

Rehabilitation in New Order of Iranian Criminal Law

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Abstract

Rehabilitation, a measure for reintegration and re-adaptation of convict in society, connotes restoration of deprived rights and authorities to a convict after serving his sentence and regarding him as a Non-criminal. In Iranian new criminal law, rehabilitation is carried out after the passage of definite time from these cases: execution of punishment, lapse of time, amnesty, conditional discharge, remission by complainant in forgivable offences and stay and suspension of execution of punishment. Regaining social and political rights is one of the effect of this privilege. However, Islamic Penal Code 2013, in conflict with the philosophy of rehabilitation, Iran's Constitution and doctrines of human rights, has established permanent execution deprivation of certain social rights -such as nomination in presidential and parliamentary elections, etc. - for effective criminal convictions, in which the revision and amendment are essential. With rehabilitation the convict can also benefit from some lenience such as non-execution of recidivism rules and aggravation of its resultant punishment, suspension of punishment and deferment, but New Islamic Penal Code has not accepted the reuse of conditional discharge, however, encouraging corrigible convicts to good behavior and re-adaption in society justifies revision and amendment of act.

Key words: Rehabilitation, Effective criminal conviction, Accessory punishment, Civil rights, Criminal record

INTRODUCTION

Generally, the final sentence possesses the authority of *res judicata* (Akhondi, 3, 1989: 24; Ashouri, 1, 1996:185), and principal and complementary punishments inserted in a sentence are enforceable, unless prescribed in conformity with retrial. However in certain criminal convictions named effective criminal conviction, in addition to principal and complementary punishment, accessory punishments prescribed by law are enforced. These punishments are automatically imposed on individuals by law without inserting in sentence on the basis of conviction type (Ardebili, 3, 2014: 72) and deprive the convict from most of his important social and political rights. But considering individuals' criminal record and deprivation of their political and social rights complicates the possibility of their re-entrance and successful interaction of convicts with

society; therefore, criminal convictions should not create permanent deprivation of certain rights for individuals or in case of recidivism, criminal record should not constantly cause aggravation of punishment or deprivation of some privileges such as conditional discharge.

Rehabilitation is one of the criminal law measures which can remove criminal record and negative consequences of criminal conviction, restore the deprivation rights and reverse the incapacities (Stephanie et al. 2, 1998:904). However, given the regulations of Iran, what is the concept of rehabilitation? What reasons is its acceptance based on? How many types does it include? For what convictions is it applicable? What conditions does it follow? What is its effect? In this case, Iranian Criminal Law, especially after the Islamic Revolution of 1979, does not have a clear status, and has witnessed different evolutions in legalization including the one in 1998, however, the prominent role of these evolutions should be sought in the Islamic Penal Code approved on 2013 (hereafter: I. P.C). Given the legal evolutions of rehabilitation and in the light of New Order of Iranian Criminal Law, this present study aims to investigate in four parts background, types, terms of awarding, effects and consequences of rehabilitation, in addition to presentation of acceptable explaining of the rehabilitation concept.

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CONCEPT AND BASIS OF REHABILITATION

In Persian, the definition of rehabilitation is regaining of reputation and prestige (Law Dictionary,2004: 342); idiomatically, it is returning of capacity and competence that the individual lost for certain reasons (Jafari Langroudi, 2009:59). In Arabic and English, rehabilitation is also used as the mentioned concept (Kurnu,1998:200 ; Aliyeh : 1998: 489 ; Alsjaj,1998: 470 ; Black, 1990:1287), however, rehabilitation in English, with the concept of social reintegration of delinquent, is served also as a major aim of new criminal policy or special correctional and rehabilitative treatment programs considering for delinquents (Heseltine at al, 2011 ; Welsh & Zajac, 2004:109-115). But generally, rehabilitation has two concepts in Persian legal texts:

