

The Human Rights In The Brazilian Prison System And The Humanitarian Crisis Ignored By Contemporary Society

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Abstract:

This paper aims to analyze the complex and multifaceted issues of human rights in the specific context of the Brazilian prison system, an issue that constitutes a humanitarian crisis of great proportions, although often neglected by contemporary society. The analysis seeks to understand the historical evolution of human rights, from their conception in fundamental international documents, such as the Universal Declaration of Human Rights, to their incorporation and application in the Brazilian legal system, with emphasis on the Federal Constitution of 1988. Based on this contextualization, the study delves into the intrinsic relationship between the Fundamental Guarantees established in the Constitution of 1988 and the guiding principles of the Universal Declaration of Human Rights. In view of this, the main objective of the paper is to shed light on the alarming situation of the Brazilian prison system, marked by degrading conditions, systematic violations of the fundamental rights of inmates and the ineffectiveness of resocialization policies, highlighting the urgent need for measures that ensure respect for human dignity and promote the effective social reintegration of inmates. The methodology adopted involved a bibliographic review of relevant sources that address the topic, allowing for an in-depth understanding of the historical, legal and social context of the issue. The main conclusions of the study point to the existence of degrading conditions and systematic violations of the fundamental rights of inmates in the Brazilian prison system. These violations are the result of a series of structural problems, including prison overcrowding, the lack of adequate infrastructure and the inefficiency of resocialization policies. The analysis reveals the urgency of adopting effective measures that guarantee respect for human dignity in the prison environment and that promote the social reintegration of inmates, aiming to break the cycle of violence and marginalization that characterizes the current prison system. The work highlights the importance of an ongoing debate and commitment to compliance with legal and international human rights standards, both by the State and society, in order to build a more just and humane prison system.

Keywords: Human Rights; Brazilian Prison Syste; Federal Constitution of 1988; Universal Declaration of Human Right; Resocialization.

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I. Introduction

Changes in the age structure of the population: Dynamics and implications of demographic transition

II. Development

History of human rights at the international and national levels

Comparato (2019) points out that global recognition of the importance of fundamental rights, embodied in the promulgation of the Universal Declaration of Human Rights by international organizations, represented the culmination of an evolutionary process that spanned approximately twenty-five centuries. and the effectiveness of the maxim “all men are born free and equal in dignity and rights,” contained in that document, required the construction of a uniform and comprehensive regulatory framework, consolidated in the specific legal systems of various nations. Although it was a complex process that required adaptations, it was recognized as essential over time.

Castilho (2018) comments that, in the historical context of legal philosophy, the figure of Thomas Aquinas, notably in the 13th century, emerges as a fundamental milestone in the debate on this topic, through his seminal work, *Lex Naturalis*, he outlined an innovative understanding of the function of law in relation to justice, sustaining the autonomy of law as an intrinsically human domain, dissociated from the mere extension of moral

theology. In this context, he defined that human rights would constitute a foundation of inherent natural rights, thus establishing a paradigm that would influence the legal thinking of several other thinkers after that period.

The 17th century, marked by the decline of political absolutism, highlighted the importance of certain legislative milestones in the consolidation of individual rights, such as the publication of the Petition of Rights, which safeguarded the right to property against arbitrary expropriation, establishing the requirement of due process of law for this purpose, as well as the definition of the Habeas Corpus Act, which enabled the right of appeal to a higher court for individuals detained or accused, and also the Bill of Rights, which consolidated Parliament's supervisory role over monarchical power, imposing limits on royal authority, something of great importance in view of the arbitrariness of certain sanctions (SAMPALIO, 2017).

This need for humanity became particularly apparent in the wars of the 19th century, characterized by atrocities and systematic human rights violations, and was a fundamental factor in understanding the limits imposed by human rights (GOMES; CAMARGO, 2020).

