



Considerations about the obstacles to the offer of productive activities in the brazilian penitentiary system

Consideraciones sobre los obstáculos a la oferta de actividades productivas en el sistema penitenciario brasileño

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Abstract: Within these discussions, it is common to reflect on the importance of public policies to promote the prevention of this phenomenon. The Brazilian Federal Constitution of 1988 and the Penal Execution Law confirm that education and work also represent effective mechanisms to promote resocialization of inmates and minimize violence. This research aimed to analyze the difficulties faced by companies and penitentiaries to enable access and to increase productive activities for the prison population. The methodology used was the narrative literature review produced about this subject, specifically in Brazil, in the last five years. The results obtained by the research reveal that several aspects hinder the expansion of productive activities for the prison population. Inside the penitentiaries it is clear the overcrowding, the lack of resources, the inappropriate infrastructure and the neglect of public power in developing policies for resocialization. The private sector also faces complications such as the lack of instruction and professional qualification of inmates, the consequences of world economic crisis, the absence of State incentive destined to companies which offer productive activities in penitentiaries and the reproduction of stigmas and prejudice towards prisoners and former prisoners. It was concluded that the right to have access to work has been denied to most inmates, therefore, the resocialization, used to legitimize the incarceration policy adopted in Brazil, remains restricted to the theoretical plan.

Keywords: *Prison system; Labor therapy; Overcrowding.*

Resumen: En estos debates es común reflexionar sobre la importancia de las políticas públicas para promover una prevención de este fenómeno. La Constitución Federal de Brasil de 1988 y la Ley de Ejecución Penal muestran que la educación y el trabajo también representan mecanismos eficaces para promover la resocialización de los detenidos y minimizar la violencia. Esta investigación buscó analizar las dificultades que enfrentan las empresas y las prisiones para permitir el acceso y la expansión de las actividades productivas para la población carcelaria. La metodología utilizada consistió en una revisión de la literatura narrativa producida sobre este tema, específicamente en Brasil, en los últimos cinco años. Los resultados obtenidos por la investigación revelan que varios aspectos obstaculizan la expansión de las actividades productivas para la población penitenciaria. Dentro de las cárceles destacan el hacinamiento, la falta de recursos, la infraestructura inadecuada y la negligencia del poder público en la ampliación de las políticas destinadas a la resocialización. La iniciativa privada también se enfrenta a obstáculos como la falta de educación y cualificación profesional de los reclusos, las consecuencias de la crisis económica mundial, la falta de incentivos estatales para las empresas que ofrecen actividades productivas en las prisiones y la reproducción de estigmas y prejuicios dirigidos a los presos y reclusos. Se concluyó que el derecho de acceso al trabajo ha sido negado a la mayoría de la población carcelaria, por lo que la máxima de resocialización, utilizada para legitimar la política de encarcelamiento adoptada en Brasil, queda restringida al plano teórico.

Palabras clave: *Sistema penitenciario; laborterapia; hacinamiento.*

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INTRODUCTION

In the current Brazilian context, the exercise of productive and educational activities is seen as one of the most important tools capable of enabling the social reintegration of inmates. This is due, mainly, to the fact that Law No. 7.210, of July 11, 1984, which was responsible for establishing the Law of Criminal Enforcement - LEP, in its article 28, establishes that the convict's work should be understood as a social duty and a condition of human dignity, with educational and productive purposes (BRASIL, 1984).

Therefore, once the convicts' work is considered by LEP as a social duty, the convicted have the right to access productive activities while serving their prison sentences. Therefore, the State has the duty to invest and encourage labor therapy, having the obligation to provide the convicts with the necessary instruments and means to accomplish this right-duty.

Thus, this research seeks to address the issue of prison labor to answer the following question: What factors have been preventing companies and prisons from offering and expanding productive activities in Brazilian prisons? Having said this, the investigation of the problem is justified, since knowing the challenges to be faced by prisons and companies to expand the supply of labor for the prison population will contribute to the glimpse of new mechanisms and procedures for action necessary to promote and enforce fundamental rights directed to the prison population, especially access to decent work, with educational and productive purposes.

Therefore, this study has the general objective of diagnosing the difficulties faced by companies in the generation and expansion of productive activities in prisons in Brazil. Moreover, the research intends, as specific objectives, to perform a historical review of the institute of prison labor in Brazil; to verify the characteristics present in prisons that hinder the access to productive activities for the prison population; and to diagnose the advantages provided to companies that offer work in prisons.

To this end, a narrative literature review will be conducted, based on the deductive approach method, from Brazilian articles that focus on prison labor in Brazil, published in the last five years.

METHODOLOGY

The strategy adopted in the study of the challenges for the expansion of productive activities to the prison population was based on the literature review, which is considered by methodologists as a process of searching, analyzing, and describing the knowledge produced on a given subject. This procedure is seen for scholars such as Vosgerau and Romanowski (2014, p. 167) as follows:

Review studies consist of organizing, clarifying and summarizing the main existing works, as well as providing complete citations covering the spectrum of relevant literature in a field. Literature reviews can present a review to provide a historical overview on a topic or subject considering the publications in a field.

The choice of this method is due to several factors. In this sense, it is worth mentioning that through the literature review it was possible to perform an analysis of this phenomenon, comparing the different experiences and results of other research on the theme studied. In addition, it was possible to identify and point out promising experiences in the field of productive activities for Brazil's prison population.

Thus, possible paths to be followed for the improvement of labor practices developed in the Brazilian prison system were identified. Regarding the type of literature review, a narrative review was chosen, which is based on the following procedures:

The "narrative review" does not use explicit and systematic criteria for the search and critical analysis of the literature. The search for studies need not exhaust sources of information. It does not apply sophisticated and exhaustive search strategies. The selection of studies and interpretation of information may be subject to the subjectivity of the authors. It is suitable for the theoretical foundation of articles, dissertations, theses, course completion papers (UNESP, 2015, p. 2).