1. Returning of tainted dignity, reputation and prestige of a person by responding to intentional or unintentional behavior of others. In this situation, rehabilitation is considered a sanction and is especially an examples of compensation for moral damages or security measure executed by decision of competent court; the purpose of this response is defending the prestige of people that according to Islamic principles and Constitution (principle 22), its preservation has high and essential value. Principle 171 of the Constitution on the necessity of rehabilitation of the person whom judge's mistake or fault caused him detriment or defamation, also, the rehabilitation prescribed in article 698 of Fifth book of Islamic Penal Code (Tazirat) approved on 1996, regarding the offence of libel, agree with this concept. In these cases, courts choose different manners for rehabilitation: As article 27 of the act of Protection of Authors, Composers and Artists Rights approved on 01/01/1970 has prescribed, publication of the sentence in the press is one of the most logic and legal ways of rehabilitation.
2. In other concept, which is more applicable in criminal law texts and among experts and is considered after execution of punishment or presumption of execution of punishment (such as lapse of time), the rehabilitation is the rule that declines the subordinate effects of criminal conviction and returns all of the deprived rights, privileges and legal status to a person, except what law excludes (Aliabadi, 2,1989: 413; Sanei,2,1992: 331-327). Therefore, like a non-criminal and an average citizen, the person obtains the capacity to exercise his social and political rights (such as chief editor) deprived during a fair conviction. Briefly, the specialized signification of rehabilitation is: restoration of deprived rights and authorities to a person experienced punishment and treat him as a Non-criminal. In second concept which means restoration of rights and legal competences, rehabilitation matches

moral principles; and this is why if a person didn't re-commit a crime after criminal conviction and lapse of time, he would be assumed a reformed person who does not have the dangerous mood any more (Stephanie et al. 2,1998: 902-898) and the continuation of deprivation of some social and political rights would be contrary to justice; besides, according to principle of equality, reformation of person and his appropriate behavior, society is obliged to provide them with equal opportunities, and pave the way for his successful presence and activity in society and also, assist the reintegration of convict into society. Furthermore, rehabilitation is a kind of condonation and kindness to convict (Aliabadi, 2, 1989: 429) that conforms to the humanitarianism and originates from respect to dignity and intrinsic human dignity from which he enjoys even after punishment. Rehabilitation conforms to -reformation of convict- the ultimate objective of criminal law from punishment; and society plays an important role in crime prevention and prevent the revenge of the convict on society by rehabilitation. The rehabilitation, also, has a significant congruity with the repentance in Islamic law; because after execution of punishment and its punitive role, the convict who determines to recede from his dark past and to move in the path of reform and appropriate behavior, is deemed as a repentant subjected to God's grace, and society should not deprive him the kindness and affluence but also it should prepare him the possibility of a normal life among people in addition to the restoration of all rights and constitutional rights.

HISTORY AND TYPES OF REHABILITATION

Previously, the rules of rehabilitation in Iranian legal system was affected by Foreign laws (France). In France, rehabilitation had at first administrative feature and administrative authorities considered rehabilitation for convicts after acceptance of judicial authorities, but later, this measure/institution which was initially limited to criminal penalties were possessed of judicial feature (judicial rehabilitation) and generalized to all convictions inserted in criminal record including misdemeanor punishments. Similarly, instead of just removing the incapacities resulting from convictions, it erased criminal convictions and their effects. Then, rehabilitation was extended to recidivists and the convicts whom their punishments included lapse of time; finally, at the end of 19th century and according to the act of August 5th 1899, legal and automatic rehabilitation was accepted (Stephanie et al. 2, 1998: 904-897; Aliabadi, 2, 1989: 422-412 ; Istanbuli,1990,184). Basically, in certain legal systems, the ways of rehabilitation consist on two types: 1- judicial rehabilitation 2- legal rehabilitation.

Judicial Rehabilitation

In this type, each convict requests the pronouncement of his rehabilitation from the competent court and after the revision - in case of discretion- court will pronounce the rehabilitation. Awarding this type of rehabilitation has not the same conditions in all countries; the principal conditions of which in French Substantive Law are:

1. Perfect execution of punishment predicted in criminal sentence, or pardon and or realization of time-lapse.
2. Expiration of predicted deadlines in Law or realization of punishment prescription. Aforementioned deadlines of convictions for offence, misdemeanor, and crime are respectively, one, three and five years. These deadlines are doubled for recidivist and those who have once used the rehabilitation, previously. The convict who has done great services to the country, may obtain some exemptions in this case. This type of rehabilitation is not only allocated to natural person and included also legal person (Stephanie et al. 2, 1998: 902-898). In Iranian law, no rule is predicted for this type of rehabilitation, but in one case, the national consultative assembly, on 16/10/1941, passed a law about convictions of bribery and embezzlement for the amounts up to 1000 Rials that required permanent dismissal from public services, according to which if the convict did not commit an offence within three years after the time of execution of punishment, the penal court of civil servant would pronounce rehabilitation for these convicts after proceedings and ascertainment of facts (Nouri, 1971:105).

