

## Prison system: an approach to infrastructure, rebellions and crisis management in Brazil

### Sistema prisional: uma abordagem sobre a infraestrutura, rebeliões e administração de crises no Brasil

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**ABSTRACT** - This work aims to show the historical synopsis of the sentence, as well as its theories, as a purpose, regarding the prison and the reality of the Brazilian prison system. For this, the empirical and deductive approach methods, monographic procedure method and bibliographic, academic and documentary research were adopted. The situation of Brazilian prisons is critical, as it is marked by overcrowding and constant violations of human rights, as well as the lack of minimum conditions for serving the sentence in a dignified manner, where the process of re-socialization of the prisoner does not exist, and the rates recidivism are alarming, characterizing a deep bankruptcy of the prison and penal system, where the results are the increasing increase in violence, crime and the feeling of insecurity experienced by the whole society. Even though society has evolved a lot, social problems are still present. Most Criminal Organizations are installed on the outskirts of the city, where humble people and very low quality of life are found. Places like these are in need of state aid, which also happens to the rest of the population without any discrimination. Otherwise, these criminal organizations or factions are installed within the prison system, promoting riots and rebellions, turning into major crises that must be managed by the prison system. The study of Crisis Management, as in any other branch of scientific knowledge, there is a need to establish certain basic principles and definitions for greater doctrinal uniformity.

**Keywords:** Violence. Prison system. Violations. Over crowded. Crisis management.

**RESUMO** - Este trabalho tem como objetivo mostrar a sinopse histórica da pena, bem como as suas teorias, como finalidade, no que tange a prisão e a realidade do sistema prisional brasileiro. Para tanto, adotou-se os métodos de abordagem empírico e dedutivo, método de procedimento monográfico e pesquisa bibliográfica, acadêmica e documental. A situação das prisões brasileiras é crítica, por ser marcada pela superlotação e por constantes violações aos Direitos Humanos, bem como a falta de condições mínimas para o cumprimento da pena de forma digna, onde o processo de ressocialização do preso não existe, e os índices de reincidência são alarmantes, caracterizando uma profunda falência do sistema prisional e penal, onde os resultados são o aumento crescente da violência, da criminalidade e da sensação de insegurança vivenciada por toda a sociedade. Mesmo que a sociedade tenha evoluído muito, os problemas sociais ainda são presentes. A maioria das Organizações Criminosas se instala em periferias da cidade, onde se encontram pessoas humildes e com baixíssima qualidade de vida. Lugares como estes, são carentes da ajuda do estado, o que também ocorre com o resto da população sem haver qualquer discriminação. De outro modo, estas organizações criminosas ou Facções se instalam dentro do Sistema Prisional, promovendo Motins e rebeliões, se transformando em grandes crises que deverão ser administradas pelo sistema prisional. O estudo de Administração de Crises, como em qualquer outro ramo do conhecimento científico, há necessidade do estabelecimento de certos princípios básicos e definições para uma maior uniformidade doutrinária.

**Palavras chaves:** Violência. Sistema prisional. Violações. Mais lotado. Gerenciamento de crise

## INTRODUCTION

This study aims to analyze the growing number of prisoners, currently existing in Brazilian prisons, caused by a policy of maximum criminal law, where almost all small crimes are repressed through prison, rarely using some alternative measures, in order to address the problems of lack of vacancies in the prison system, as well as the terrible conditions in the treatment of prisoners, constituting a difficult task due to the high financial investments that are necessary, with regard to infrastructure.

Among the difficulties encountered by the military police to manage the crises in the states' penitentiary system, but specifically, the rebellions, escapes and riots, it was chosen as object of study, "the lack of definition regarding the responsibility with the administration of the crises".

What steps should be taken, moments after the fact and its administration throughout the process? Which people would be responsible for the decisions that should be made throughout the process? And, finally, the prison has suffered influences in relation to aspects considered valid and constitutional, in terms of control and applicability in solving the problem of Overcrowding and application of Crisis Management in Prisons?

It is believed that, if these issues were defined in advance, it would be providing crisis management participants with an atmosphere of tranquility, fundamental to the success of the operation and also, that the procedures to be adopted could occur, in advance, studying and analyzing and even training, through simulations, as well as exercises scheduled before the occurrence of such facts.