This perspective is also highlighted by Flick (2013), when he points out that a narrative review presents an account of the literature in the sense of an overview, including different types of literature. Finally, the approach method used was qualitative, and for data collection, some procedures and delimitations were used. Initially, it should be pointed out that the bibliographical research was carried out using electronic databases, in this case Scielo and Google Scholar. For this procedure, the following descriptors were used: work in prisons, resocialization, entrepreneurial initiatives.

Moreover, the inclusion criteria were articles published in Portuguese language, in the last five years, dealing with the aforementioned theme. Thus, articles published outside the period between 2016 and 2020, theses, dissertations and monographs, and studies that did not portray the reality of Brazilian prisons were excluded.

RESULTS AND DISCUSSIONS

Work in prisons in Brazil from a historical perspective

In Brazil, the right of prisoners was expressly provided for with the promulgation of the first Magna Carta, the Political Constitution of the Empire of Brazil, of 1824, drafted by a Council of State and granted

by Emperor Dom Pedro I. In this sense, the Constitution of 1824 sought to "preserve the legal guarantees that had been conquered for centuries against the atrocities that terrorized the delinquent" (BOGO; SANTOS; FAGUNDES, 2020, p. 28).

Thus, among the guarantees preserved by the Charter of 1824, the right to pardon, due process of law, habeas corpus, bail and the individualization of the penalty stand out. Furthermore, the police power in the case of flagrante delicto and the judge's prerogatives in the order of arrest were maintained. Regarding the penalties of affliction, flogging, torture, branding with a hot iron and all other cruel punishments were abolished (BOGO; SANTOS; FAGUNDES, 2020).

When it comes to the institute of prison labor in Brazil, Santos and Vieira (2018) show that in 1830, the country adopted the Auburnian penitentiary system, originating from the state of New York, in the United States of America. In the molds of the Auburnian system, prison work was developed during the daytime period, while prisoners remained isolated during the nighttime period.

According to Vieira and Stadtlober (2020, p. 81), the idea that work and the meaning of human life are directly related has been present in Western culture since ancient times, "not only for the organization of labor within the recently boiling industries, but also as a way to discipline a miserable portion of society.

In this sense, in 1833, the first penitentiary on the Latin American continent was built in Brazil, the Casa de Correção do Rio de Janeiro. Inspired by the reformist ideal present in Europe in the eighteenth century, this institution was intended to provide that the execution of the custodial sentence occurred together with the exercise of labor activities by the convicts (VIEIRA; STADTLOBER, 2020).

Later, with the enactment of Decree-Law No. 2.848, on December 7, 1940 - the Penal Code, work in prisons became mandatory throughout the Brazilian prison system (SANTOS; VIEIRA, 2018). Moreover, decades later, the institute of prison labor was extensively regulated by Law No. 7.210, of July 11, 1984, which established the Law of Criminal Enforcement - LEP.

With the enactment of LEP, the essentially correctional model of imprisonment was overcome. Thus, the LEP was responsible for humanizing the conditions of Brazilian incarceration, as well as, consolidated in national legislation the resocializing purpose of penal execution (VIEIRA; STADTLOBER, 2020).

Currently in Brazil, the progressive system is adopted, with express legal provision in Law No. 6416 of May 24, 1977, whose goal is to promote the resocialization of the criminal through the imposition of a penalty of confinement that progresses between the stages of closed regime, semi-open regime and open regime, successively, according to the good conduct of the prisoner (BOGO; SANTOS; FAGUNDES, 2020).

Therefore, the Brazilian prison system aims primarily at the re-education and rehabilitation of people deprived of liberty, so that at the end of the sentence, the individual is able to be reintegrated into society and, consequently, into the labor market (LOPES; GREGORIO; ACCIOLY, 2016).

When analyzing this phenomenon, Matos (2016) points out that prison labor is one of the most important re-socialization programs encouraged by the agencies responsible for penal execution in Brazil, namely, the Ministry of Justice and Public Safety, the State Secretariats of Prison Affairs and the National Council of Justice - CNJ.

Therefore, it is important to emphasize that the right to prison work is guaranteed both by international legislation and by the domestic, constitutional and infra-constitutional legislation. Therefore, it is a guarantee that cannot be annulled due to incarceration, which must be exercised according to the parameters of safety and dignity provided by law.

Querino et al. (2017) highlights in their analysis that the LEP plays a fundamental role in the process of social reintegration of the inmate, especially by highlighting the positive impacts that labor therapy can provide for inmates. In addition, LEP highlights the importance of observing the individual's aptitudes and capacities to perform productive activities while serving a prison sentence.

According to the caput of Article 28 of LEP, "the convict's work, as a social duty and a condition of human dignity, will have educational and productive purposes" (BRASIL, 1984). That said, as clarified by Querino et al. (2017), prison labor is distinguished to the extent that it integrates a set of duties of the prisoner. In this sense, the mandatory exercise of productive activities by inmates is expressly mentioned in Article 31 of LEP, except only the work for the provisional detainee that is optional.

Regarding the legal nature of labor relations in prison, LEP expressly states that the work of the convict is not subject to the regime of the Consolidation of Labor Laws - CLT. In this sense, prison labor is subject to its own legal regime, established by LEP.

Regarding the remission of the penalty through work, Querino et al. (2017) states that the institute was introduced by the penal reform brought by LEP in 1984. Thus, according to the caput of Article 126 of LEP, "the convicted person serving the sentence in closed or semi-open regime may redeem, through work or study, part of the time of execution of the sentence" (BRASIL, 1984). Thus, § 1º, clauses I and II of the above mentioned device establish that the convicted is guaranteed the right to reduce the penalty in 1 (one) day for each 3 (three) days worked or for each 12 (twelve) hours of school attendance, distributed among 3 (three) days, at least (BRASIL, 1984).