Legal Rehabilitation

Legal Rehabilitation (automatic) is granted automatically to convict without intervention of judge and also after the execution of punishment or presumption of its execution, then the subordinate effects of a criminal conviction disappears and person regains all of his deprived social and political rights. The time of legal rehabilitation is different depending on the type of conviction (such as crime, misdemeanor, retaliation, prescribed, etc.) and convict (natural person or legal person). The essential conditions of its grant in some legal systems are as follows:

1. Lapse of specified time after the execution of punishment.
2. Non-Commission of new offence. (Sami Alnabrawi, 1995: 581; Stephanie et al. 2, 1998: 898-899; Aliyah, 1998: 490). In our country, General Penal Code of 1925, allocated articles 57 to 59 to legal rehabilitation and during prediction of the rehabilitation about public offences and political crimes prescribed more leniency on political crimes. Then, the Amendment of General Penal Code of 1973, in article 57, its two notes and article 58 stipulated legal rehabilitation and predicted relatively different conditions agrees with

those listed above according to person's conviction due to commitment of misdemeanor, crimes or political offences. But the first Iranian penal codes after Islamic revolution of 1978 didn't indicate this measure and the question was whether or not convicts would eventually gain the rehabilitation?

This doctrine which indicates that after the execution of punishment in Islamic criminal law, the convict gains the rehabilitation (Nourbaha, 1998 : 522; Goldouzian, 2004: 390), didn't conform to the law named "effective criminal conviction"(which) resulted in establishing the effects about certain convicts, so that on 1998, legislator prescribed the repeated article 62 of Islamic penal code whereby some of criminal convictions caused deprivation of social rights and after lapse of specific times, the effects of criminal convictions were eliminated and indeed person gained rehabilitation (Ardebili , 2, 2009: 157). In spite of that, prediction of aforementioned article was an incomplete step in regards to the included rules of that measure, instead of idiomatic and famous concept of rehabilitation, it evoked more,"restoration of social rights to convict" (Eini, 2006:46).

Finally, the pilot Islamic Penal Code passed by Islamic parliament of Iran on 21/04/2013, besides the prescription of accessory punishment of social rights deprivation in articles 25 and 26, has stipulated the rehabilitation in note 2 of article 26. Pursuant to the mentioned code, only some of the convictions lead to social rights deprivation. Those are: 1-convicted to capital punishments and life imprisonment upon staying of execution of original verdict 2-convicted to punishments of amputation of limbs and extremities, retaliation of organ of the body (while blood money of committed crime is more than half of that for victim), deportation and taziri imprisonment up to level four; 3-convicted to punishments of lash (prescribed punishment), retaliation of organ of the body (while the blood money of committed crime is half or less than of that for victim) and taziri imprisonment up to level five. So, other convictions do not include accessory punishment of social rights deprivation and also the express abolition of effective conviction law passed on 1987 and amended on 2003 confirms this opinion.

THE CONDITIONS OF GRANTING REHABILITATION

It is understood from note 2 of article 26 of Islamic Penal Code that, for other convictions except those inserted in Article 25 of the mentioned law, a person gains rehabilitation by executing convictions; but the conditions of rehabilitation of the mentioned convictions in article 25 are as follows:

Execution Of Punishment Or Realization Of Lapse Of Time

Clause of rehabilitation is execution of the criminal sentence and from article 25, it is understood that the object of execution of the sentence is complete execution of criminal sentence or completion of execution of the punishment and not only starting its execution. For this reason, by suspension of punishment and since the criminal sentence is not executed, the convict cannot be granted to rehabilitation, but in these cases, by virtue of article 52 Islamic Penal Code, whenever the convict, upon entry of the order of suspension of punishment until the end of its term, does not commit the intentional offences resulting in prescribed punishment, retaliation, blood money or taziri up to level 7, the suspended conviction will be ineffective and will be effaced from his criminal record and basically, it creates the effects similar to rehabilitation.