### *Historical synopsis and theories of the purpose of punishment*

Word originated from the latin prehensione, which means punitive judicial or administrative measure, restricting the freedom of movement.

Prison, an essential part of all punishments, certainly marks an important moment in the history of Criminal Justice: its access to humanity. But also an important moment in the history of these disciplinary mechanisms that the new class power was developed: the moment when those colonize the judicial institution.

The arrest is less recent than what is said when the birth of the new codes is endowed. The prison form pre-exists for its systematic use in criminal law. It is constituted outside the judiciary, when processes are developed throughout the social body to divide individuals, fix them and distribute them especially, classify them, take the maximum amount of time and maximum strength from them. , training their bodies, coding their continuous behavior keeping them in a visibility without gap; to form around them a complex apparatus of observation, recording and annotation, to build on them knowledge that accumulates and is centralized.

This prison is based on Legal Justice, which obliges the individual, as a member of society, to submit to losses and sacrifices due to the need for measures to enable the State to provide the common good, its ultimate and main purpose. It is in this sense that the article states that, with the exception of the flagrante delicto, the Prison may be made if not by virtue of the

pronunciation or in the cases determined by law, and by written order of the competent authority, which today is only the judicial authority (Art. 5 °, LXI, CF).

However, by constitutional permission, it is still possible to execute the arrest without a warrant in the event of a criminal offense (Art. 5, LXI), disciplinary transgression or military crime (art. 50 LXI), during the State of Defense (art. 136, paragraph 30) and the State of Siege (Art. 139, II), in addition to allowing the recapture, without mandate, of evaded (Art. 684 of the CPP), in which case the previous collection was legal because it was made in the act or because it was collected under an arrest warrant.

### *Theories of the use of the penalty*

From the revolutions brought in the eighteenth century, mainly with the thought of Beccaria, externalized in his work "Dos Delitos e Daseaters", the ends that criminal sanctions had to have had to be considered, according to the author, the penalty should have a utilitarian and political purpose, as follows: The penalties that go beyond the need to preserve the deposit of public salvation are unjust by their nature; and the more just they will be the more sacred and inviolable the security is and the greater the freedom that the sovereign will retain to the subjects (BECCARIA, 2001).

In the scope of the purposes of penalties, Anton Bauer's classification is traditionally used, which theoretically divides into three groups, the absolute theory, the relative theory and the mixed theory. In accordance with the thinking of Liberatti (2014, s / p), "the portuno emphasizes that the purposes of criminal sanctions are applied according to each legal system, being the prerogatives of each state, as it evokes for itself the right to punish".

### *Absolute Theory*

The Absolute theory has a character of retribution. It is based on the existence of justice, advocating the idea that the penalty is just evil to punish the unjust evil practiced, that is, the crime. It is based on Kant's theory of ethical or moral retribution (LIBERATTI, 2014).

When analyzing the absolute theory, emeritus, Rogério Greco adds that

Society, in general, is satisfied with this purpose, because it tends to be satisfied with this kind of "payment" or compensation made by the convict, as long as, obviously, the sentence is deprived of liberty. If the convict is punished with a restrictive rights or even a fine, the feeling for society is of impunity, since the man, unfortunately, still rejoices in the suffering caused by the imprisonment of the offender (GRECO, 2009, p. 489).

Such conclusions corroborate with the thoughts that the core of the problem is not Criminal Law, but cultural and social, since the community is still linked to the ideals of the past and is satisfied with the suffering of those who caused them harm. It is certain that impunity should not be accepted, but, likewise, one cannot justify an error like another.

### *Relative Theory*

In turn, we have the Relative theory, which asserts that the penalty has a different purpose than simply to repay the evil of the crime with the evil of the penalty. Ensures that criminal sanctions have a preventive character, that is, it seeks to prevent other individuals, when viewing the consequences brought by the offending conduct, from having attitudes considered illegal, in the eyes of Criminal Law.