In summary, Passos (2016) states that the progression of modern society, driven by historical and social events of great magnitude, such as the French Revolution and the American Revolution, was perhaps the greatest catalyst for the rise of ideals of universal equality, and throughout the development of civilization, the need for a minimum level of humanity in interpersonal interactions was naturally perceived, which ended up being translated into what is known today as Fundamental Human Rights, mainly in order to prevent humanity from regressing into barbarism.

Thus, Gomes and Camargo (2020) divide human rights into two distinct phases in their evolution. The first phase, centered on the Geneva Convention of 1864 and subsequent conventions of 1906 and 1929, culminated in the United Nations General Assembly in 1948, resulting in the Universal Declaration of Human Rights. The second phase emerged with the so-called "Hague Law," included in the conventions of 1907 and 1954. Both phases focused mainly on preventing the inhumanities that occur in times of war, both in terms of minimum standards for humanity in relation to life, dignity, and peace, as well as conflict mediation and which war strategies would be considered unacceptable in light of these standards.

Although it is a widely debated topic, the complexity of protecting human beings actually encompasses a multiplicity of terms and approaches that vary according to the context and analytical perspective adopted, with "Human Rights," "Rights of Men," and "Fundamental Rights" being the main ways of referring to this protection, as pointed out by Zanini and Queiroz (2022).

These authors also emphasize that the plurality of terms used to designate the protection of human beings has a direct impact on legal interpretation, mainly because terminological diversity can result in ambiguities and divergences in the application of the law, with different jurists attributing different meanings to expressions such as "human rights," leading to a complexity that requires constant debate (ZANINI; QUEIROZ, 2022).

The evolution of democracy in the modern West occurred through a complex and dynamic process, driven by paradigmatic changes that intensified with the Glorious, French, and American Revolutions, and with the arrival of the 18th century, and even more strongly in the 19th and 20th centuries. This phenomenon resulted in the construction of an international political pact where traditionally divergent ideological perspectives, such as conservatism, liberalism, and the democratic left, had a unified goal, coexisting and interacting in an interdependent manner, shaping the contemporary democratic structure, albeit with their specific disputes (SERRANO; MAGANE, 2020).

Novelino (2015) points out that the Federal Constitution of 1988 represented an initial milestone in the consolidation of human rights in Brazil, transcending the mere incorporation present in previous constitutional charters, and under the title of "Fundamental Rights and Guarantees" began to substantially internalize Universal Human Rights, and although adapted to the specificities of the national context, Fundamental Rights and Guarantees promoted the almost complete integration of the provisions of the Universal Declaration of Human Rights, reflecting the constitutional commitment to the protection and promotion of human rights in Brazil.

Hachem (2019) also argues that the 1988 Constitution consolidated a legal model guided by citizenship, dignity, and social values, anchored in the principles established by Universal Human Rights, which broadened the scope of social rights so necessary at the time, but also established rigorous mechanisms to curb any violation of fundamental rights, ensuring that Fundamental Guarantees would operate as a powerful instrument in building a more just, peaceful, secure, and committed society to the democratic rule of law.

Casara (2017) points out that in recent times, however, a disturbing transformation has been observed in the Brazilian political landscape, with the author suggesting that the country is undergoing a transition to a "post-democracy" model, in which public policy is altered to the detriment of private interests, leading to a weakening of fundamental rights and guarantees, both subtly and in a more "post-democracy," in which public policy is altered to the detriment of private interests, leading to a weakening of fundamental rights and guarantees, both subtly and more explicitly, with this whole context amplified by the advances of neoliberalism in the country.

The neoliberal context has led the population to no longer be seen as a group of individuals with rights and guarantees that are inherent to human beings, but rather as products or useful tools in a public machine that

is confused with the private machine, which tends to serve much more to generate resources and drive the economy. This power structure becomes the basis of an -ideological model that increasingly blurs the lines between public and private powers, spheres that should be completely separate by definition, since the role of the state is to protect public interests and defend the collective good of the population, while the role of private initiative, in general, tends to be to obtain as much economic power as possible (DARDOT; LAVAL, 2016).