In principle, lapse of time for execution of punishment (regarding to articles 107 to 112 Islamic Penal Code) is also similar to execution of punishment, unless the law stipulates the contrary; as according to the article 109 Islamic Penal Code, certain crimes (such as economic offences) does not include lapse of time and execution of punishment is essential for them. This situation is applicable to crimes deserving retaliation or prescribed punishment because these do not include lapse of time and execution of punishment is required for them. But concerning conditional discharge, referring to note 3 of article 25 Islamic Penal Code, elimination of subordinate effect of conviction and obtaining rehabilitation is considered after lapse of mentioned time upon expiration of the period of conditional discharge. Concerning forgivable offences, by withdrawal of complainant from his complaint and by staying of execution of punishment, effects of criminal convictions disappear and person can obtain rehabilitation (note 2 of article 25 Islamic Penal Code). Referring to articles of 97 and 98 Islamic Penal Code, the general amnesty about taziri offences, also causes decline of the effects of criminal conviction and in consequence person will gain rehabilitation. Supreme Court decision as a unified judicial precedent number 59/24 dated 14/03/1981 has stipulated; "the effects of criminal conviction including also accessory punishments...have disappeared by enactment of general amnesty law." (Collection of Supreme Court Precedents- Penal, 1993:336). According to eleventh paragraph of principle 110 of Constitution and article 96 of Islamic Penal Code general amnesty is awarded after proposition of chief of the judiciary and agreement of Leader, and its awarding can terminate all or part of the definitive criminal conviction. In this type, by lapse of predicted time in article 25 of Islamic Penal Code since the time of amnesty, the subordinate effects of criminal conviction disappear and the convict person gains rehabilitation (note 3 of article 25 of Islamic Penal Code),

also, certain opinions of legal office of judiciary confirm this point of view. (Islamic Penal Code, 2005: 170).

Expiration of Definite Deadlines

Rehabilitation of convict is contingent on lapse of definite time after execution of conviction and enduring accessory punishment in this period. This period predicted by article 25 of Islamic Penal Code differs for different convictions: seven years for capital punishments, three years for punishments of amputation of limbs and extremities, retaliation of organ of the body- while blood money of committed crime is more than half of that for victim-, deportation and taziri imprisonment up to level 4; two years for punishments of lash (prescribed punishment), retaliation of organ of the body- while the blood money of committed crime is half or less than of that for victim- and taziri imprisonment up to level 5.

Absence Of New Effective Conviction

Awarding rehabilitation to convict means condonation of dark and incorrect past of convict by the society and treating him kindly, hoping he chooses good deeds and avoids bad behavior. One sign of this hope is the non-commission of new conviction; so, one condition of rehabilitation stipulated by article 57 of Islamic Penal Code 1973 was the absence of new effective crime or misdemeanor conviction, but Islamic Penal Code of 2013 has ignored this important condition; therefore, if a person, for commission of a crime such as fraud, convicts to the punishment of taziri imprisonment level 4, and if for example one year after the execution of sentence, he commits a new crime leading to unpredicted convictions in article 25 (for example punishment of taziri imprisonment level 6), he will deserve rehabilitation three years after execution of the last conviction.

EFFECTS OF REHABILITATION

By obtaining rehabilitation stipulated in note 2 of article 26 of Islamic Penal Code, the following effects are realized:

Elimination Of Criminal Conviction From Criminal Record Of A Person

This effect is the logical result of rehabilitation that construed from article 18 of the ordinance of judicial record. A person who obtains rehabilitation, is considered a non-criminal and essentially, the previous conviction of him should not be inserted in certifications issued by competent authorities.

Restoring Social Rights

by rehabilitation, deprived social rights of a person are restored and actually, he is employed in jobs from which he was deprived or regains deprived privileges, for this

matter the verdict is not necessary (Goldouzian, 2003 : 78). However, except for some scattered regulations that have caused some limitations in these cases for specific employments (such as lawyer or notary), note 2 of article 26 of Islamic Penal Code has explicitly prescribed that subordinate effects of conviction are removed except for nomination in presidential election, assembly of experts for leadership, Islamic parliament and Islamic city and village council, membership in guardian council, Iran expediency council or cabinet and vice- president, chief of the judiciary, prosecutor general, chief justice the supreme court and chief of administrative justice court that its deprivation is permanent. It seems that prediction of permanent deprivation does not conform to institution of rehabilitation.

