RIGHT TO HEALTH IN THE PRISON SYSTEM: INTEGRATIVE REVIEW

ABSTRACT

Objective: to investigate in the literature concerning the legal status of the right to health of inmates, as well as its effectiveness in the Brazilian prison system. Method: an integrative review aimed to answer the question << The legislation relating to the right to health in the prison system is correlated to their practice? >> Held in the databases LILACS, PubMed, Cochrane and Adolec, looking up for articles in Portuguese, English and Spanish, published between 1998 and 2012, in addition to the SciELO, books, dissertations, theses, laws and normative documents using the descriptors rights to health, law and prisons.

Results: the results revealed that the legislation and normative documents produced recently are quite comprehensive and meet the theoretical needs of maintaining the health of inmates Brazilians. However, there was a non-observance of the law and noncompliance of the social rights of the detainees, including the scope of health. Conclusion: the current legislation is a rather complete, but there is a noncompliance of the right to health of prisoners by the State. Descriptors: Right to Health; Legislation; Prisons.

RESUMO


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INTRODUCTION

One of the broader concepts for the term health was prepared by the World Health Organization (WHO) in 1948, and defines: "Health is a state of the most complete physical wellbeing, mental and social wellbeing and not merely the absence of disease." Considering health as an expression of the relationships that humans establish with the environment and with himself, it is related to biological variables, and involves social and psychic life in society, the conditions of living and working conditions and the environment in which the individual is inserted.¹

According to the Constitution of the Federative Republic of Brazil (FC), enacted in 1988, health care is a constitutional right guaranteed to every citizen of Brazil, is the duty of the State to offer it through the power of their devices. Therefore, considering a citizen inmate as a Brazilian citizen, that right also is inherent. In this paper, we consider detainees, prisoners or inmates, individuals in seclusion closed system.²

The increase in the number of inmates is a worldwide phenomenon, which as expected, also affects Brazil. From 2001 to 2011, the number of prisoners in Brazil grew from 233,859 to 514,582, representing an increase of approximately 120%.³

In Brazil, the number of prisoners per 100,000 inhabitants has been growing consistently, to the point, which has doubled in the last ten years. A retrospective of these data points to surprising variations. In 1997, 108,6 prisoners per 100,000 inhabitants rose to 135,7 arrested. In 2001, the data revealed showed an increase of almost double of prisoners, where 229,7 per 100.000 inhabitants, rose to 422,5. Also notes that in 2007, an increase of 170,6 to 233,8 prisoners per 100.000 inhabitants.⁴

The increase in the prison population demand physical spaces for their accommodation, but despite the joint efforts of the Federal and State Governments for the construction of new prisons, the shortage of places in the Brazilian prison system grew from 96,010 in 1997 to 173,075 in subsequent years.⁴

The disproportion between the inflows and outflows in the Brazilian prison system results in overcrowding, which favors disrespect the dignity of the prisoner, predisposing the commitment process of morbidity and mortality, contradicting the legislation of security to the rights of prisoners.

The Penal Execution Law (PEL) of n. 7.210/1984, in their legal precepts highlights that the inmate has the right to health, which is a social right.⁵ Thus, the practice of the Brazilian prison system presents quite different from that laid down in legislation. There are a number of inadequacies related to both infrastructures as living conditions; highlight the lack or shortage of transportation for inmates on an emergency, food, health, among other factors aggravating the health of inmates.

In the context of health care in the prison environment, there is a shortage of conditions and resources for quality care. This is the result of physical and structural issues of the environment, together with the absence or quantitative inefficient health professionals and the humanities for the effectiveness of multidisciplinary and interdisciplinary actions to promote improved physical and mental health of these citizens-arrested.⁶⁷ Thus, there is a perceived contradiction between law and practice. While the Constitution and the Penal Execution Law ensure the right to health, there is a big gap for the realization of the right to health among prisoners.

In this sense, considering the current situation in prisons in several states in our country, a search in the literature is of paramount importance, since it promotes the consolidation of knowledge and a better understanding of the phenomena studied. The literature is evaluated and the information generated, stored, by conducting a comprehensive survey. It is clear, therefore, that this type of research, it is certainly one of the vital points so that there is progress in reflective thinking and scientific conduct.⁸

Given the above, we wondered: legislation relating to the right to health in the prison system is correlated to their practice? Therefore, the aim of this study is to investigate the literature concerning the legal status of the right to health of inmates, as well as its effectiveness in the Brazilian prison system.