Moreover, Querino et al. (2017) emphasizes that the development of productive activities in prison is directly linked to the resocialization of convicts. Thus, prison labor can represent a "guarantee to the

convict of a profession after serving the sentence, having legal tools to develop their livelihood when they are free" (QUERINO ET AL., 2017).

However, the reality presents a panorama not very exciting, given that "prisons have become scary places where the number of prisoners is much higher than the number of vacancies, this hinders the rescue of that individual who seeks a way to re-socialize" (LOPES; GREGORIO; ACCIOLY, 2016, p. 49).

Sucedo que o sistema penitenciário nacional tem se desenvolvido de maneira caótica desde seus tempos mais remotos, de modo que, em sua trajetória, desrespeitou tanto as leis pátrias antigas, como permanece contrário às atuais. According to Silva Junior and Bertoncini (2017) the chaotic context of Brazilian prisons has been disregarding legal provisions since the Constitution of 1824, which established in its article 179, item XXI, that jails should be safe, clean and well aired, which did not effectively occur.

Therefore, in view of the historical context in which prison labor has developed, it is important to emphasize that, nowadays, "the incentive to inmates' work, with the active participation of civil society through companies, can offer hope for reducing violence and recidivism" (SILVA JUNIOR; BERTONCINI, 2017, p. 116). Therefore, we now move on to the diagnosis of the difficulties present in the Brazilian prison system that hinder the offer of work to inmates.

Prison Labor: obstacles to its effectiveness

When it comes to the difficulties of the prison system for the generation and expansion of access to productive activities for inmates, many authors point out that there is a shortage of jobs for inmates, given the prison overpopulation (GRION; AQUOTTI, 2016; LOPES; GREGORIO; ACCIOLY, 2016; IRELAND; LUCENA, 2016; MATOS, 2016; SOUZA, 2019; SOUSA, 2019; NIÑO ARDILA, 2019; POSSE; SANTOS; COELHO, 2019; BERTONCINI; LIMA; SLONGO, 2019; BOGO; SANTOS; FAGUNDES, 2020). For Souza (2019, p. 772) overcrowding is probably "the most chronic problem afflicting the penal system."

Posse, Santos, and Coelho (2019, p. 7) point out some of the problems verified in the Brazilian Prison System, which are quite similar and can be found in most prison units in the country, namely: "the terrible working conditions for professionals, lack of hygiene, unhealthy conditions, lack of financial resources, deficiency in the number of servers, among other difficulties".

Moreover, for Santos et al. (2020) overcrowding, the lack of adequate structure, the deficit in the accounts, and society's prejudice towards the prison population are difficulties faced by the Penitentiary System for the provision of productive activities for inmates.

According to Oliveira (2017, p. 25), there are many gaps that hinder the execution of productive activities by the prison population, among which, he highlights: "lack of physical structure of prison

establishments; prison work devoid of qualification, without educational and productive purpose, besides not respecting the aptitude and capacity of each inmate".

In this sense, Silva Junior and Alaniz (2020) emphasize that the work for which prisoners are prepared is that rejected by society, due to low qualification, as well as the intense exploitation to which they are subjected, comparable to slavery systems.

That said, Silva Junior and Bertoni (2017) also highlight several factors that go beyond overcrowding, such as prejudice and the disqualification for work cultivated throughout the idle fulfillment of the conviction. They also highlight other factors that hinder the development of labor activities in prison, such as lack of structure, poor hygiene conditions, and inadequate food.

In this sense, Vieira and Stadtlober (2020) point out that the precarious conditions found in Brazilian prisons make it difficult for inmates to perform labor activities, as well as imply in the guarantee of the right to health for prison workers.

In light of this, Oliveira (2017) stresses that the legal regulations, in general, determine that prison labor should be organized and exercised based on the same standard of safety and hygiene determined by ordinary legislation for ordinary workers. However, Oliveira (2017) identifies that the worsening of prison overcrowding interferes directly in the organization and methods of prison labor with the safety and hygiene precautions determined for free workers.

Moreover, given the insufficient number of jobs in Brazilian prisons, Grion and Aquotti (2016) assert that the State cannot effectively guarantee what is proposed by LEP, due to the lack of necessary infrastructure and overcrowding. Given this, the authors point out that, in reality, "the State's disregard for incarcerated individuals is verified, making evident the total lack of interest in social reintegration and, especially, with their resocialization" (GRION; AQUOTTI, 2016, p. 4).

When analyzing the infrastructure problems that hinder the implementation of prison labor, Matos (2018) clarifies that, although 75.07% of prison units claim to have workshops for the exercise of productive activities by inmates, the structure of these workshops is precarious and insufficient for the realization of labor activities. Given the above, Matos (2018) states that approximately 80% of prisoners do not have access to work during their deprivation of freedom due to lack of opportunities.

Besides the difficulties mentioned, Oliveira (2016b) also highlights another. It is about the real motivation of companies to generate activities for this social group. In his perception, the State has difficulty in forming partnerships with the private initiative in order to expand the supply of productive activities for inmates, especially because the private initiative seeks benefits of economic nature, "aiming primarily at profit, and only secondarily, at the social purpose of prison labor" (OLIVEIRA, 2016b, p. 172).

Given this, to expand access to productive activities by inmates, it is necessary the "structuring of a national prison labor policy, with a view to promoting work inside prison units, involving the public power and also promoting partnerships with private companies" (MATOS, 2018, p. 53).

According to Santos and Vieira (2018), the present scenario in the prison system, marked by prison overcrowding, insalubrity, and disregard for prisoners, ends up making it impossible for productive activities to be offered to people deprived of liberty as part of their social reintegration process.

In view of this, Santos and Vieira (2018) ponder that while the convict has the duty to work, the State has the obligation to offer work inside prison units, in adequate conditions. Based on this, the authors conclude that, although the legislation disciplines the minimum conditions of dignity that must be respected during the criminal execution, many times, due to the State's lack of interest, they are not materialized.

