

Reviews and Criticism of Rehabilitation in the Legal System of Iran

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Abstract: According to studies, the rehabilitation means restoration reputation, honor and rights taken from victims and even offenders as well as elimination of all deprivations and social rights in addition to compensation for moral and material losses either due to defamation of individuals who have been victims of judicial errors or they have been suffered the effects of definitive penal sentence. Rehabilitation aims to remove effects of criminal conviction and make barrier to people who wish to file a biased and unfounded complaint. Rehabilitation is generally of two types: once the damage may be imposed on an individual's dignity and independence due to actions by other people such as mistake and the fault of the judge or punishment for a false charge. Second, the loss may damage one's social prestige due to his own action. Article 62 of the Penal Code, Act of 1998 was a good but incomplete, effort for recognition and establishment of legal rehabilitation. It was associated with restoration of civil rights to the sentenced person with the adoption of some effects of rehabilitation. It required revisions which have been carried out largely hence, many of the defects and shortcomings were removed. In general, rehabilitation is the most proper expression for eliminating or reducing unpleasant effects in Iran legal system. While explaining different concepts about rehabilitation, this study describes its principles, conditions and its effects in a descriptive-analytical approach.

Key words: Rehabilitation, criminal conviction, civil rights, defamation, recognition

INTRODUCTION

In criminal law and jurisprudence as the literal meaning of rehabilitation is restoration violated rights and dignity taken from persons by various factors or it has been insulted. After rehabilitation, all former honor, dignity and state should be obtained; moreover, the lost social position should be regained (Sheikhzadeh, 1994). For treatment of its abnormal members, society has established some criminal laws to prevent them committing crimes for fear of retribution. However, crime is a social phenomenon that is incompatible with the culture and customs of the community and it induces the community to the reaction. In the wake of conviction and penalty, these persons have lost their honor, dignity and competence and they may be deprived of their legal and social rights. Here, continuing subordinated sentences creates difficulties and obstacles for peaceful and painless return of these persons. Thus, a situation should be provided for these people to rehabilitate their former condition to much extent although, they may be time-consuming (Barzegari, 2008). Honor and dignity of individuals are emphasized in Islam; in addition, Iran has emphasized much on this issue. Nevertheless, rehabilitation has not a strong legal position in Iranian

law. Indeed, rehabilitation is a modern installation in criminal law. According to this installation, persons losing their rights due to a sentence or judicial order are allowed to restore their rights as much as possible. There is a doubt that whether rehabilitation is a criminal or legal issue. It is correct to answer that it has in general two dimensions of legal and civil while it seems to be more criminal. The provisions of the justice system in Iran have been set for organization of its judicial system but, it has caused chaos and disorder in the judicial system as well as in the rights of citizens. Rehabilitation is one of the most important issues of criminal law which has been ignored and it has been left alone either by university professors or by the judicial system after the Islamic Revolution. One cannot deny that criminal conviction has many inconvenient social effects to condemn such as denying or limiting their social status. Perhaps, regaining lost prestige requires years of pain and suffering, especially in small urban communities as well as hit populated and integrated neighborhoods. In the same manner, a person's criminal conviction due to judge's mistake or charges to non-guilty and innocent person for reasons including witnesses' collusion and magistrate's deception will bring adverse social and psychological effects on denounced innocent person. It also damages

face of justice and the judiciary by reducing public confidence in the justice system. However, since society is responsible for maintenance and supporting all its members, it dislikes depriving some of its members. In this regard, it has established rehabilitation to return them to society, restore a previous social position and decrease in debt statistics. This important issue must be considered by teachers and lawyers in their analysis and investigations. Then, the relevant authorities can employ their ideas in the adoption and approval of laws. In this respect, the main research questions are: are the new-established criminal rules has been successful to enhance the position of rehabilitation in Iranian legal system? How is the rehabilitation of an offender? What are the rights of criminal after rehabilitation?