METHODOLOGY

The study consists of an integrative literature review. Their classification with respect to methodological quality is on level 4 of evidence which establishes a non-experimental study design as descriptive correlational and qualitative. Therefore, it is a search that must follow rigorously the methodology, through which the reader can identify the main characteristics of the publications, providing a synthesis of knowledge and the incorporation of the
applicability of study results in significant practice. The instrument used in this study was a standardized checklist consists of six distinct phases: the preparation of the issue; establishment of the strategy literature search, selection of studies based on the inclusion criteria, critical reading, evaluation and categorization of content, analysis and interpretation of results. To identify publications that comprised the integrative review of this study, we carried out a search online, by lifting the Database Virtual Library Scientific Electronic Library Online (SciELO) and LILACS databases, PubMed, Cochrane and Adolec, besides of, dissertations, theses, laws and normative documents. The words were right to health; legislation; prisons. To restrict the sample, we used the Boolean operator and, along with the selected terms such as: Right to health and Legislation, Right to health and prisons, Law and Prisons.

The total study population consisted of 34 publications relevant to the subject under study, the research sources available above. Of these, 28 were included in the sample, considering the previously established criteria.

Inclusion criteria defined for selecting studies consisted of the following items: articles published in English, Portuguese and Spanish available in full in the period 1998-2012, the modality scientific article (original or revised) or normative document made by researchers and present context refers to legislation the right to health of inmates, as well as its effectiveness in the Brazilian prison system. With regard to the exclusion criteria, we took into consideration: Duplicate articles published in foreign languages or precede year de1998, and those who, despite having selected descriptors, not addressed directly to the proposed theme. Data collection was conducted between January and December 2012.

For the organization of content obtained after the data collected was used a framework containing the following items: year, mode of study; journal; thematic focus of this study. The data were grouped and presented in tabular form, so that would allow a better view of the studies included in the integrative review. Faced with the realization of the different approaches concerning the legal status of the right to health of inmates, as well as its effectiveness in the Brazilian prison system, were listed three approaches Issue: Right to health as a human right; the Unique Health System and the right to health of the inmate; Health Brazil's prison system.

It is worth mentioning that the proposed instrument was instrumental in the construction of the integrative review, since, based on the data collected, it was possible to characterize the publications included in the study as well as the interpretation and analysis of findings and synthesis of knowledge produced, marking the focus of the integrative literature review, which is displayed in tables, according to the established thematic approaches.

RESULTS E DISCUSSION

In this work, the material was analyzed according to the methodological criteria described above “right to health in the context of the prison system.” All these data regarding the subject are presented in Figure 1, which shows the distribution of the material used for the realization of the article. To evaluate it realizes that there is a paucity of publications in the area, which reinforces the need to review the huge literature, and generate material for a better understanding of issues related to the theme, and a reflection of how much is required to be performed further studies on the subject.

The date of cutout for the work has not been defined due to the small number of publications on the subject, and the legislation is often old. With regard to the language most of the material was published in Portuguese, since the focus was Brazilian law. Only three texts used were in English. Most of the published material (72.41%) was between 2000 and 2012. However, in general publications ranged from 1948 to 2012.
Right to health as a human right

Regarding the "Human Rights", suggests that it is an umbrella term that exceeds the field of legal rights. This expression is linked to ethics, and it is a universal parameter that must be followed by individuals and institutions, being due to a requirement of moral respect for human beings. According to an article published in 2010, by Miriam Ventura, principles and standards of human rights should ensure the satisfaction of minimum conditions that allow the attainment of a decent life.\(^{11}\)

The concept of human rights is related to the dignity of the subject. So that they are implemented, there is the need to aggregate them the recognition and enforcement of other rights, including civil, political, social, economic and cultural rights of individuals.