According to Souza (2019), the decadence present in the Brazilian prison system hinders the successful resocialization of the prisoner. Therefore: "prisons are haunted by internal rebellions, spread of diseases, formation of authorized criminal groups, abuse of state power" (SOUZA, 2019, p. 752).

Regarding the difficulties experienced by the prison system to ensure access to work activities by inmates, researchers such as Sampaio and Oliveira (2020) Bogo, Santos and Fagundes (2020), Vieira and Stadtlober (2020) analyze the lack of state assistance regarding the entry of these individuals into the labor market.

That said, based on the National Survey on Penitentiary Information - INFOPEN, for the first half of 2016, Vieira and Stadtlober (2020) identify that only 15% of the prison population in the country had some kind of work activity, which confirms the scarcity of job openings in prisons.

On this issue, it should be noted that the prison system, saturated with new criminal types, perishes in the face of lack of investment and shortage of structural policies directed to education, health and income, which represents a breeding ground for increased crime and maintenance of inefficiency and degradation of the prison system (BOGO; SANTOS; FAGUNDES, 2020).

Given this picture, Niño Ardila (2019) highlights that the lack of stability in the supply of public services, including prison services, is a consequence of low budgets and strong political influence in this area.

With this, Brasil and Andrade (2019, p. 124) point out that the mandatory nature of prison labor, provided for by LEP, is contradictory. In practical terms, in most Brazilian penal establishments, there are not enough opportunities for all inmates.

Therefore, Souza (2019), Posse, Santos, and Coelho (2019) observe a deep gap between the reality of prisons and the provisions set forth in the Brazilian legal system, given that, if the Law were effectively

applied, prisons would not have so many functional problems and resocialization would not be restricted to the theoretical realm.

Corporate social responsibility and the offer of productive activities to prisoners: obstacles and benefits

As seen, the effectiveness of prison labor in Brazilian penitentiaries currently faces several obstacles. In view of this, the participation of companies, in partnership with the Public Power, in offering work to inmates becomes essential for this right/duty to be made effective for people deprived of freedom, ensuring them access to activities that promote their professionalization and have a positive impact on the re-socialization process during the time they are serving their prison sentences.

When analyzing the performance of companies that generate employment for the prison population, Oliveira (2017), Silva Junior and Bertoncini (2017) point out that it derives from the social responsibility conferred by the State to companies, given the impossibility or lack of interest of the Public Power to act in this field.

Thus, according to Oliveira (2017), for prison work to be developed based on the principles of corporate social responsibility, educational and productive results must be sought, i.e., it must focus on the professional training of the convict, in order to prepare him to, in the future, act in the common labor market, as a free citizen.

In this sense, Silva Junior and Bertoncini (2017) point out that the companies assume an important function, capable of changing the prison reality and the violence rates. However, the authors point out that it is the role of the State to grant positive sanctions as a form of incentive for such companies. These positive sanctions would represent a kind of reward for the good action of private initiative, i.e., they are contrary to the concept of negative sanction imposed by criminal law (SILVA JUNIOR AND BERTONCINI, 2017).

When analyzing this phenomenon, Silva Junior and Bertoncini (2017) reveal that for the company to exercise its social function, including by hiring prison and inmate labor, it is necessary that the State ensures safety in the work environment and provides incentives for the private sector to hire such individuals.

Still on the social function of the company, it is verified that it derives not only from a legal-normative command, but also "from an ethical duty of solidarity, requiring from society - and especially from the company - a positive action in order to change the inhuman reality of the prison" (SILVA JUNIOR; BERTONCINI, 2017, p. 131). Therefore, the joint action between government and society is essential for the realization of the rights of people deprived of liberty, since many social problems affect the community as a whole.

According to Bertoncini, Lima and Slongo (2019), it is necessary to raise awareness of society, specifically businessmen, regarding the importance of social responsibility for the implementation of the principle of human dignity directed to prisoners.

Therefore, Bertoncini, Lima and Slongo (2019) consider that the exercise of social responsibility by companies, a priori, can figure as an apt instrument to reduce the crisis involving public safety in Brazil. However, they point out that the goodwill of the private initiative to exercise social responsibility directed to the penitentiary sphere is not common. Therefore, it is up to the Public Power to act to modify this reality.

Obstacles to the effective participation of companies in offering and expanding prison labor

There are difficulties that are experienced specifically by companies and that end up hindering the performance of such entities in offering work to inmates.

According to Matos (2016, p. 131), the private initiative "is reluctant to explore prison labor through the agreements provided by law, since they do not find the ideal environment in prisons." In addition, the author highlights that companies also reproduce prejudices and stigmas directed at the incarcerated worker (MATOS, 2016).

Another difficulty is that a large part of the prison population does not have a high level of education, nor professional qualifications. That said, the lack of qualification, coupled with prejudice, hinders the insertion of such individuals in labor activities (LOPES; GREGORIO; ACCIOLY, 2016). In this sense, Lopes, Gregorio and Accioly (2016) point out that society itself does not agree with the hiring of prison labor and inmates, in view of deep-rooted prejudices, which intimidates private organizations, which end up not making these hires.

According to Matos (2018), one of the main instruments of active policy to promote prison labor is the establishment of partnerships with the private sector (companies and non-profit institutions) to offer work to the prison population. However, the author identifies that in the current economic environment, characterized by recession and reduction of jobs in the labor market, attracting private companies with a view to expanding the supply of prison labor becomes an even greater challenge.

Matos (2018) also highlights that it is the State's duty to provide incentives for private companies to act as partners in offering productive activities for people deprived of liberty. This recognition of the need for tax incentives is evidenced by the existence of Bills, presented in the House of Representatives, which propose the creation of tax incentives and economic subsidies to companies that absorb prison labor.

However, according to Matos (2018), it is unlikely that bills addressing the topic will prosper, given the economic environment found in Brazil, affected by a fiscal crisis, which makes it difficult for incentives

based on tax benefits and economic subsidies to be implemented, discouraging the private initiative in the prison field.