Research objectives: Trying to attract the attention of jurisprudence and courts to hear and investigate claims of rehabilitation and insertion of rehabilitation in court rulings. Trying to return more offenders into the community, their institutionalization and stop movement according to the current rules. Thorough and comprehensive review of rehabilitation in the Iranian legal system according to the new criminal rules.

Research hypotheses: It seems current penal codes have been can enhance the position of rehabilitation to some extent. It seems rehabilitation institution has taken some measures to enable offenders to continue their ordinary social lives in their return to society upon completion of the punishment and condemnation in light of the stipulated rules.

Literature review: In his book 'Rehabilitation and comparative study the laws in some countries,' Riyahi (2013) has investigated repeated Article 62 of Islamic Penal Code and he has compared the article to Articles 25 and 26 Islamic Penal Code Act of 2013. Riyahi concludes that only the deadline for rehabilitation has been reduced or extended in some cases and the basic principles have not been changed. In requirements and civil liability without contract, Seyyed Morteza Ghasemzadeh have reviewed moral losses and the need to compensate for it according to the law of civil liability, Article 58 of Islamic Penal Code, Article 171 of the constitution and Article 3 of the Press Law. In a chapter, he emphasizes on the need to eliminate the root cause of loss and to return the status of aggrieved or accused sentenced innocent to pre-loss condition. In his senior thesis at the University of Qom on 'Rehabilitation in Iranian legal system', Maleki (2002) has investigated the current and former statuses of rehabilitate in legal terms; he also reviewed whether

rehabilitation matches with the reality of the day or not. In general, he concludes that there are not complete and comprehensive rules in this regard despite speaking of defamation in the constitution.

MATERIALS AND METHODS

Research materials have been gathered through library-based tools according to descriptive analytical method. The researcher has employed printed and digital sources including books, study, texts, documents and international regulations, where necessary notes, reasoning and inference to analyze data and evaluate research findings.

Conventional and legal sense of rehabilitation: Conventional concept of rehabilitation is not far from its literal meaning; this implication of the term rehabilitation is common among people. When a person is labeled, defamed or insulted, it is said that he has dishonored or his reputation is gone. In fact, this defamation means moral losses to a persons's personality.

The legal concept of rehabilitation: Rehabilitation is literal the restoration of former fame and condition to an accused who has lost his fame due to an offense and because of a criminal conviction. This concept has been accepted as legal establishment in the penal systems in the world. It is proposed due to condemned's sentence. This means that a person is deprived of some of his social rights for a while or even a lifetime because of criminal conviction. To encourage and correct such a person, the legislator has determined a period in which if the person does not commit a crime or violation (if he has been corrected), he could acquire his former rights and privileges. Studying some doctrines of rehabilitation show that it has a particular position in its legal term. Law Terminology states that rehabilitation is the return to a competence lost due to an action by an accused. Rehabilitation is met by elimination of penalties and effects of criminal conviction. If rehabilitation is carried out due to court ruling, it is called judicial rehabilitation; if it is according to law provisions, it is legal rehabilitation (Jafari, 2009).

Types of rehabilitation in the Iranian legal system: Criminal convictions and their collateral and non-collateral effects put a trace in the life after sentencing; they cause one's exclusion of some exemptions and legal privileges in legal institutions such as suspension of punishment, probation, etc. Therefore, previous criminal records

prevent these legal privileges. These section is devoted to introduce types of rehabilitation and includes three parts.

Legal rehabilitation: Legal rehabilitation or rehabilitation of rights is met spontaneously without respect to all circumstances and the common characteristics of judicial rehabilitation after expiration of date of completion of punishment. Therefore, cause of legal rehabilitation is passing a certain time from the date of completion of the punishment of a person who has not been found guilty under a final judgment. In fact, when a person commits an offense and he is excluded from some social rights for the same offense, the legislator stipulates a specific period to remove the effects of his crime in order to prevent his deprivation of social rights; in this way, he can continue his social activities after a certain time (Maleki, 2002).