The right to health is indisputably recognized as a right, facing the preservation of human life and dignity. Article 25 (Paragraph 1) of the "Universal Declaration of Human Rights" 1948, cite the first time in the history of health as a right:

Everyone has the right to a standard of living adequate for the health and your family's health and well-being, including food, clothing, housing and medical care [...].\(^{12,7}\)

It appears that the right to health is a concept much broader than just the absence of a physical or mental illness, but includes the right to food, housing, work, education, dignity, life, non-discrimination, equality, the prohibition against torture, privacy, access to information and freedom of association, assembly and movement. Enjoy health is to enjoy a decent life, enjoying a range of human rights.\(^{13}\)

In 1978, the Declaration of Alma-Ata describes another broad concept of health, added to the fact that this is a fundamental right of every individual:

Health is a complete state of physical well-being, mental and social wellbeing and not merely the absence of disease and infirmity, is a fundamental human right [...].\(^{14,15}\)

The recognition of the right to health and their incorporation in the laws, policies and jurisprudence, since it is related to human dignity, promotes concerns about how to achieve this well-being and what rights and responsibilities of citizens and states.\(^ {12}\)

In Brazil the right to health was legally recognized in the 1988 Constitution, Article 196 which recommends:

Health is a right and duty of the state, guaranteed by social and economic policies aimed at reducing the risk of illness and other hazards and to universal and equal access to actions and services for its promotion, protection and recovery.\(^ {2}\)

This text covers a broad spectrum of health, considering this a universal right, which includes everything from preventive health traversing the intermediate stages to achieve curative health. His approach is founded on the quality of life, placing health as a matter of law and promotion of life.\(^ {16}\)

The Constitution, in Article 197, states that it is the actions of public importance and health services, leaving the Government to provide, under the law, for their regulation, supervision and control. According to Article 198 of the Constitution "the actions and public health services are part of a regionalized and hierarchical network and constitute a single system".\(^ {2}\)

SUS and the right to health of the inmate

The concepts contained in the current Constitution, the associated health concepts present in the Declaration of Alma-Ata, notoriously influenced the development of a Unified Health System (SUS), which covers all public and Brazilian citizen.\(^ {11}\)
The SUS was established through the Organic Health Law nº 8.080/90, which establishes the conditions for the promotion, protection and recovery of health, the organization and functioning of the corresponding services and other measures, and that the Law 8.142/90 provides for community participation in the management of the NHS and on intergovernmental transfers of financial resources in the health sector and other measures.\(^\text{17-18}\)

It should be emphasized that the SUS is a unique social project, whose principles of universality, comprehensiveness and equity were established in the 1988 Constitution. Based on this perspective, understanding the actions for the promotion, prevention and health care are the responsibility of the government. The Ministry of Health to organize and develop plans and policies that meet the constitutional assumptions and these policies extended to all Brazilian citizens, including those who perform some type of penalty.

According to the National Penitentiary Department (DEPEN / Ministry of Justice)\(^\text{19}\), in December 2011, it was estimated that the total prison population of Brazil was composed of 514.582 inmates (counting those who were the open, semi-open and closed). These people are distributed as shown in Figure 2 in the different states of the Federation:

![Figure 2. Distribution in absolute numbers of individuals who serve time in prison (men, women and young offenders) in the open, semi open or closed regime, distributed through different states of Brazil. Source: DEPEN, 2011.](image)

There is a very uneven distribution, since only the state of São Paulo has approximately 35% of inmates in the country. Even more serious is the fact that it is significantly growing the number of inmates in the country. In 2001, just ten years earlier, the number of inmates in Brazil was only 233.859 individuals, representing an increase of 120% in the number of prisoners in just 10 years.\(^\text{19}\)

Becomes dire the situation, since the prison system does not track such changes in the infrastructure, staffing and receipt of funds. This results in problems such as overcrowding, physical structure depreciated, inadequate conditions of rest and nutrition, poor hygiene, lack of an effective policy for social reintegration, constant violation of the rights of convicts and a neglect of egress. All these factors become a health problem for these citizens, and therefore a public health problem, since it conflicts with the broad concept of health, human rights and defended by the Brazilian public health system.