Moreover, Niño Ardila (2019) notes the importance and permanent need for the articulation of partnerships between the public sector, third sector organizations, and the private sector. In this sense, Niño Ardila (2019) points out that through a broad network of partnerships, it would be possible to ensure access to work and professionalization to the prison population, since such rights cannot be met and guaranteed only by a particular public policy.

Despite the difficulties highlighted by different researchers regarding the role of the private initiative in offering work in prison, there is, on the other hand, data that points out the numerous benefits resulting from this participation.

Beneficial repercussions for companies that hire prison labor

When it comes to the beneficial repercussions for companies that make productive activities available to inmates, Bertoncini, Lima and Slongo (2019) point out that, traditionally, prison labor is seen from two basic perspectives. First, it is worth mentioning the low cost involved in hiring people deprived of liberty, which stems from the payment of low wages, the impossibility of strikes and the lack of expenses with facilities in the event that the work is developed intramurally.

Secondly, we highlight the philanthropy that involves the employment of this class of workers, so that companies begin to receive financial incentives to operate in the prison environment, which adds a good social image for such entities (BERTONCINI; LIMA; SLONGO, 2019).

Therefore, when analyzing the issue, it is identified that some authors claim that the celetal marginalization of the prisoner's work, provided for in article 28 of LEP, is beneficial for companies, in view of the reduction of production costs, from the use of a cheaper labor force (LOPES; GREGORIO; ACCIOLY, 2016; OLIVEIRA, 2016a; MATOS, 2016; OLIVEIRA, 2016b).

Therefore, according to Oliveira (2016b, p. 170), companies that employ prison labor are benefited with lower production costs due to the non-configuration of an employment relationship. Thus, the prisoner's labor force is cheaper because certain labor benefits are not due, such as the payment of the Severance Premium Reserve Fund (FGTS) and the thirteenth salary. In addition, inmates are not entitled to paid vacation with an additional one-third.

Given this, Matos (2017) clarifies that hiring inmates is extremely lucrative for companies because they are not subject to the legal regime of the Consolidation of Labor Laws - CLT, becoming cheaper when compared to the expenses incurred with the hiring of an ordinary worker (MATOS, 2017). Therefore, the

non-application of the labor regime in the hiring of prison labor "determines a cost three times lower compared to hiring under the CLT" (SILVA JUNIOR; BERTONCINI, 2017, p. 123).

According to articles 28, § 2 and 29 of the Law of Criminal Enforcement - LEP, in addition to the remuneration of less than a minimum wage, the one who employs a person deprived of liberty is exempted from paying certain labor costs, so that hiring inmates becomes less costly and more profitable for entrepreneurs (BRASIL, 1984).

As an example, based on a study of the Começar de Novo Program (PCN), developed by the State Secretariat of Justice and Citizenship (SJC) in the state of Santa Catarina (SC), Hillesheim and Silveira (2017) found that companies that partner with the State benefit from the reduction in labor costs, since through the terms of cooperation established between these entities, the payment of certain charges and labor obligations are waived.

Besides the economic advantages, companies that collaborate with the resocialization process of the prison population, through the generation of employment aimed at hiring prison labor, may gain visibility in society, especially because this performance is a practice of social responsibility of great relevance for social development (SILVA, 2011, p. 14, apud. LOPES; GREGORIO; ACCIOLY, 2016, p. 49).

Moreover, researchers such as Matos (2018), Bertoncini, Lima and Slongo (2019), Vieira and Stadtlober (2020) highlight the creation of the National Seal of Social Responsibility for Prison Labor - RESGATA, through Ordinance GABDEPEN No. 630 of 2017, linked to the Ministry of Justice and Public Safety, which is currently in its second cycle of granting.

According to Bertoncini, Lima and Slongo (2019), the goal of the RESGATA Seal is to give recognition to companies that act with social responsibility and employ individuals imprisoned and former inmates of the Prison System, in order to increase the real expectation of social reintegration of such subjects. In this sense, for Vieira and Stadtlober (2020, p. 82) the granting of the RESGATA Seal represents "a strategy to encourage and give visibility to organizations that collaborate with the reintegration of these people to the labor market and society.

This recognition from the community and the consequent visibility of companies that act demonstrating a concern for social problems represents an efficient strategy that can collaborate with the generation of productive activities, especially in a context marked by the inefficiency of the State in guaranteeing the rights of the prison population.

In addition, Bertoncini, Lima, and Slongo (2019) consider that the participation of private initiative in the development of programs aimed at the generation and expansion of productive activities in prison, brings greater visibility for the company before consumers. At the same time, the company is favored with the reduction of costs spent on labor and facilities and the reduction of crime.

Therefore, when addressing the function of work in prisons as a resocializing tool and the importance of private initiative with social responsibility, Bertoncini, Lima and Slongo (2019, p. 14) conclude that "the idea of humanization of prisons can get out of the theory by offering job openings, being fully possible the conjunction of apparently so disparate interests".

Finally, Silva Junior and Bertoncini (2017) argue that offering jobs to the prison population brings yet another benefit. This is much broader, as it benefits not only companies, but the entire society. It is the reduction of criminal recidivism.

Researchers such as Niño Ardila (2019), Oliveira and Pessôa (2019), Bertoncini, Lima, and Slongo (2019) highlight that prison labor is an important tool for the social reintegration of inmates and for reducing crime and recidivism rates. In this context, the reduction of crime is beneficial for private enterprise, as it enables the company to remain competitive, in a harmonious society (BERTONCINI; LIMA; SLONGO, 2019).

Given the above, on a pragmatic level, it is necessary that effective mechanisms are adopted, with an impact on crime reduction, which due to the nature of economic activity, are in the hands of private initiative. Thus, the generation of employment and income represents the appropriate tool for the reduction of recidivism and crime in Brazil, on the path to the construction of a society based on the values of justice, freedom, solidarity and fraternity (BERTONCINI; LIMA; SLONGO, 2019).