Credibility and business rehabilitation: Credibility rehabilitation is a return by a bankrupted merchant according to court ruling to his former business fame so that he can continue his economic activities (Jafari, 2009). Pursuant to Article 418 of the Commercial Code, "Bankrupted merchant cannot interfere in his possessions, even what may even his income; the administrator is his legal vice president."

Criminal rehabilitation: Criminal rehabilitation has an important position in most legal systems as an institution of criminal law to improve the social situation of offenders after punishment. Since the purpose of punishing criminals is their correction and this aim is achieved after serving, law seeks to provide ground for the reappearance of convicts in society. Removing criminal labels and social outcast signs from their names as well as restitution competencies and their enjoyment of their rights that results in voluntary return to healthy life free of crime and deviance are included in 'collection of criminal laws and regulations' titled as "criminal rehabilitation" (Jafari, 2004).

Effects of rehabilitation: Criminal law does not aim to remove individuals from society and social activities; the more law has mercy on persons without criminal records and persons accused to an offense, it prevents more their decline. This approach is very reasonable for helping people who had difficulties in normal situations, they have been captured by crime detection apparatuses, enforcement officials and other personnel related to the judicial system. In this regard, they have been away from society and family for a while. In addition to the psychological pressures for offenders and those around him, knowing a person as one with criminal records will

directly influences on his social and economic activities. A shadow of evil and defamation covers him so that state agencies do not employ him; even private jobs do not like hiring him because the certificate of clearance is a condition for many job application. Thus, the accused is deprived of having a decent job and enjoying many advantages of a normal social life including employment, education and business license (Talachain and Vaziri, 2010).

Ways to achieve rehabilitation: Due to the fact that many convicts are practically and officially deprived from employment to all government jobs, public service NGOs and even many private sector jobs. How long should they pay for their mistakes in past while they have endured punishment? What is the source of their family expenses? Contrary to criminal conviction (which guaranteed severely), one can find civil and administrative conviction (which has not enforcement characteristics of criminal conviction). In any way, the purposes of criminal conviction and punishment are not fond in civil and administrative conviction (Sheikh, 2009).

Suspension of punishment: Given the goals of penalties (to correct and return offenders to community), unhealthy prison conditions, especially for those who have sentenced to the prison for the first time and association with professional criminals (exposing them to any sort of corruption), this legal entity works in favor of the accused and the interests of society. According to Article 46 of Islamic Penal Code, adopted 2013, "In ta'zir crimes of the third to eighth degree, the court can suspend execution of all or part of the punishment from one to five years, subject to the (same) requirements provided for postponement of deliverance of judgment. Also, the public prosecutor or judge in charge of execution of criminal judgments, after execution of one third of the punishment can ask the court to suspend (execution of the punishment). Also, the convict, after spending one third of the punishment, subject to legal requirements, can request suspension through the Public Prosecutor or Prosecutor in charge of execution of criminal judgments" (Ardebili, 1998). Basically, punishments should consider offender' reform more than any other issue. Every condemned person should be optimistic about his future. If he has hope, he will help to reform himself to change his destiny. Probation is a chance given to convicts in prison before the end of his sentence to enjoy absolute freedom if he shows of good manners and enforce court orders during the period that the court determines (Noorbaha, 1990). Satisfaction of plaintiff or private claimant is another reason eliminating the effects of a criminal

conviction. Some penalties have been stipulated merely to support people and defend their interests; in the case of plaintiff's satisfaction, the punishment is stopped and disregarded. Since an offender disrupts good order, public security and the stability of society by his crime, it is not possible to disregard all crimes by upon the victim's satisfaction because it increases criminals' rudeness (Khorshidvand, 2000). In terms of criminal code abrogation, a professor of criminal law defines abrogation as, "practical rule upon which the legislator expropriates explicitly or implicitly the validity of law. Then, validity and force of law disappears and old regulations are replaced by new rules" (Katouzian, 1991). The term abrogation has also been defined as, "overthrowing validity of a law by another law; the later law is called abrogating and the old one is called abrogated law" (Jafari, 2009).

