiding prison massification, it also avoids the expenditure of funds by the State, and who knows, the State may invest massively in the reintegration of the convict into social life. Finally, the work presented leaves the notion of the need to still invest a lot in a system currently on the verge of decadence, but with immense possibilities of becoming, if not the desirable, at least the acceptable for the human condition.

Being aware of what needs to be changed and improved, the expectation is that the work will produce good results for the future, inside and outside the prison walls. Education, by itself, does not have the power to change the world, but to change the people who are going to transform the world. With the sum of efforts of people interested in bringing about change in society, expectations remain in high regard.

Valuing the prisoner as a human person, even in prison, is one of the ways to recover his criminal conduct. From the moment that the convict is shown that it is still possible to dream, giving him the opportunity, when released, to be reintegrated into society, we will be contributing to the reduction of recidivism rates.

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