

Restoration/ Rehabilitation of Prestige in Islamic Sharia and Afghan Statutory Laws



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Abstract

Aim: Human dignity or being human in term of his/her soul, property, honor, status need to be respected. Unfortunately, sometimes it has been witnessed that human being is confronting outrage, accusation, abuse, humiliation, etc., that affects their soul, property, honor and status. These all acts are considered illegal and prohibited in Holy Quran, Hadiths and Jurisprudence. If a person is exposed to such disgraceful activities, his/her status has to be rehabilitated and restored. Both material and intellectual remedies are suggested and approved by Law, that scholars know it as General Rehabilitation/ Restoration of Prestige.

Methods: The doctrinal research methodology and a descriptive, explanatory, and analytical research approaches were used in this study. It is worth mentioning that this study was entirely based on library sources. The sources are textbooks, scholarly published and unpublished journal articles, law reports, and online websites related to the research area.

Results: This study found that most of the Afghan academicians and legal scholars believe that if someone's prestige is affected due to a crime committed by others or itself, in both situation one's prestige has to be recovered. That Islamic law indicates it as repentance and remorse though substantive law suggest two ways i.e. statutory rehabilitation/restoration of prestige and judicial rehabilitation/restoration of prestige.

Conclusion: Human dignity and sympathy call for respecting others honor, prestige and privilege. If someone's prestige and dignity is violated due to a cruel act, the perpetrator has to be convicted by court, that the victim's prestige, privilege, and status is renovated and restored.

Recommendations: As many people in Afghanistan are illiterate and do not know the importance of restoration of prestige, the judges should declare the principle of both law and court-based rehabilitation with the time lapse within their verdict and criminals will know the importance in the future.

Keywords: *Rehabilitation, prestige, Islamic Sharia, Afghan statutory laws.*

Introduction

Human beings are social and cannot live in isolation. For humans, their property, soul, status and honor are safe must be kept away from aggression. Notwithstanding, there are some persons who overrun others' soul, property, dignity and prestige, for example through abuse, humiliation, accusation, defamation, etc. Who is aggressed has lost his prestige and dignity which has to be redressed. If someone commits a crime, he or she lost his or her dignity and honor in the society so the dignity or the perpetrator can be rehabilitated after the punishment. To restore the previous dignity either through statutory or judicial rehabilitation/restoration of prestige needs some norms and principles. Rehabilitation is derived from two Arabic words prestige and restoration (Moeeni, 1382 H. S). Prestige means dignity, honor and status, and restoration means to redress or recover. So, restoration of prestige means to obtain the previous competence and status that one last due to any reason (Moeeni, 1382 H.S).

The Concept of Restoration of Prestige in Islam and Afghan Statutory Laws

In general, the term restoration/ rehabilitation is used in two cases: 1. Restoration of prestige/ Rehabilitation is to render one's dignity and status that is affected to Intentional or un-intentional devil act of someone. Restoration appears as a guarantee or specifically as intellectual remedy and security measures (Sabir, 1379 H.S). 2. Restoration of prestige/ rehabilitation is a legal norm that invalidates the person's conviction and criminal history and can be benefited of its political, social and civil rights (Sabir, 1379 H.S).

Rehabilitation/Restoration of Prestige in Islam

Human dignity, prestige and status are considered in very high rank, pious person dignity is high from Angels and Holy Kaaba. Allah SWT has forbidden his servants from doing all those acts that affects other's dignity, prestige, and status. Almighty Allah says in Holy Quran: O you who have believed, let not a people ridicule (another) people; perhaps they may be better than them; nor let women ridicule (other) women; perhaps they may be better than them. And do not insult one another and do not call each other by (offensive) nicknames. Wretched is the name of disobedience after (one's) faith. And whoever does not repent- then it is those who are the wrongdoers (Sarfaraz, 1386 H.S).

In a Hadith, that Imam Baqir has narrated from Hazrat Muhammad SAW, states that insulting a Muslim is an evil action and fighting (Qital) him is disbelief (Klfr). to backbite is sin, to take his property is Haram as shedding his blood. (12:343). Likewise, Ibn Abbas (May Allah Pleased with him) narrated that Allah's apostle SAW has stated that: There is neither Harm not to Harm in Islam. (15:4).

So, if anyone is exposed to any kind of aggressive act like accusation, abuse, humiliation, defamation and affect his dignity and prestige, or someone lost his/her prestige and dignity for committing crime, both victim and perpetrator's status and competence has to be restored. The perpetrator must redress the status of victim also is going to be trailed in the court. For the perpetrator to rehabilitate, must repent to Allah SWT and regrets of his/her act that will make him/her obtain his previous prestige within the society.