Lapse of punishment's time: In the fight against evil and maintaining public order in society, penal policy is based on justice and benevolence. As judgment is issued against someone but it is difficult to implement it, forgetfulness will overcome the sins soon; in this case, execution of penalty will not be useful for both the guilty and the society. Moreover, retribution after a long time has not corrective and educational effect. There are many discussions, opinions, judgments and inquiries about religious and non-religious state of lapse of time. The important issue in this research is lapse of time as it has been stated in the Islamic Penal Code, Articles 105 to 113. About ways to achieve rehabilitation for a subject of defamation, several principles of the Constitution of the Islamic Republic of Iran are dedicated to the protection and dignity of persons to protect honor and dignity of individuals. Article 22 of the Constitution of Iran stipulates, "The dignity, life, property, rights, residence and occupation of the individual are inviolate, except in cases sanctioned by law." Therefore, the importance of protecting the dignity of the people is so much that it is prior to life, property, rights, etc. In addition, Article 39 of the Constitution goes further and states, all affronts to the dignity and repute of persons arrested are forbidden and liable to punishment. As a result of these principles, the legislator has been forced to consider violation of honor and defamation of individuals as crime. According to Article 697 of Islamic Penal Code, "Anyone who through any printed press or any other media falsely accuses someone of an offense or crime should be sentenced to imprisonment from between one month and one year or flogging up to 74 lashes (unless the punishment is specified in haads)."

RESULTS AND DISCUSSION

Criminal record: In different penal systems, lawmakers consider commission of some charges effective and important in a person's future and they have tried in the registration and maintenance of this type of sentence to influence it in the future through various methods. In past, the convicts might be mutilated for some crimes, their hand or nose would be cut and point a mark on the forehead or body. In the 15th and 16th centuries that mutilation was common, they cut an ear and then they cut the next ear for the second crime; it was a sign for crimes committed (Garraud, 1966). Although, many changes imposed on regulation relevant to criminal record in Iranian criminal law, criminal convictions were not recorded at any office or authority before 1939. All individuals were same in terms of criminal record until all effective criminal histories were recorded in an office in 1939 according to a regulations. Article 4 of Modification Law on a Part of the Act of Judicial Organization and Recruitment of Judges, criminal records were a part of technical bureau. However, regulation on criminal records was adopted in 31 Articles in 1939. Then, regulation of criminal records was approved by the Council of Ministers in 30 Articles in 1942. According to Article 30 of this regulation, regulation of 1939 was canceled. In 1958, Article 8 of the regulation was modified by the Council of Ministers (Riyahi, 2013). On the criminal record in present Iranian law, the criterion for adjusting criminal record is juridical record (approved 2005). In terms of the terms juridical record and criminal record, it should be said that the scope of juridical record is much broader and includes civil, commercial and administrative sentences as well as definitive criminal sentences; but criminal record is an instance of juridical record including the history of criminal convictions (Barzegari, 2008).

The performance of Iranian executive agencies in recording criminal conviction: There are many problems in the registration of individuals' criminal conviction in Iranian system of recording. For example, upon arrival in prison, the convicted's fingerprint is registered in the system and a file, including all his specifications as Article 50 of bylaws of prison terms is opened for him even if his sentence is a simple 24 h temporary detention. A copy of the file is kept in the archives of prison and a copy is sent to Directorate General of Prisons in Tehran which will be troublesome for him in future queries (Jafari, 2004). The profile which includes an individual's criminal records, remains in prison for life. When the prison office is inquired about criminal records, the office is obliged to announce any previous conviction whether effective or