Comparato (2019) argues, in line with Dardot and Laval (2016), that the weakening of the state in the face of the rise of private capital seriously compromises the fundamental conditions for a dignified existence, mainly because by relegating the public interest to a secondary position, the obvious antagonism between capitalism and human rights in the social, cultural, and economic dimensions becomes evident, simply because capitalism is based on the continuous exploitation of the workforce for profit, while human rights seek to preserve human dignity, regardless of the dynamics and interests of the private sector.

Thus, Soares (2020) analyzes the Brazilian political scenario as an environment of intense polarization and risks to human rights, a scenario that has been worsening with the weakening of citizens' understanding of the nation and the strengthening of ideological feuds, promoting a reductionism of politics to antagonism and hostility against any opposition. At least in recent years, there has been a proliferation of discourses that exalt militarization, brutality, and increased access to firearms, trends that unquestionably reveal a threat to the fundamental principles of human rights.

Furthermore, it is important to emphasize that the denial of human rights to minority groups in Brazil is deeply rooted in sociocultural factors that perpetuate marginalization and exclusion. In this sense, it can be argued that one of the biggest barriers to the realization of these rights lies not only in institutional structures, but in society itself, whose values and practices sustain historical inequalities (MIGUEL, 2018).

Even so, Nunes, Lehfeld, and Lehfeld (2022) recall that the 1988 Constitution was conceived based on the principles of Universal Human Rights, guaranteeing the structuring of a Democratic State of Law committed to protecting its citizens, regardless of gender, ethnicity, religion, or social class, and that this protection requires a continuous effort to promote awareness among society and state agents, ensuring that Universal Human Rights keep pace with social changes over time.

Correlation between the Fundamental Guarantees enshrined in the 1988 Constitution and the Universal Declaration of Human Rights

Recognized as one of the most important foundations of the Brazilian Constitution's evolution, human rights, enshrined as fundamental rights and guarantees in the 1988 text, are achievements made throughout a history of resistance, social evolution, and movements in favor of civility and human dignity.

And although Fundamental Rights and Guarantees are based on the 1948 Universal Declaration of Human Rights, it is important to understand how these rights correlate in order to identify how this protection of Human Rights is specifically carried out in the Brazilian legal system and, with that, to more accurately identify the similarities and possible distinctions between the constitutional text and the universally recognized declaration.

The first three articles of the Universal Declaration of Human Rights establish fundamental principles that guide dignity and equality among individuals. The first article emphasizes that all are born free and with the same rights, possessing reason and conscience, which implies the need for relationships based on fraternity. The second article extends this guarantee by stating that everyone is entitled to the principles of the Declaration, regardless of factors such as race, gender, religion, social origin, or political status of the territory to which they belong. The third article guarantees essential rights to human existence, such as life, liberty, and personal security, reinforcing protection against any form of threat or oppression (UNICEF, 2024).

When comparing the principles established in the first three articles of the Universal Declaration of Human Rights with the provisions of Article 5 of the Federal Constitution of 1988, there is a direct correspondence between the two normative texts, with the constitutional article reinforcing the principle of equality by stating that all are equal before the law, without any form of discrimination, and guarantees fundamental rights such as life, liberty, security, and property to both Brazilian citizens and foreign residents in the country, a convergence that highlights the influence of Universal Human Rights on Brazilian legislation (BRAZIL, 1988).

The Universal Declaration of Human Rights, in Articles 4, 5, and 6, establishes direct protection of human dignity, particularly against various forms of violence, with Article 4 prohibiting slavery and human trafficking, while Article 5 prohibits torture and cruel, inhuman, or degrading treatment, and Article 6 ensures the right to recognition as a person before the law everywhere (UNICEF, 2024).

In the Brazilian context, the Federal Constitution of 1988, in its Article 5, paragraphs II and III, echoes the principles of the Universal Declaration, with Paragraph II establishing that no one may be compelled to do or refrain from doing anything except by virtue of law, while Paragraph III guarantees that no one shall be subjected to torture or to inhuman or degrading treatment (BRAZIL, 1988). However, severe criticism must be levelled with regard to the issue of slavery, since the term is mentioned only twice in the entire constitutional text, both

times in Article 243, and only in relation to other issues, such as the expropriation of assets and properties used for the illegal cultivation of psychotropic plants or illicit drug trafficking.