In general, they find the foundation of punishment in the need to avoid the practice of crimes, (punitur ut ne pecceter) - utilitarian conceptions of punishment. It is not a necessity in itself, to serve the realization of Justice, but a preventive instrument of social guarantee to avoid the practice of future crimes (poem relata ade effectum). This means that the penalty is based on its preventive, general or special purposes. It is justified for reasons of social utility (PRADO, 2008).

Thus, the special relative theory seeks to work specifically with the individual itself, disregarding others, in order to recover him and bring him to the heart of society.

### *Mixed Theory*

In turn, the Mixed theory claims that punishment has a retributive nature, insofar as it reaffirms the legal order, with the observation of guilt and retribution, but has as its purpose both prevention and education and correction.

This time, the theory defends the needs of proportionality, as there is no way to replace culpability with the requirement for prevention. If the penalty is proportional to the offense committed, in addition to reflecting justice, it will contribute to the purposes of general prevention and special prevention, since at the same time it sets an example, secondarily, it intimidates (LIBERATTI, 2014).

### *Theory Adopted by the Brazilian System*

The Brazilian legal system is a fan of the mixed theory, also called unifying or eclectic, having adhered to the other two theories, having two interests, the first to repay the condemned for the harm done, and the second to prevent the condemned and society from seeking the committing new criminal conduct. Therefore, the conclusion is reached that the objective penalty is to punish the convicted person, repaying to him the evil caused as a result of his crime, simultaneously the objective objective is the prevention of new criminal conduct, making the criminals not perform new illegal conduct, as well as, that society itself is afraid to disobey penal legislation.

Nevertheless, the theories adopted by our penal system do not reflect a solution. Reciprocating criminal offenses with severe penalties will certainly not solve our social problems. In this sense, according to Beccaria (2001, p.85): "The truths hitherto exposed demonstrate to the evidence that the end of the sentences cannot be to torment a sensitive being, nor to make a crime not committed to be committed."

It is observed that our Constitution places the dignity of the human person of extreme value, having as values freedom, equality, dignity, humanity, justice and proportionality

### *History of the prison system*

The word penitentiary comes from the Latin penitentiarius, "relating to the penalty, to punishment". Initially, in more remote times, the punishments were configured basically in extremely cruel physical punishments, without the application of deprivation of liberty as a penalty in itself, but only as a way for the prisoner to await his true penalty, in addition to, eventually, be a means of obtaining evidence, through the use of torture, which, at the time, was legitimized.

The discussion about the creation of penitentiaries started at the end of the 18th century, with the Englishman John Howard, who spread the idea of the prison assuming the character of a definitive penalty, abandoning its aspect of mere custody. In 1787, the Englishman Jeremy Bentham wrote the work "The Panopticon", a great contribution that presents us with a model penitentiary, in which the cells would have a circular structure and an omnipresent watchman would observe the prisoners without them seeing him. (SANTIS; ENGBRUCH, 2012).

However, the confinement cells were very dark and small, which led to several prisoners, exposed to continuous confinement, death or madness. In order to appease such a situation, solitary confinement was abolished, passing them on and allowing prisoners to work together, however, in absolute silence, and to be placed under confinement only at night, the main characteristics of the auburnian system (BITENCOURT, 2012).

### *Crisis management*

The term "crisis" - which has minimal variations in many languages - originates from the Greek krinein, which means "to decide" or, more appropriately, "the ability to judge well". The first - and very appropriate - application of the term occurred in medicine. This notion must be kept, valid both for Hippocrates, Father of Medicine, in Ancient Greece, and for Law Enforcement Officers today: in the essence of the term "crisis" is a quality - more art than science - defined as "the ability to judge".

In many Eastern languages, there is no clear distinction between the concepts of "crisis" and "opportunity". In Chinese, the same ideogram represents two ideas and the Western translator certainly chooses the meaning that appears most appropriate. There is an observed practical lesson: a "crisis" should not be seen as something just negative. Every moment of crisis brings an opportunity for growth, an opportunity to review concepts and methods, in short, an opportunity to change the world. In "crisis management", this positive side of the phenomenon is often what loses its political value. According to Salignac (2001):

Political science considers a crisis when the State perceives a sudden change in life in society, with a manifestly violent, sudden and rapid content, translating into a dangerous or difficult moment in a process from which a solution must emerge. There is a crisis when social tranquility is at odds with the perceived reality.