CONCLUSIONS

The present article aimed to investigate the difficulties faced by the Brazilian prison system and the private sector in expanding the supply of productive activities for the prison population. To this end, a narrative literature review was conducted based on the qualitative analysis of scientific articles published between the years 2016 and 2020.

Initially, a historical review was conducted about the institute of prison labor in Brazil. Thus, it was identified that prison labor was conceived in the Constitution of 1824 in order to avoid the idle compliance of the prison sentence. Through the evolution of Brazilian legislation, it is clear that, currently, the institute of prison labor has been developed to achieve innovative goals, such as the re-socialization of inmates.

About the obstacles faced by the Brazilian prison system for the development of actions aimed at the promotion of prison labor, it can be concluded that overcrowding, the precarious infrastructure of prisons, the negligence of the State with re-socialization programs and the lack of public resources are among the main reasons that prevent the realization of the right to work with educational and productive purposes for the inmates.

On the other hand, regarding the difficulties faced specifically by companies, the following were identified: the absence of the necessary infrastructure; the reproduction of stigmas and prejudices directed to the prison population; the current economic scenario in Brazil; the lack of instruction and professional qualification of prison labor and; the insufficiency of state incentives for the participation of companies in this area.

Moreover, regarding the beneficial repercussions for the private sector when employing prison labor, it was identified the reduction of production costs, a greater visibility for companies through the concession of the RESGATA Seal, the access to state benefits and the decrease of violence rates and criminal recidivism.

Based on this study, it can be considered that the realization of the right to decent work in the prison environment benefits society as a whole. For the convicts, access to work can contribute to their re-socialization process, remission of sentence and qualification, and can also enable access to the necessary means of subsistence for their dependents. Companies, on the other hand, also benefit through state incentives and a greater appreciation in the contexts where they operate.

Therefore, this study has shown that the State alone is unable to change the reality of the Prison System in the current context. For this reason, the action of private initiative and society to achieve the resocialization of prisoners is essential. In this sense, it is necessary the awareness of the whole civil society as to the importance of social responsibility for the implementation of the principle of human dignity directed to prisoners, aiming to build a society based on the values of justice, freedom, solidarity and fraternity.

REFERENCES

- [1] BERTONCINI, Mateus Eduardo Siqueira Nunes; LIMA, Priscila Luciene Santos de; SLONGO, Evelise. Responsabilidade social da empresa e o trabalho prisional. *Relações Internacionais no Mundo Atual*, Curitiba, v. 2, n. 23, p. 41-58, 19 abr. 2019. Disponível em: <http://revista.unicuritiba.edu.br/index.php/RIMA/article/view/3886>. Acesso em: 04 mar. 2021.
- [2] BOGO, Ademar; SANTOS, Sérgio; FAGUNDES, Rosélia. O colapso no sistema penitenciário do sul da Bahia: o dever do estado e as parcerias público-privadas. *Revista Veredictum*, [S.l.], n. 3, p. 21-44, 23 dez. 2020. Disponível em: <https://veredictum.org/index.php/veredictum/article/view/26>. Acesso em: 06 mar. 2021.

[3] BRASIL, Mariane Lima Borges; ANDRADE, Odara Gonzaga de. A ilegalidade do trabalho prisional: análise da legalidade da mercantilização da pobreza e a crítica à forma jurídica. *Revista Insurgência: revista de direitos e movimentos sociais*, Brasília, v. 5, n. 2, p. 101-131, 2019. Disponível em: <https://periodicos.unb.br/index.php/belasinfieis/article/view/28275/0>. Acesso em: 28 fev. 2021.

[4] BRASIL. [Constituição (1824)]. Manda observar a Constituição Política do Imperio, offerecida e jurada por Sua Magestade o Imperador. *Constituição Política do Imperio do Brazil (de 25 de Março de 1824)*. Rio de Janeiro, RJ: Coleção de Lei do Império do Brasil, 25 mar. 1824. Disponível em: http://www.planalto.gov.br/ccivil_03/Constituicao/Constituicao24.htm. Acesso em: 20 nov. 2021.

[5] BRASIL. [Constituição (1988)]. *Constituição da República Federativa do Brasil de 1988*. Brasília, DF: Presidência da República, 5 out. 1988. Disponível em: http://www.planalto.gov.br/ccivil_03/Constituicao/Constituicao.htm. Acesso em: 20 nov. 2021.

[6] BRASIL. Decreto-Lei nº 2.848, de 7 de dezembro de 1940. Código Penal. Rio de Janeiro, RJ: Presidência da República, 7 dez. 1940. Disponível em: https://www.planalto.gov.br/ccivil_03/Decreto-Lei/Del2848.htm. Acesso em: 20 nov. 2021.

[7] BRASIL. Decreto-Lei nº 5.452, de 1º de maio de 1943. Aprova a Consolidação das Leis do Trabalho. Rio de Janeiro, RJ: Presidência da República, 1 maio 1943. Disponível em: https://www.planalto.gov.br/ccivil_03/decreto-lei/Del5452.htm. Acesso em: 20 nov. 2021.

[8] BRASIL. Lei nº 6416, de 24 de maio de 1977. Altera dispositivos do Código Penal (Decreto-lei número 2.848, de 7 de dezembro de 1940), do Código de Processo Penal (Decreto-lei número 3.689, de 3 de outubro de 1941), da Lei das Contravenções Penais (Decreto-lei número 3.688, de 3 de outubro de 1941), e dá outras providências. Brasília, DF: Presidência da República, 24 maio 1977. Disponível em: https://www.planalto.gov.br/ccivil_03/LEIS/L6416.htm. Acesso em: 20 nov. 2021.