This criticism is fundamental in a country with such a strong history of slavery, and the reference in a prominent place in the Universal Declaration of Human Rights demonstrates a much more serious view of the fight against institutional racism and the rejection of slavery, something that could be defended much more strongly in the constitutional text.

The guidelines proposed in Articles 7 to 11 of the Universal Declaration of Human Rights involve the clear promotion of due process, which is also a fundamental part of the democratic rule of law, where everyone is protected by the law and should never be punished without the right to defense, specifically stipulating that:

Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9

No one shall be subjected to arbitrary arrest, detention, or exile.

Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11

1. Everyone charged with a criminal offense has the right to be presumed innocent until proven guilty according to law in a public trial at which they have had all the guarantees necessary for their defense.
2. No one shall be held guilty of any act or omission that did not constitute a criminal offense under national or international law at the time it was committed. Nor shall a heavier penalty be imposed than that which was applicable at the time the criminal offense was committed. (UNICEF, 2024, p. 1).

In general, all these articles of the Universal Declaration of Human Rights appear in the Federal Constitution of 1988 in the form of the principle of presumption of innocence and non-guilt, as well as the principle of proportionality, and others that ensure legal guarantees of great importance, in addition to excerpts contained in sections LIII, LIV, LV, LVI, and LVII, which reinforce aspects of full defense and due process for any individual accused of a crime, including protecting the physical and moral integrity of citizens throughout the entire judicial process, as provided for in item XLIX, ensuring that throughout the process, including during the serving of the sentence, human rights are protected, even if the individual is convicted of the crime in question (BRAZIL, 1988).

It is also possible to identify correlations in practically all the remaining articles of the Universal Declaration of Human Rights in the Federal Constitution of 1988, but one of the main aspects that this paper aims to highlight is precisely the issue of human rights within the context of due process of law, and in this sense, the first articles of the Universal Declaration already sufficiently demonstrate the constitutional commitment to promoting equality, freedom, dignity, and other values that are essential to human beings.

Although human rights are historically rooted in social reactions by the population against atrocities committed in different eras, their protection requires constant care, mainly because, while state negligence can result in the violation of these rights, sociocultural trends driven by neoliberalism can undermine the full realization of human rights, which requires more than mere legal positivism and theoretical adherence, but also proactive state action, manifested in protection, guidance, and guardianship in situations of humanitarian vulnerability (NUNES; LEHFELD; LEHFELD, 2022).

The human rights situation in Brazilian prisons as a public health issue and humanitarian crisis

Once the conceptual aspects of human rights defined in the Universal Declaration and the fundamental rights and guarantees enshrined in the 1988 Federal Constitution have been understood, it is possible to discuss what occurs daily in a number of Brazilian prisons, and only by comparing legal theory on human rights with the practice analyzed by various authors on these institutions can the extent of the humanitarian crisis that occurs with aberrant naturalness in the country be measured.

For decades, it has been understood that the Brazilian prison system, far from fulfilling its function of resocialization, operates as a mechanism of exclusion that aggravates the marginalization of inmates and directs them even further toward crime. There are structural flaws that often result in inmates reoffending with even more serious crimes. Thus, the penal system in Brazil translates into a model that, instead of contributing to public safety, perpetuates a cycle of violence and degradation, in clear contradiction to the constitutional principles that ensure human dignity and prohibit cruel and degrading punishment, as established in Article 5 of the Federal Constitution (FOUCAULT, 2002).

The crisis in Brazil's prison system is not simple and cannot be understood in isolation, mainly because it reflects much broader structural challenges, such as social inequality, lack of equal opportunities, and the inefficiency of public policies aimed at vulnerable groups. The problem is most acute in the most vulnerable regions, such as the Northeast, and in states such as Roraima, where prison occupancy already exceeds 300% of maximum capacity. Punitive policies, rather than resocialization policies, combined with a lack of investment in infrastructure, have intensified this crisis in recent years (DANTAS; ALVES, 2021).