With the understanding of what constitutes a crisis, let us analyze the concept of Crisis Management, a concept made by the National Academy of the FBI: "Crisis management is the process of identifying, obtaining and applying the resources necessary to anticipate, prevent and resolve a crisis. crisis".

Crisis management can also be described as a rational and analytical process of solving probability-based problems.

It is a science that must deal, under a tremendous compression of time, with the most complex social, economic, political, ideological and psychological problems of humanity, in the most dangerous moments of its evolution, that is, when they manifest themselves in destructive terms.

Along the lines of Lara and Mauro (2014, p. 17), a crisis management process, in a critical event, "[...] requires planning and coordination before the occurrence of a critical situation, as well as the application of force minimum necessary for the administration of the event".

The aforementioned authors also state (2014, p.17) that effective planning is the solution for any type of incident.:

The crisis management doctrine provides an efficient methodology to the manager responsible for the use of his resources in a confrontation. Enables a standardized system for successful preparation and resolution of problems that occur during a critical event.

Furthermore, Laura and Mauro (2014, p.17) also argue that:

Crisis management develops chronologically in four phases and there are no distinct lines of separation between them. Indeed, depending on the specific situation, they can overlap each other. They are: pre-confrontation; Immediate action; scale of use of force; planning; situation analysis; risk assessment; development strategy; development of plans; intervention and resolution; direct assault; motivations for crises in the prison system.

In this sense, we discuss about these phases. First, pre-confrontation, in terms of what Laura and Mauro (2014, p.17) present, "covers all activities and preparations made before a crisis occurs. It generally includes training, preparation of the standardized operation plan and contingency plan".

Continuous training, along the lines of Laura and Mauro (2014, p.17) "is essential for there to be a reasonable expectation of success. [should not be] confined to the tactical unit, but to the entire mechanism of action of a specialized force". The standardized operation plan (SOP), in turn, "aims to provide standardized formulas for reactions applied to problems encountered or frequently foreseen", being that:

The value of standard operating procedures is, in fact, for everyone to know precisely what is expected when a critical event occurs.

At a minimum, POP's must cover:

- Hierarchy commanding
- Personnel notification and meeting

- Communications
- Assignment of duties and responsibilities
- Initial survey of essential information elements
- Operation center procedure
- Standard tactics
- Care for suspects and reporters
- Relationship with the press (only the personal authorized by the Penitentiary Crisis Management Office –GGCP) (LAURA; MAURO, 2014, p. 17).

It also restores three action criteria, namely: necessity, risk validity and acceptability. The necessity criterion, according to Laura and Mauro (2014), indicates that any and all actions should only be implemented when it is indispensable. If there is no need to make a decision, it is not justified to adopt it. In other words, those responsible for the management of the critical event, and with much more reason the commander of the action scene, must first make a certain decision, if he asks the following question: "is this really necessary?".

The risk validity criterion, in turn, recommends that each and every action must take into account whether the risks arising from it are offset by the results. The question to be asked now is: "is it worth taking the risk?".

It is, of course, a difficult criterion to be followed, as it involves factors of both a subjective nature (what is animated for one is not for another), as well as objective (what is or was nondescript or beneficial in a crisis, can be high risk in another).

The validity of the risk is justified when the probability of reducing the threat exceeds the dangers to be faced, is the continuity of the "status quo".

The third action criterion, acceptability, implies that every action must have legal, moral and ethical support.

Acceptability must also cover the moral field. This means that decisions should not be taken or actions taken that are helpless in the face of morality and good customs..

Acceptability also includes ethics. Within this reasoning, the person responsible for crisis management cannot make decisions or demand from his subordinates the practice of actions that cause "internal corporis" constraint, within the police organism.

#### *Essential operational elements*

From the moment a police authority becomes aware of the outbreak of a "crisis", the administration process begins. Immediate measures must be adopted in the first moments, in order to favor the subsequent control and the conduct of the event itself. Such initial measures are: contain, isolate and negotiate.

