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European Journal of Experimental Biology, 2013, 3(1):292-297



Rehabilitation in Iran's Law

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ABSTRACT

Wield is to rehabilitate the dignity of people which has been irreverent or denied by a variety of factors. This may be sometimes used about the person who may have been innocent of the crime or his reputation has been damaged. In this case all spiritual damage is compensated by rehabilitation. Because no doubt in lawful communities the government shows attention and respect to personal dignity which is their intellectual capital. So much that in most countries this attention is explicitated in the texts of the Constitution and supported by the legislator. Therefore defamation and dignity of persons, in whatever form is denied and the case would be punished and sometimes it is possible to rehabilitate the condemned to give back some or all of these rights to the condemned. What is certain is that the purpose of sanctions is not always to ostracize offenders but it is hoped after punishment that the offenders go back into society as a normal person. Offender in the rehabilitation duration is as sick a person which is spending his recovering duration. The rehabilitation philosophy is that following it, the criminal learns the way of life in the community and without difficulty goes back to the community. This paper will discuss the definition and types of rehabilitation, then the condition of achieving rehabilitation and the side effects of rehabilitation will be discussed.

Keywords: rehabilitation, criminal law, Iran law, law of condemnation, Conviction, returning

INTRODUCTION

Definition of rehabilitation

In the literary meaning rehabilitation means giving, giving back, returning, and compensating. But dignity literary means honor, prestige, rights, competence and character. Rehabilitation is to award and return credits and rights which have been withdrawn by people or court order, or committing crime. Basically rehabilitation is discussed when personal dignity and respects of a person is severely damaged or has been confounded for some reasons. In other words, whenever their situation, personal credit and personal and social status is confounded or tarnished for some reasons or because of doing of the act, he lost his competence and social rights, it is said that the dignity of the person is affected and damaged. As a result, it is after this step that rehabilitation which means the ways of returning or repairing the competence and former dignity are discussed. But this is the customary concept of rehabilitation and rehabilitation has another concept which is a legal concept and the concept of dignity here is different from previous cases and is caused by one's own actions. It means the person himself damages his reputation. Whereas in the conventional sense, the person awarded to rehabilitation is in fact the victim of crime and is-- against. Therefore his reputation has been done by someone else. Another define about rehabilitation is "... condemned criminal conviction is removed from the criminal in order to eliminate some of the deprivations to which he was sentenced as a

conditioned punishment [1]. It seems that this definition only refers to some deprivations while deprivation of a person has some side effects one of which is placing him among precedent condemned community is more intense about the people who commit the crime repeatedly. In the definition of rehabilitation Stephanie and Luasor wrote: "the legal status of a person who had lost it due to crime restitution, and such person is put aside from among persons in the record, and in case of committing the crime again, repeating the offense provisions do not apply in his case "[2]. It seems that what legally may impair the dignity of the person is his registration for his conviction in a judicial office. So, if this article has not been registered or if registered faded in judicial court, his reputation would be normal [3]. At the end, rehabilitation is simply returning a person's competence lost because of some reasons [4].

Kinds of Rehabilitation

Legal Rehabilitation

Legal rehabilitation is "whenever in order to pass any new criminal conviction period specified by law, no new criminal conviction by law, with no court, the dignity of the offender is rehabilitated and the lost competence will be obtained [4]. Generally, any sentences in law duration which does not face new sentences will be removed of criminal conviction by themselves and are considered null [5].

We will investigate the legal rehabilitation in:

Rehabilitation in 1925 by the General Penal Code and the Penal Code Act of 1973

Rehabilitation is a legal organization which is formally recognized in all legal systems with the objective of improving the social status of offenders after conviction stand. The meaning of rehabilitation is that after the offender is punished for the crime committed, he won't be deprived of social benefits for whole life [6]. Rehabilitation did exist in the old Europe and then is followed with magnificent formality, a civil baptize was considered for the sentenced to eliminate the results of conviction and regain his dignity [7]. "From court record point of view rehabilitation is accepted in European countries by the criminal law enacted from the nineteenth century, and bring back criminal conviction [8]. In Iran rehabilitation is predicted for the first time in the Penal Code provision enacted in 1925. Acts number 57, 58, 59 t was allocated to rehabilitation. The above mentioned acts respectively describe rehabilitation in misdemeanors, criminal and political crimes. Affirmation of lawmakers to political crimes and rehabilitation conditions in the mentioned crimes is one of the most important ingredients of the Penal Code Act of 1925. Specific element of rehabilitation is different in each of the crimes, misdemeanors, and criminal policy in 1925 of the Penal Code. In comparison of specific elements of each can be seen that the 1925 legislature consider shorter terms for political crimes rehabilitation. Therefore, specific attitudes follow political crime and the leniency policy make distinction between political crimes and misdemeanors offenses with a special leniency. Article 57 of the Penal Code Act 1925 provides: "If one population has been sentenced to a penalty and has no new conviction for five years from the completion of punishment; he is acquired to rehabilitation and his former conviction will fade from his criminal identity." "These cases are performed in the Penal Code Act of 1973, with a few changes.

Rehabilitation in the reform law approved in 1998

"By studying the sources of Islam, we can obtain that the objective of Islam is not to punish criminals, wrongdoers, suffering them and relief for the victim's family and matters alike. The purpose is to order, discipline and reform offenders, and generally creating a healthier society of evil and corruption, protecting the social and decline in morality vices [9]. Legal rehabilitation of rights established after the revolution was not predicted in any law. "There is no article in law about Islamic Penal Code adopted in 1962 and subsequently about rehabilitation in 1991 because according to Islamic criminal law principally the person authorized to bear his own punishment can go back to the community and the question of being rehabilitated or returning back to the community does not become customary in the criminal law [10]. Finally, after nearly twenty years of abandonment of rehabilitation by the judicial system the bill 1998 frequent incorporation of Article 62 of the Penal Code was submitted to the State Assembly by the government and its basics were approved in the meeting.

Judicial Rehabilitation

"Whenever any competence lost by the criminal conviction, is to be rehabilitated by means of court." [4]. While judicial rehabilitation generally deserves confirmation however rehabilitation value is of legal dispute. The danger is that those who have bad morals and norms and due to society's lack of knowledge of crimes repeatedly committed and being prosecuted, they exploit [11].

In Case of Wrong Verdict

This rehabilitation subject has been investigated in Article 58 of this Code. Whenever the judge in the matter of fault or mistake causes material and spiritual losses, the spiritual harm done to the innocent person is rehabilitated. In this case, the court will attempt to rehabilitate him [12] Article 171 of the Iran Constitution also confirmed the same. It happens a lot that because of judges' wrong or unfounded criminal trial or unsubstantiated confession about the competent authorities and leads to the issuance of the plea and after finalizing it is known that the confession was false and based on genuine reasons. Therefore, the discovery and arrest of the offender, the reasons and actual evidence against him had been obtained; the first defendant is to be rehabilitated [4].

Commercial Rehabilitation

Regarding that a broken businessman in case of bankruptcy order loses some of his competency rights, so that under Article 418 of the Commercial Code, the date of the judgment of bankrupt businessman's involvement in his property is banned, the clearance manager is considered his deputy administrator and has the right to use the above mentioned lawful rights. This deprivation of civil rights is eliminated whenever the trader manages to commercially rehabilitate the business. Trade Act 561 and 575 respectively state the order. And generally suggests that legislating administration has prescribed commercial rehabilitation in terms of judicial rehabilitation which requires the court's verdict. On the other hand, the stipulation of Article 575 of the Commercial Code, bankrupt as fraud and also individuals sentenced because of, theft, fraud, betrayal of trust as long as they are not rehabilitated from aspect of criminal restitution, can't rehabilitate from commercial aspect. It means that the bankrupt businessman committed to fraud or in addition to bankruptcy commits the theft, fraud and betrayal of trust pays all the debts of the debtors or all the lenders release his obligation; he will not be issued unless rehabilitated from the criminal aspect [13]. Until these provisions of rehabilitation are not performed until this issue is a major obstacle for a bankrupt businessman that is eligible of rehabilitation. There is no doubt that, this issue severely harms the economic and trade activities in the country if the rules about rehabilitation are not running, bankrupt businesses fail to rehabilitate value [3]. Therefore the legislator in Article 62 of this law repeatedly recognizes rehabilitation to the benefit of the community and approved in 1998.