Serrano and Magane (2020) highlight a disturbing aspect of this scenario: the rapid growth of the prison population, driven by a neoliberal model that marginalizes certain social groups, has not resulted in greater security for society. It is noteworthy that even with the increase in incarceration, violent crime rates have not decreased significantly, demonstrating once again the ineffectiveness of this punitive approach in promoting social peace.

Dal Santo (2019) emphasizes that the lack of investment in both infrastructure and resocialization programs directly compromises the social reintegration of inmates, and it is in this context that the lack of opportunities for personal and professional growth within the prison system favors the perpetuation of crime, transforming the prison environment into a space of marginalization and violence, something that, together with the degrading living conditions in Brazilian prisons, highlights the failure of the penal system to fulfill its rehabilitative function or maintain social peace.

Another point addressed by the aforementioned author is that the implicit criminalization of poverty, represented by criminal repression to the detriment of effective social policies, not only reinforces social stigmas, but also limits access to rights and opportunities for the most vulnerable populations, who are precisely those who most need access to these rights, since they cannot compensate for this absence with economic power, thus establishing a model that perpetuates socioeconomic inequalities and lacks serious investment in prison infrastructure and the social reintegration of convicts (DAL SANTO, 2020).

Carvalho and Achutti (2021) also comment that, over the centuries, certain vulnerable groups have been systematically marginalized and subjected to inhumane conditions within the prison system, where they suffer deprivation and abuse comparable to torture and exile, supported precisely by a historical context of state violence and social exclusion of these groups. and although these human rights violations occur in an institutionalized manner and with the backing of the law, they are perpetuated through a social discourse that delegitimizes the dignity of incarcerated individuals, reinforcing the idea that those serving sentences are not entitled to basic rights.

The process of dehumanization to which prisoners are subjected significantly increases the chances of criminal recidivism, and it is possible to consider that overcrowding not only violates the dignity of inmates, but also compromises the basic function of the prison system to promote social peace, a problem that goes beyond precarious conditions and lack of physical space, considering that the excess of inmates prevents any individualization of punishment, and creating environments where inmates, for the simplest and most brutal crimes, live together in environments marked by violence, psychological suffering, and without any prospect of social reintegration (DANTAS; ALVES, 2021).

The confinement regime that disregards the dignity of prisoners constitutes a state practice analogous to torture and cruel, inhuman, and degrading treatment, a scenario that conflicts with constitutional precepts, in particular Articles 5, XLVII, and XLIX, which prohibit cruel punishment and ensure respect for the physical and moral integrity of prisoners. It is evident that the unsanitary conditions that already characterize the Brazilian prison system constitute an environment where fundamental rights and guarantees are systematically violated (BRAZIL, 1988).

An analysis of the degrading conditions of the Brazilian prison system, as pointed out by Mirabete (2019) and Oliveira (2019), reveals an environment that perpetuates crime, casting doubt on the effectiveness of prison sentences, considering that subjecting prisoners to cruel and inhuman treatment contradicts the very function of the State, normalizing violence and promoting a reality that closely resembles a disguised death penalty, considering the extremely high mortality rates in Brazilian prisons, a paradigm that requires an urgent review of the principles that guide Brazilian criminal law.

Dias (2017) also points out that the Brazilian prison system perpetuates a serious violation of human dignity, with state negligence manifested in the lack of infrastructure, unsanitary conditions, and stigmatization of prisoners, as well as the strong denial of prisoners' fundamental rights, which conflicts with Brazilian

constitutional principles and requires, as already mentioned, actions to hold the state accountable and ensure justice.

Soares and Freire (2020) describe the Brazilian prison system as an environment that promotes the systematic dehumanization of inmates, violating their fundamental human rights to the point that degrading living conditions lead to loss of identity and de-individualization, reducing the self-image of prisoners to objects, generating the internalization, by the individuals themselves, of the idea that they are not deserving of human rights because they no longer feel part of humanity.