ineffective even one day suspended sentence of 10 year passed from the date of issue. The problem with this type of recording is that the Identification Bureau keeps this file always regardless of the sentence of the convicted person after his death. Whenever the judicial system inquiries about personal conviction (regardless of its effective or ineffective condition) the records are announced to court. Therefore, the rehabilitation which is subject of Articles 25 and 26 of the Penal Code is implemented only about social deprivation, not all conviction records. While, one of the effects of criminal rehabilitation is elimination of criminal conviction record after expiration of the deadline to enable individuals to enjoy all concessions devoted to a person who has committed a crime for the first time. In practice, it has not been accepted, yet. Another contradictory point in the registration of individuals' criminal conviction is the fact that the history of financial punishments is not registered. This has led to many adverse effects; it requires revision and review with respect to approval of new rules of criminal procedure and Islamic punishments.

Beyond punishment and repression, most of present penal systems aim to pave the way for social and moral rehabilitation as well as the offender's return to society and healthy life like other citizens. This sacred goal, if followed and emphasized carefully in sanctions, confronts many difficulties after execution of criminal penalties because culpability stigma on offenders cannot be cleaned easily. Society pays little attention to him, does not welcome him and prevent giving him social benefits such as appropriate job and profession. Rehabilitation has been established to facilitate the return of offenders to community life and to eliminate disadvantaged consequences arising from a conviction; it has been welcomed in most legal systems. In Iranian legal system, rehabilitation has been included since the very beginning of legislation; in addition to provisions of General Penal Code in 1924 and 1973, regulation on criminal record had also been adopted to emphasize on this issue which had effective and institutional role in the institution. With the changes in laws after the revolution, despite mentioning rehabilitation in numerous principles of the Constitution, this institution is very weak during the two decades after the revolution. In this manner, many adverse consequences have been imposed on convicts; their punishment might be intensified as the result of these rules. In terms of defamation and when a person is acquitted of the charge or accusations, if he files a complaint against the slanderer and seeks rehabilitation, Iranian authorities and conventions pays little attention to this subject and disregard the subject easily by issuing prosecution order due to lack of sufficient evidence or

advisory opinions. In fact, the case can be closed easily. In the case of judicial errors or sentences of certain convicts, even if the accused prove in competent courts that the sentence has been wrong and judicial authority has made a mistake, he can earn conviction sentence against his judicial authority; but he cannot request revision for issued sentence. If the judge orders taken in custody, he cannot initiate a case for rehabilitation or compensation of detention period. The right for rehabilitation is a good and humanitarian practice. After gaining rehabilitation, he is not regarded chronic.

The rule of law is the same for all offenders. Giving such a privilege and declining all convict' criminal record in a same manner is contrary to the philosophy of this institution (rehabilitation). Undoubtedly, some individuals have not committed a crime but they have been subject of libel or they have been accused due to mistakes by judicial authorities. Some individuals have committed an offense accidentally and they are significantly and noticeably liable to be corrected or reformed. Others commit a crime easily and are not aware of the obscenity of their behavior; but they talk proudly of their former offenses in public. Many jurists believe that repentance is not achieved for this group and they are seeking re-offending. Therefore such people do not have the merit of having social benefits aligned with random criminals and the system should be careful in granting rehabilitation to them.

CONCLUSION

Final point relates to the most effective result of a criminal conviction or temporary deprivation of civil rights at some specific crimes that is subject of Articles 24 and 25 of Islamic Penal Code. Its effects are eliminated after a specific lapse of time and it provides the ground for restoration of mentioned rights. Due to the existence of rules and regulation on selection in Iran, qualification and capacity of persons in possession of some social rights such as the right of employment in the state and official occupations or non-state public occupations depend on local research and oral interviews; in this regard, personal internal standards are recognized as criteria. Perhaps, rehabilitated individuals after long years of previous conviction cannot earn their most important social right (employment) because their moral authority is questioned due to such criminal record.

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