Due to the growing need and urgent search for solutions to problems related to the health of individuals in seclusion, created the National Health Plan in Prisons, established by Ministerial Decree n. 1.777 of 09 September 2003.\(^\text{20}\)
himself, then inserting its participatory nature in relation to health.20

As to care more complex, includes the insertion of convicts in the immunization program, as well as the acquisition and registration of medicines and treatment of several diseases that affect convicts.20

Additionally, the prisoner has their right to health, established by the Penal Execution Law nº 7.210/1984. This law aims to regulate the rights and duties of prisoners with the state and society, thus establishing core standards to be applied during the period of imprisonment. The same is considered one of the most advanced laws regarding the right to health by the inmates because it establishes rights standards and efficient, especially concerning the rehabilitation of the inmate.21

As a goal, the Penal Execution Law intends to effect the provisions of criminal judgment or decision and provide conditions for the harmonious integration of the social and sentenced hospitalized. It also provides, in its Article 3°, the convict, and the hospital will have secured all rights not affected by the judgment or the law. Thus, prisoners have asserted other social rights inherent in any individual, and these should be exercised by the State during the period of reclusion.7

The Criminal Sentencing Act comes into its Section III, the items that relate to health, titled “HEALTH CARE”. In Article 14, states that: "the health care of prisoners and hospitalized, preventive and curative care comprise medical, pharmaceutical and dental".5-7

Sets Moreover, assistance to pregnant women (Paragraph 3) and its Paragraph 2 defines:

[...] When the prison is not equipped to promote the necessary medical care, this will be given elsewhere, upon authorization from the establishment.1,7

The inmates are still other fundamental rights guaranteed to the maintenance of health in the perspective of improving the quality of life such as food, clothing, hygienic and airy ward, visiting family and friends, the right to write and receive letters, to be called by name, to perform paid work, have adequate medical care as well as educational assistance, social, religious and judicial.22

The legislation also provides for the need of the team involved and funding on the health of the inmates is this is also an item of public responsibility. The cost is defined by the Interministerial Ordinance nº 3.343/2006 of December 28, 2006, a predefined budget and a team of qualified health working over a number of hours, depending on the capacity of the unit.23

Based on this same Ordinance, this incentive should fund several aspects in health and there is a distribution of responsibilities on their payment between the Ministry of Health and Justice. Additionally, Ministerial Order No 1,777/2003, defines that there should be co-financed by Incentive for Health Care in the Prison System, in which the Ministry of Justice would be responsible for financing the adequacy of physical space for services health as well as the acquisition of equipment units in prisons..20,24

This space should be organized according to Resolution nº 14, dated November 11, 1994, which in Article 16 states that to promote the health care of prisoners, prisons should be equipped with:

1 - bed ward, clinical material, suitable instruments to pharmaceuticals essential for inpatient medical or dental emergency.6,15

Additionally, determining the existence of dependencies for psychiatric observation and substance abuse care; isolation unit for infectious contagious diseases.24

♦ Health in Brazil’s prison system

Although the legislation is so comprehensive and attentive in meeting the needs of prisoners, there is an experience quite different. Are many and various difficulties for the development of health activities in prisons, particularly in the preventive field.

Aiming to contribute to realizalization of social rights of these individuals, inspection visits are made in the prison system and it is registered in national and international reporting. In this work we have selected some texts that reveal the everyday realities on the prison system, demonstrated by quotations from these reports.

have legal assistance. Conditions are required visits to strip and undergo intimate searches.

In Ceara, the situation gets to be inhumane. The reports show a total lack of minimum conditions for survival:

[...] the cells are filthy. So that the foul smell they exude can be felt even in the courtyard of the police station. All of them are dark and unventilated [...] On the ground, amidst the filth and garbage, transiting with aplomb dozens of cockroaches. All these prisoners are forced to sleep on the floor on the slab, they are offered without even a mattress or blanket. [...]The permanence that place disgusting provokes tantrums, crying jags and the most varied diseases, notably skin diseases and broncho-pulmonary,2 3,25.