For Nunes, Lehfeld, and Lehfeld (2022), the stigmatization and marginalization of convicts, coupled with long and severe sentences for nonviolent crimes, create a vicious cycle of social exclusion. The author argues that it is necessary to question the effectiveness of mass incarceration and combat stereotypes that prevent the reintegration of ex-convicts. In summary, the Brazilian prison system, like others around the world, is subject to international human rights standards, such as the Universal Declaration of Human Rights, and since the implementation of these rights is often neglected, it is necessary to promote the implementation of these rights in prisons.

In short, the Brazilian prison system, like others around the world, is subject to international human rights standards, such as the Universal Declaration of Human Rights, and since the implementation of these rights in Brazil faces obstacles, there is a need for ongoing debate and a commitment to compliance with these standards by society as a whole, whether by demanding that the government invest in infrastructure or by breaking stigmatizing paradigms toward individuals who have already served their sentences and who are often denied opportunities for work and social interaction by the population (SCHMIDT, 2017).

The defense of human rights, including the rights of prisoners, is fundamental to the consolidation of the democratic rule of law, and the inertia of the state and society in guaranteeing these rights results in the reality of violence and inhumanity observed in the criminal justice system today. It is in this context that it is necessary to reinforce the commitment to the implementation of legal and international norms that protect the rights of prisoners (SOARES; FREIRE, 2020).

Gomes' (2017) proposal for a new paradigm in the Brazilian penal system, centered on resocialization, with the search for alternatives to prison and the prioritization of reparation and social reintegration, offers the possibility of building a more just and secure society, relieving pressure on the prison system and promoting the human dignity of offenders, with the aim of transforming the reality of the Brazilian penal system in a way that also has an impact outside prison institutions, increasing public safety and maintaining peace.

Although criticism of the prison system may seem repetitive, with many authors often expressing similar views, this state of affairs actually reinforces the understanding that the humanitarian crisis in the prison system is widely known and occurs with disturbing frequency throughout Brazil. Therefore, debating this issue is an obligation for scholars of legal sciences and public policy, as well as for the entire population, in order to promote the changes that Brazil needs in relation to the defense of human rights in conjunction with fundamental guarantees.

III. Final Considerations

This paper sought to analyze the complex relationship between human rights and the Brazilian prison system, initially exploring the historical evolution of human rights, from their roots in international documents such as the Universal Declaration of Human Rights to their incorporation into the Brazilian legal system, with an emphasis on the Federal Constitution of 1988. This analysis allowed us to contextualize the debate on the protection of human dignity and its relevance to contemporary society.

The study also delved into the correlation between the Fundamental Guarantees enshrined in the 1988 Constitution and the principles of the Universal Declaration of Human Rights, promoting understanding of the influence of universal human rights on Brazilian legislation, while pointing to the need for continuous improvement in the enforcement of these rights, especially with regard to combating discrimination and protecting against torture and inhuman treatment.

Based on this foundation in human rights, the work focused on analyzing the situation of the Brazilian prison system as a clear humanitarian crisis, revealing, based on the bibliographies analyzed, the degrading conditions and systematic violations of the fundamental rights of prisoners, resulting from problems such as overcrowding, lack of adequate infrastructure, and the inefficiency of resocialization policies, highlighting the urgency of measures that guarantee respect for human dignity in the prison environment and promote the social reintegration of prisoners.

It is important to recognize that this work, despite seeking to contribute to the debate on human rights in the Brazilian prison system, focused mainly on bibliographic sources, which may have limited the exploration of empirical data and practical experiences.

Thus, it is suggested for future work a deeper investigation into public policies aimed at the prison system, analyzing their effectiveness and proposing alternatives that promote resocialization and reduce criminal

recidivism. It is also recommended to explore the role of civil society and other institutions in defending the human rights of prisoners, as well as investigating the experiences of other countries in the search for a more just and humane prison system from the perspective of comparative law.

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