Conditions to Achieve Rehabilitation**Punishment**

The first condition for rehabilitation or in other words, returning the social rights is executing the verdict of the sentenced. Therefore, a condemn whose conviction doesn't executed because of the reasons of escaping from war and the justice system shall not be awarded to rehabilitation, so that helps compliance rather than punishment. Then passing time will not restore punishment of civil and social rights. Accordance with Article 57 of the Penal Code of 1973, rehabilitation conditions, includes time pass of punishment and time pass has similar results executed and punishment completion but now with regard to Article 62 explicitly repeated in Islamic Criminal Law execution of sentence on convictions anticipated is urgent and time pass is not considered as execution of the sentence conviction. Law in Article 174 of the Criminal Procedure time pass only on crimes punishable by providing preventive and educational measures, and his sentence, doesn't include corporal or--- penalties [14]. The appearance in Article 62 of the Islamic Penal Code, indicates that the object of the sentence full conviction or completion of sentence, not just the start of it, therefore, it seems along with corporal punishment suspension, regarding that the sentence does not run, condemn can not use rehabilitation credit or social rights [15]. But the granting of conditional release of Article 38 of the Islamic Penal Code, it is subject to not having prison sentence. Clause 5 of Article 62 recurrent history of Penal Code provides for a specific sentence. "In the conditional release, after freedom term specified, condemnation is fixed. On this basis, using conditional release and with the expiration of the period specified of freedom, verdict will be implemented and benefit from rehabilitation is possible [16]. In the cases of offenses which are to be passed, if the plaintiff of his complaining and as a result the judge's opinion execution of sentence is suspended, and the criminal conviction of a pecan be rehabilitated [6]. Overall general amnesty is to eliminate the consequences of criminal conviction and its results and consequently the person will become rehabilitated. Theory of legal department is also provided. As general amnesty is approved by the legislature, resolves results of the crime and conviction. It seems that the Clause 5 of Article 62 of the Islamic Penal Code approves this. Because, as a result of it, in cases which amnesty penalty includes criminal conviction, conviction results will also be cleared ..." and the person will become rehabilitated [16]. Private amnesty, under the eleventh paragraph of Article 110 and Article 24 of the Islamic Penal Code, after the suggestion of the head of the judiciary is by the leader and its granting is subsequent to final judgment of criminal conviction which can slow down all or part of the penalty. In this kind of forgiveness, consequences of criminal conviction disappears (Penal conditioned) and after the expiration of the period provided for in Article 62 of the Penal Code, a person will

become rehabilitated [17]. Clause 2 of Article 62 of the Islamic Penal Law f has predicted an exceptional sentence. Therefore direction of the execution of death penalty is stopped in some regards. Therefore the consequences of the expiry after 7 years from the date of suspension of execution of sentence are corrected. If pursuant of this note any legal reason stops the death penalty, whether other 1 punishments like jail sentences, the condemned are deprived of social rights for 7 years [17].

Expiration of certain dates

Rehabilitation is subject to a certain time after the expiration of the sentence. This time is predicted by Article 62 of the Islamic Penal Code. This is different in different convictions. The shortest time necessary to return social rights taken away, is a year and the longest sentence is seven years, the type of conviction specifies the time. These are:

-The convictions of any crime deserving flogging punishment, such as excessive consumption of alcohol, adultery, prostitution, lesbianism and expires one year after the execution of sentence;

- On conviction to the punishment of amputation so much as fighting and robbery, five years after the expiry of the sentence;

-On the conviction that the death penalty has ceased for any legal reason, seven years after the expiry of the sentence;

- On the conviction of imprisonment of more than three years intentional crimes like kidnapping conviction to a penalty of five years, after the expiry of two years from the execution of sentence

- In the case of probation, the period stipulated in Clause Five of Article 62 of the Penal Code repeatedly is calculated from condemned release time.

- The private Amnesty Clause 4, Article 62 in Islamic penal stipulates consequences of convictions does not disappeared and also the subject has no clarification, however it seems that stopping the punishment after the amnesty, according to the criteria set forth in Note 3 and 5 of Article 62 repeated the Islamic Penal Code, the time required for granting rehabilitation to the condemned is calculated at any time liberty or halting the execution of sentence of condemnation, although it is best this legislation clarifies them.