Obtaining Leniency

The other effect of rehabilitation appears in recidivism, this means that according to the article 137 of Islamic Penal Code, if a person with a prior discretionary punishments of level 1 to 6 on his criminal record re-commits one of the aforementioned crimes after obtaining rehabilitation, the regulations of recidivism and aggravation of punishment will not apply to him because rehabilitation causes disappearance of convictions records. For this reason, it may also pave the way of obtaining some privileges such as suspension of punishment (article 48 of Islamic Penal Code) or defer (article 40 of Islamic Penal Code) but according to Islamic penal code 2013, if the convict who has received conditional discharge and who has gained rehabilitation, re-commits crime, he can't obtain the conditional discharge again, while, logically conditional discharge, similar to suspension of punishment is a leniency measure in the interest of corrigible convicts that facilitates their social adaptation and encourages their permanent good behavior in the period of imprisonment (Ardebili, 3, 2014 :226), in addition, it helps the reduction of prison population and also, the prevention of imposition of useless costs on society (Nourbaha, 1992 : 96) thus, if the proposition of amendment of act, after rehabilitation, causes possibility of regaining conditional discharge at the discretion of criminal judge, it will be a logical proposition which should be followed by legislator.

RESULTS AND RECOMMENDATIONS

After reviewing the legislative evolution and especially Islamic Penal Code 1392, the following points are submitted:

1. Idiomatically rehabilitation is restoration of deprived rights and authorities of a person who has passed his sentence and therefore legal system treats him as a non-criminal.
2. Essentially, by execution of principal punishment and complementary punishment inserted in criminal verdict, convict immediately obtains rehabilitation, but by virtue of law, exceptionally, in certain criminal convictions named effective criminal conviction, besides the principal punishment and complementary punishment, the accessory punishment and deprivation of some social and political rights specified in law, are imposed. In this case, by lapse of definite time from execution of accessory punishment, a person receives rehabilitation and can apply his social and political rights again. However, in Iranian Legal System, certain criminal convictions cause permanent deprivation of some political and social rights such as candidacy in presidential and parliamentary elections. This matter is in conflict with the philosophy of rehabilitation which asks for entry and engagement of person in society, in addition, the aforementioned permanent deprivation doesn't concur with Iranian Constitution and human rights doctrines.
3. Presentation of completely limitative examples of deprivation of social rights as an accessory punishment is an admirable action of legislator that concurs with the principle of *nulla poena sine lege* (no punishment except in accordance with the law), justice and realities of social life in Iran.
4. In Iranian Criminal law, rehabilitation is carried out if certain amount of times has passed from these cases: execution of conviction, lapse of time, granting amnesty, conditional discharge, remission by complainant in forgivable offences, stay of execution of punishment and suspension of punishment.
5. By rehabilitation, convict is considered a non-criminal and as a person without criminal record that even after re-commission of a crime, he can obtain some legal privileges like profiting from suspension of punishment or defer or non-aggravation of punishment in case of recidivism, nevertheless the new Islamic Penal Code imports that the convict who profited conditional discharge by court decision and obtained rehabilitation, cannot profit from conditional discharge again.

Despite the appropriate changes that Islamic Penal Code has undergone about rehabilitation, some decrements, justify the amendment of act. Therefore, it is suggested that:

1. The legislator stipulates the non-commission of new intentional crime before the rehabilitation, as one of the conditions for rehabilitation of convict; therefore by recidivism, rehabilitation is postponed for definite time. This legislative threat is effective for a person to choose admirable behavior and adapt to society.
2. By obtaining rehabilitation and its certification by a competent authority like justice administration,

one can apply all of his social rights and also, their employment by informal reports are not encountered with prestige and official problems in public or private organizations and companies. Hence, as mentioned above, permanent deprivation from some social rights because of some criminal convictions, is not acceptable, thus elimination of the last paragraph of note 2 of article 26 of Islamic Penal Code is suggested.

3. About convictions of political and press crimes, leniency regulations about rehabilitation for convicts of these types of crimes should be predicted.
4. For rehabilitation of convict who profits from conditional discharge, lapse of time prescribed in law, should be calculated from the beginning of conditional discharge period and not from the completion of conditional discharge period. The amendment of note 3 of article 25 of Islamic Penal Code is also recommended. It is advised that, Islamic Penal Code explicitly predicts the reapplication of conditional discharge after rehabilitation of convict with agreement of criminal judge.
5. Since rehabilitation of convict and preparation for social presence and interaction, in addition to setting the legal rules, requires execution of training and reformative protective programs, competent organizations such as Organizations of Prisons should exercise them, with the assistance of professional experts.

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