The action to contain a crisis consists of preventing it from spreading, that is, preventing the rebels, in the case of rebellions in prison establishments, from expanding the area under their control, gaining safer or better guarded positions, increasing the number of hostages or have access to more streets, etc..

The action to isolate the critical point, which develops practically at the same time as that of containing the crisis,

consists of extreme the place of the conflict, interrupting any and all contact with the rebels and hostages (if any) with the outside.

The isolation of the action area is not only due to the implantation of "tactical perimeters", but also by the interruption or blocking of telephone communications from the critical point with the outside world..

The start of negotiations is the third essential step to be taken by the police authority that became aware of the conflict.

Even if this police authority is not the one who will be in charge of the administration process, it is important that it start negotiations immediately..

#### *Generality*

In spite of crisis management in prisoners, using a series of procedures, obstacles, that characterize this type of conflict, only some considerations of generic characters, which are common to most crises, as it is not possible to use the case of such procedures monographs, because its disclosure can only cause the scope of agents and agents that have the functional responsibility to participate in crisis management in use.

The crisis management procedure consists of steps, with the initial measures to be taken consisting of containing, isolating, and negotiating. Once these measures are adopted, the installation of the "theater of operations", also known as the "action scene", begins as an immediate procedure..

According to Laura and Mauro (2014, p.17):

The crisis management process requires planning and coordination before the occurrence of a critical situation, as well as the application of the minimum force necessary for the management of the event. Effective planning is the key to resolving any incident. The crisis management doctrine provides an efficient methodology to the manager responsible for the use of his resources in a confrontation. Enables a standardized system for successful preparation and resolution of problems that occur during a critical event.

Since, the authors also (2014, p.17):

Crisis management develops chronologically in four phases and there are no distinct lines of separation between them. Indeed, depending on the specific situation, they can overlap each other. They are: pre-confrontation; Immediate action; scale of use of force; planning; situation analysis; risk assessment; development strategy; development of plans; intervention and resolution; direct assault. The Pre-Confrontation phase covers all activities and preparations made before a crisis occurs. It generally includes training, preparation of the standardized operation plan and contingency plan, as well as training. Continuous training is essential for a reasonable expectation of success. Training should not be confined to the tactical unit, but to the entire mechanism of action of a specialized force.

The action scene must be under the responsibility of the Action Scene commander, who must be exercised by a Senior Officer, specialized in Crisis Management. Any and all orders, orientations or decisions regarding the critical event must necessarily be transmitted to the action scene through this police officer.

## **FINAL CONSIDERATIONS**

History has shown that since its inception, prison as an institution, aims only at the segregation of the criminal, its control and observation, a way found by society to separate from its coexistence, those who once violated its codes and its rules. Over time these objectives have been modified, and the penalties have become more humane, replacing the example shows, the ordeals. The intention became the resocialization and reintegration of the sentenced to society.

Hence to the present day, when, even far from the time when the punishment was aimed at the body of the criminal, it can be seen that, due to the terrible conditions of the Brazilian Prison Prison, overcrowded, dirty and infected, they are very similar to the remote times, predisposing to crises, where the prisoner prefers to kill or die, than having to serve the totality of his sentence in that harsh and violent environment, in which the "law of the strongest" prevails, and the struggle for survival is daily and constant, making the critical situation of Brazilian prisons, coming over the years, becoming large deposits of prisoners, huddled in cubicles without the minimum conditions of hygiene and dignified accommodation for the human person, far from providing the recovery of the criminal, thus transforming our prisons in real universities of crime.

This reality is evident throughout the country, combined with overpopulation, corruption and numerous other problems common to our prisons. Violence reigns, giving rise to constant escape attempts, which, according to the penitentiary census, occur every day.

In the face of so many existing problems, such as the huge number of pre-trial detainees, the inhuman and degrading conditions present in most prisons, as well as the exaggerated increase in the number of prisoners, the high rates of recidivism and the increase in crime, often commanded by inside prisons, it was urgently necessary to initiate a wide discussion on the objectives of criminal law and the existing conditions in the Brazilian prison system, seeking alternatives to minimize the problems faced daily by those serving sentences in Brazil.

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