[9] BRASIL. Lei nº 7.210, de 11 de julho de 1984. Institui a Lei de Execução Penal. Brasília, DF: Presidência da República, 11 jul. 1984. Disponível em: http://www.planalto.gov.br/ccivil_03/LEIS/L7210.htm. Acesso em: 13 jan. 2021.

- [10] FLICK, Uwe. Introdução à metodologia de pesquisa: um guia para iniciantes. Porto Alegre: Penso, 2013. 256 p.
- [11] GRION, Bárbara dos Santos; AQUOTTI, Marcus Vinicius Feltrim. A deficiência do Estado no tocante à oferta de trabalho e estudo aos sentenciados. In: Encontro Toledo de Iniciação Científica Prof. Dr. Sebastião Jorge Chammé. Presidente Prudente, 2016. Anais [...], Presidente Prudente: Centro Universitário Antônio Eufrásio de Toledo de Presidente Prudente, v. 12, n. 12, p. 1-16, 2016. Disponível em: <http://intertemas.toledoprudente.edu.br/index.php/ETIC/article/view/5664>. Acesso em: 12 out. 2020.
- [12] HILLESHEIM, Jaime; SILVEIRA, Jamilli Fernanda Ramos da. Trabalho do preso: a estrutura prisional a serviço dos interesses produtivos. In: Seminário Nacional de Serviço Social, Trabalho e Política Social, 2., 2017, Florianópolis, Anais[...]. Florianópolis: UFSC, p. 1-10, out. 2017. Disponível em: <https://repositorio.ufsc.br/handle/123456789/180022>. Acesso em: 21 dez. 2020.
- [13] IRELAND, Timothy Denis; LUCENA, Helen Halinne Rodrigues de. Educação e trabalho em um centro de reeducação feminina: um estudo de caso. Cadernos CEDES. Campinas, v. 36, n. 98, p. 61-78, jan./abr. 2016. Disponível em: https://www.scielo.br/scielo.php?script=sci_arttext&pid=S0101-32622016000100061. Acesso em: 17 out. 2020.
- [14] LOPES, Paloma de Lavor; GREGORIO, Mayara da Fonseca Porto; ACCIOLY, Tabata Carina de Oliveira. A inserção de egressos no mercado de trabalho. Revista CONBRAD: Revista Eletrônica do CONBRAD – Congresso Brasileiro de Administração. Maringá, v. 1, n. 1, p. 47-70, 2016. Disponível em: <http://www.revistaconbrad.com.br/editorial/index.php/conbrad/article/view/19>. Acesso em: 13 out. 2020.
- [15] MATOS, Erica do Amaral. Privatização de presídios e a mercantilização do crime e da pobreza. Revista Brasileira de Ciências Criminais, [S. l.], v. 133, p. 1-19, 14 nov. 2017. Disponível em: http://www.academia.edu/download/55026623/Artigo_EAM_RBCCRIM.PDF. Acesso em: 20 dez. 2020.
- [16] MATOS, Franco de. Instrumentos de políticas ativas para o fomento do trabalho prisional no Brasil. Interfaces Científicas: Direito, Aracaju, v. 6, n. 3, p. 43-56, 4 jul. 2018. Disponível em: <https://periodicos.set.edu.br/direito/article/view/5866>. Acesso em: 24 dez. 2020.
- [17] MATOS, Lucas Vianna. Entre o discurso e a prisão: elementos para uma análise do trabalho prisional no Brasil contemporâneo. Revista Eletrônica Direito e Sociedade – REDES. Canoas, v. 4, n. 1,

p. 123-144, maio 2016. Disponível em:

<https://revistas.unilasalle.edu.br/index.php/redes/article/view/2532>. Acesso em: 20 out. 2020.

[18] MESQUITA, Luisa Angélica Mendes. Análise crítica da privatização do cárcere como solução aos problemas penitenciários. *Revista Transgressões: Ciências criminais em debate*, Rio Grande do Norte, v. 5, n. 1, p. 29-52, 24 maio 2017. Disponível em:

<https://periodicos.ufrn.br/transgressoes/article/view/12100>. Acesso em: 17 dez. 2020.

[19] NIÑO ARDILA, Ana María. Empreendedorismo social nas prisões brasileiras: uma iniciativa para evitar a reincidência criminal. São Paulo: FGV EAESP, p. 1-30, 20 dez. 2019. Disponível em:

<https://bibliotecadigital.fgv.br/dspace/handle/10438/28740>. Acesso em: 02 mar. 2021.

[20] OLIVEIRA, Gláucio Araújo de. O trabalho penitenciário no brasil. *Revista Eletrônica [do] Tribunal Regional do Trabalho da 9ª Região: O trabalho do preso*, Curitiba, v. 6, n. 60, p. 13-26, jun. 2017.

Disponível em: <https://juslaboris.tst.jus.br/handle/20.500.12178/110417>. Acesso em: 18 dez. 2020.

[21] OLIVEIRA, José Matheus Antunes Ribeiro de; PESSÔA, Ulisses. O trabalho do apenado em relação à execução penal e seus desdobramentos nos ramos do direito. *Legis Augustus*, Rio de Janeiro, v. 12, n. 1, p. 16-32, 23 out. 2019. Disponível em:

<https://sagaweb.unisuam.edu.br/index.php/legisagustus/article/view/443>. Acesso em: 03 mar. 2021.

[22] OLIVEIRA, Laura Machado de. A não configuração do liame empregatício do trabalho prisional extramuros em prol da iniciativa privada diante do tribunal superior do trabalho: a obrigatoriedade do trabalho prisional e a ressocialização através da laborterapia. *Revista de Direito*. Viçosa, MG, v. 8, n. 1, p. 129-173, 27 set. 2016a. Disponível em: <https://periodicos.ufv.br/revistadir/article/view/1660>. Acesso em: 15 out. 2020.