This problem of overcrowded cells, poor housing and unsanitary prisons make an environment conducive to the spread of epidemics and the spread of diseases. All these structural factors are associated with bad nutrition, sedentary lifestyle, drug use, lack of hygiene and the whole ambience of imprisonment causes health conditions of individuals are affected.26,27

Inmates are affected by various diseases within prisons. The most common are respiratory diseases, such as tuberculosis and pneumonia, followed by liver diseases such as hepatitis, and sexually transmitted diseases in general, AIDS. Surveys estimate that approximately 20% of Brazilian prisoners have HIV. This is the result of homosexuality associated with sexual violence by others, prisoners, and the use of injectable drugs.26

A recently published study, conducted in 2009, shows that there is a significant delay in the diagnosis of tuberculosis in prisons in the city of João Pessoa, but it is understood that this fact is a reflection of the national context, but the lack of studies on theme preclude a claim on this aspect.29

Additionally, it is known that the treatment of tuberculosis has large dropout rate and among the causes is the lack of knowledge about the disease.28

The delays in the diagnosis of diseases, as well as the lack of commitment by the treatment are related to the naturalization of the lack of assistance inmate in seclusion. The prison is seen as a place of suffering and death. In this sense, the deprivation of the right to health with inmates is common due to the asymmetrical power relations and the ideological effects.29

Given the context presented, we note that the inmate has several social rights violated, and their human rights violated. There are often deprived of their social rights associated with the suspension of individual rights, civil and political.

Despite the present legislation is well advanced, with regard to the promotion of human rights, being the same in line with the democratic development of the country, the prison system is presented in catastrophic situation. There is a total failure of the state in its duty of custody and safeguarding the rights of prisoners.29

It is believed that the socio-demographic aspects presented in the prison system, are generators of problems related to health care services, contradicting head-on the rights guaranteed not only by the SUS, but also by the Universal Declaration of Human Rights, the principles of Biolaw, the Federal Constitution of 1988 and the Penal Execution Law.

This need for negotiation of rights inherent to individual inmates is a reflection of the absence and/or inefficiency of public policies adopted for the Brazilian prison system.29

It is indispensable for ensuring the compliance established by law in the country, in health care, teams develop the essential functions. This includes planning the promotion of health actions; vigilance in implementing procedures, the interdisciplinary team and its functioning appellee provided by the Ministry of Justice in partnership with the Ministry of Health in accordance with the device set up by the Interministerial Ordinance n° 1.777/2003.20

CONCLUSION

This study made it possible to condense data and generate knowledge through a literature review of scientific literature that addresses the right to health in the context of the prison system, focusing on legislation.

With regard to legislation and regulatory documents related to the rights of prisoners to health, it is a rather complete safeguarding the needs of inmates. Among these documents include: the Federal Constitution, the Penal Execution Law, the National Health Plan of Prisons, the Organic Health Law n° 8080/90 and 8.142, governing the Unified Health System

Faced with the aforementioned legislation, it can be seen that the prison system has its strategic plan in place, and its development over the years has been effected by the addition of various agencies involved politically, in order to provide better living conditions and health to inmates. Health care should be developed through positive actions,
including the provision of services and supplies to health care.

This growth of the legislation that regulates health actions, though having organizational character, in the Brazilian still expected results are not suitable due to the numerous difficulties encountered in their implementation. It is known that there is a huge gap between the law in force in law and in practice right living for millions of people, including social rights of the prisoners themselves, notably those related to health care.  

There is, then, a paradox: the advent of so many public policies that aims to make health care as a major exercise of citizenship, on the other hand, the exclusion of inmates with regard to the enjoyment of these policies that target every citizen regardless of the circumstances.

We emphasize that in Prisons, managers must increasingly reflect the role of the State against inmates, knowing that even though some rights are withdrawn from the individual who is serving, they continue having the rights of human beings and citizens, and all social rights that are inherent, and these should be provided by the State, including those related to health.

In this respect, respect for social rights of inmates it is essential, in the prison system, and should be followed all legal rights of the citizen in freedom, except the freedom just because it is in agreement with the sentence to be enforced by inmate whether restricted or private. From this perspective, we understand to be guaranteed the right to health citizen inmate as recommended by the Brazilian Unified Health System -SUS beyond legislation and normative documents national and international lecture on the topic. From the moment that the individual is seen as a being with biopsychosocial and spiritual needs he may have, in its broadest sense, which conceptualizes health.

**REFERENCES**


16. Lei no 8.142 de 28 de dezembro de 1990. Dispõe sobre a participação da comunidade na gestão do Sistema Único de Saúde (SUS) e sobre as transferências intergovernamentais de recursos financeiros da área da saúde e dá outras providências (28 dez, 1998).