No new offense

Relying on philosophy, rehabilitation is the rule, to provide those who have committed serious criminal and disrespectful acts. Rehabilitation means society excludes a person's past and acts of kindness and tolerant person with the hope of stepping forward to the good and avoid the bad of which sign is no new offense. The former Article 57 of the Penal Code of rehabilitation impose one of the conditions of the sentence as committing no new offense by the condemned [18].

Rehabilitation Results

Achieving rehabilitation results is as follows:

Consequences of declining conviction

Article 57 of the Penal Code against the person after rehabilitation, consequences of his conviction disappears based on the type of crime committed and the withdrawal of all or some of the social rights unless otherwise provided by law another decision is to be made. For example, if a person is sentenced to imprisonment for an intentional criminal offense and suffers the penalty, after 10 years from the date of completion of the punishment and the rehabilitating of all social rights he will use again what had been denied.

Elimination of criminal conviction

According to Article 4 paragraph of legal regulations, judicial decisions relating to rehabilitation should be entered in the ID of the condemned and according to Article 21; the conviction which disappears in the consequence of rehabilitation will not be mentioned in court ID No. 3 [3].

Exclusion of the Terms of repeating offenses

"Repeating the offense is the act of a guilty with a criminal record, and had already been prosecuted and convicted for the crime" [7]. A group of lawyers, scholars and judges argue that one of convictions of criminal offense is subject to the rules again, it means if the crime committed, is frequently repeated in case that results of a previous conviction has not been disappeared [19]. Repeating offense is the case of the offender who committed the crime and committed another crime after the execution of conviction of previous crime [8]. Considering the above mentioned definition, in order to realize an offense repetition, it is necessary that the convicted of at least one item with a

definite history of criminal conviction, commit another crime [8]. Repeating offense is dangerous state of crime cues. Therefore laws of some countries, are recommended some countries policies against dangerous offenders.

This policy is based on the assumption that convicted offenders should be warned of their deeds after bearing corporal punishment [16]. Offense repetition insists on that the offense is a violation of criminal law, also implies that the penalty for the first time punishment or correction was not enough. And that brings criminal system has failed against such offender, so the first sentence and the offender's fall reflects the amount of penalty to be added and changes types from criminal offenses to misdemeanors. Under Article 48 of the Islamic Penal Code adopted on 02/03/1375: "Everyone is under a court order or injunctive term is sentenced to capital punishment, If you commit a crime deserving corporal punishment again after execution of sentence court could or Should enhance deterrence, So if someone were to become rehabilitated, again re-committed another crime laws about his criminal acts will not be repeated because his previous conviction criminal identity has withered away.

Using Suspension Rules of Executing Punishment

Pursuant to paragraph 26 of a law enacted in July 1346 one of the provisions of suspension of punishment rules is that the condemned criminal has no previous conviction history, and if he has no previous conviction history, its conviction and results are disappeared in some legal aspects. And as we know, one of the legal ways that cause deterioration of conviction is rehabilitation. We should add that the Islamic Penal Code, 1991 does not consider and in paragraph one of Article 25 only refers to definite conviction history, disappearing by one of legal means such as rehabilitation or suspension will affect suspension or not, according to the same law Article 32, however, "if the condemned after the issuance date of suspension, at which the court has set, doesn't commit a crime worthy of condemnation mentioned in Article 25, the sentence suspension and is ineffective and is faded from sentenced criminal ID. " we can understand by the unity of this aspect of the matter that whenever first conviction of a condemned disappears by suspending punishment. After that time, the person commits a crime; generally should be entitled to re-suspension of the punishment rules, and matches with narrow interpretation of criminal law in favor of the defendant [19]

CONCLUSION

Conditioned punishment is necessary to protect society, and protecting it from the risk of having to discipline and punish criminals convicted of serious and major crime. It is however better after a reasonable time that, the restrictions and prohibitions imposed on condemned is over, and achieve competence and social rights of after crime, and shall be put among sentence people with no record and without being subject to discrimination and unpopularity be able to work with other people and engage in activities. Elimination of criminal conviction and granting rehabilitation to the condemned is a appropriate and desirable act which after being suspended for three decades is proposed by the Judiciary in Iran's Islamic Penal Code. We hope that the ratification, in addition to the existing problems and shortcomings, take important steps in our evolution and growth of criminal justice system.

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