[23] OLIVEIRA, Laura Machado de. O trabalho do apenado e a (des)marginalização do direito laboral. *Revista de Direito Brasileira*. São Paulo, SP, v. 13, n. 6, p. 167-189, jan./abr. 2016b. Disponível em: <https://indexlaw.org/index.php/rdb/article/view/2757>. Acesso em: 23 out. 2020.

[24] POSSE, Guilherme Ferreira; SANTOS, Erica Oliveira; COELHO, Sandra Sofia de Figueiredo. Sistema prisional brasileiro e o processo de privatização. *Revista Multidisciplinar do Nordeste Mineiro* -

Unipac, Teófilo Otoni, Ed. extra, p. 1-17, fev. 2019. Disponível em:

<https://revistas.unipacto.com.br/multidisciplinar/edicoes/20>. Acesso em: 04 mar. 2021.

[25] QUERINO, Taiane de Oliveira et al. O trabalho como forma de ressocialização do apenado retido na Penitenciária Regional Sul de Criciúma/SC e a remição da pena. *Constituição & Justiça: estudos e reflexões*, Orleans, SC, v. 1, n. 1, p. 1-31, 2017. Disponível em:

<http://periodicos.unibave.net/index.php/constituicaojustica/article/view/123>. Acesso em: 17 dez. 2020.

[26] SAMPAIO, Marcelo de Souza; OLIVEIRA, Francisco Cardozo. Análise econômica do direito ao trabalho do encarcerado: reflexos econômicos na promoção da dignidade da pessoa humana. *Revista do Cejur: prestação jurisdicional*, Florianópolis, v. 8, n. 1, p. 1-16, set. 2020. Disponível em:

<https://revistadocejur.tjsc.jus.br/cejur/article/view/353>. Acesso em: 06 mar. 2021.

[27] SANTOS, Edrick Carlos Nascimento et al. Uma análise jurídica sobre a remição da pena: do combate às influências que resultam do delito às condições para a reinserção do apenado. *Revista Brasileira de Direito e Gestão Pública*, Pombal, v. 8, n. 1, p. 54-65, fev. 2020. Disponível em:

<https://gvaa.com.br/revista/index.php/RDGP/article/view/7867/7456>. Acesso em: 08 mar. 2021.

[28] SANTOS, Lucimar Mendes dos; VIEIRA, Vânia Ereni Lima. O trabalho como instrumento de ressocialização do apenado. *Revista Multidisciplinar: Faculdades Integradas Pitágoras de Montes Claros*, Montes Claros, v. 29, p. 109-123, jun. 2018. Disponível em:

<https://www.unifipmoc.edu.br/periodicos/index.php/medrev/issue/view/49>. Acesso em: 27 dez. 2020.

[29] SILVA JUNIOR, João Ferreira; ALANIZ, Erika Porceli. A educação para o trabalho nos sistemas prisionais paulistas. *Reflexão e Ação*, Santa Cruz do Sul, v. 28, n. 2, p. 276-292, 2 jun. 2020. Disponível em: <https://online.unisc.br/seer/index.php/reflex/article/view/12642>. Acesso em: 06 mar. 2021.

[30] SILVA JUNIOR, Luis Otavio Sales da; BERTONCINI, Mateus Eduardo Siqueira Nunes. A contribuição da empresa para a crise penitenciária. *Revista de Criminologias e Políticas Criminais*, Brasília, v. 3, n. 1, p. 115-136, jun. 2017. Disponível em:

<https://indexlaw.org/index.php/revistacpc/article/view/1820>. Acesso em: 09 dez. 2020.

[31] SMANIO, Gianpaolo Poggio; GIRARDI, Karin Bianchini. Os ganhos decorrentes da ineficiência no sistema prisional brasileiro contemporâneo. *Delictae: Revista de Estudos Interdisciplinares sobre o Delito*,

[S. l.], v. 3, n. 5, p. 7-46, 7 dez. 2018. Disponível em:

<http://delictae.com.br/index.php/revista/article/view/75>. Acesso em: 27 dez. 2020.

[32] SOUSA, Maurício Bonfim de. Aplicação integral da Lei de Execução Penal na unidade prisional de Orizona. In: Simpósio da Faculdade de Ciências Sociais, 5., 2019, Goiânia. Anais [...]. Goiânia: UFG, 2019. Disponível em: https://files.cercomp.ufg.br/weby/up/106/o/comp_Fabr%C3%ADcio_Bonfim.pdf. Acesso em: 02 mar. 2021.

[33] SOUZA, Milena Ivan de. A realidade carcerária brasileira e o papel das APACS como vias de ressocialização. Revista de Iniciação Científica e Extensão da Faculdade de Direito de Franca, [S.l.], v. 4, n. 1, p. 751-786, jun. 2019. Disponível em:

<http://www.revista.direitofranca.br/index.php/icfdf/article/view/937>. Acesso em: 28 fev. 2021.

[34] UNESP. Faculdade de Ciências Agrônômicas. Biblioteca Prof. Paulo de Carvalho Mattos. Tipos de revisão de literatura. Botucatu: UNESP, 2015. Disponível em:

<https://www.fca.unesp.br/Home/Biblioteca/tipos-de-evisao-de-literatura>. Acesso em 23 maio. 2021

[35] VIEIRA, Greiceane Roza; STADTLOBER, Cláudia de Salles. O trabalho no cárcere feminino. Revista Prâksis, Novo Hamburgo, v. 1, n. 1, p. 77-101, 10 jan. 2020. Disponível em:

<https://periodicos.feevale.br/seer/index.php/revistapraksis/article/view/2071>. Acesso em: 06 mar. 2021.

[36] VOSGERAU, Dilmeire Sant'anna Ramos; ROMANOWSKI, Joana Paulin. Estudos de revisão: implicações conceituais e metodológicas. Revista Diálogo Educacional, [S. l.], v. 14, n. 41, p. 165-189, 12 jul. 2014. Disponível em: <https://periodicos.pucpr.br/index.php/dialogoeducacional/article/view/2317>. Acesso em: 23 maio 2021.