Rehabilitation/ Restoration of Prestige in Afghan Statutory Laws

The adverse quality of punishment means that convicted person is facing difficulty and hardship, humiliation means, convicted persons is embarrassed and lose his/her prestige and status. Definiteness mean that the sentence has to be specified in terms of legality, amount, type, aggravation, etc. and unchangeability means that there is no change and variation of once ordered penalty by the court (Noor Baha, 1391 H.S).

As described, penalties are also not changeable meaning that once the court orders or provide judgment, convicted person must face the punishment ordered by the court. Otherwise, it will contradict the main criminal law principle that is Legality of Crime and Punishment. As per the principle, a punishment cannot be changed to another. (All the qualities of crime are directly ratioed to rehabilitation, except Humiliation. This study focused on Humiliation as one of the characteristics of penalty. The implementation of any kind of punishment, humiliates and degrade the convicted person also affects the prestige and status of a person. That can be observed in two ways: 1. the criminal and convicted person feel degraded in his/her own eyes. 2. It brings hatred within the community for the criminal and convicted person and degrades the criminal (Danish, 1391 H.S).

According to norms and principle, it seems that humiliating quality of punishment will remain until the end of the punishment and wouldn't prolonged after the implementation. Because criminal is sentenced and has no responsibility regarding crime. So, it needs to restore the prestige as well as status of criminal and have to live like other people within the society. Unlikely, it remains after the implementation of the penalty. That can be explained as: Though the criminal is sentenced, he feels degraded and humiliated and cannot be absorbed in community. In addition, not able to proceed his/her life as other people in community. Moreover, people in the community also hate him/her due to his offense. Sometimes, criminal laws insist on the prolonged implementation of humiliating quality (Danish, 1391 H.S).

Consequential Penalty

Article 172 of the Afghan Penal Code states that "A person who is sentenced to imprisonment for more than ten years or less than ten years to crimes stated in part one and part two of book two of this law shall be deprived of the following rights and privileges, unless his/her prestige has been restored based on court's order or provision of law". 1. Employment in the three pillars of government or other governmental institutions. 2. To be nominated for elected positions; 3. Use of lapel pins, medals and honorary titles of the government; 4. Membership in board of directors of companies, banks and organizations, in case of being convicted of committing a corruption crime; 5. Concluding contracts with governmental and mixed administration, enterprises, organizations or obtaining privilege from the government, in case of committing financial crime.

Complementary Penalty

The second paragraph of Article 178 of the Afghan Penal Code indicates that instead of punishment the court can also order on confiscation of properties and publication of order (Afghan Penal Code, 1396 H.S).

Recidivism in Crime

Though, perpetrator is punished for the first crime committed, and commit another crime that is called recidivism in crime. The perpetrator is treated as its criminal history. E.g., Art 221 of penal code indicated up to 5-year imprisonment and Art 222 declares up to 60,000 Afs fine convicted person can take benefits of parole. But Art 223, sixth paragraph indicates that Recidivism in crime cannot be paroled. If the court was not aware of previous crime and ordered for parole, after getting informed the court can execute punishment and revoke parole. (7:202-204).

Keeping Records of Criminal History

In general, aggressive crimes like felonies and misdemeanors are registered within the documents and record of offenders, that is even not omitted after completing his/her punishment and in several occasions as Recidivism of crime, Parole, getting employed as public employee and etc. the person's criminal history is approached. (Afghan Penal Code, 1396 H.S). Humiliating quality of punishment has direct relation with deterring objective of punishment, it means that if humiliating quality is exceeded, deterring objective is also increased. But there is reverse relation of the said quality with the corrective objective of punishment. It means if the humiliating quality is increased, Corrective objective is decreased, which has bad impact, and explained as: 1. As mentioned, humiliating quality of punishment would bring hatred with criminal and feel degraded, in addition, wanted to get revenge that these all factors make the criminal for more offends after completing punishment. 2. Due to aggravating punishment not only, the criminal feels isolated and different in the community but also the society hates him and want to be far away from him/her. Therefore, the perpetrator is not able to get absorbed within the community and find a suitable job for itself. At last, to fulfill its life expenses he/she must get back to criminal sphere.

Despite mentioned arguments, the general aim of criminal law is not to torture the criminal but to rehabilitate him. Notwithstanding, the humiliating quality of punishment varies with corrective objective, and mainly this quality become an obstacle for the said objective. Therefore, all the criminologists and penal codes are insisting that if the perpetrators have completed their punishment, have responded to their social responsibilities. Additionally, have made the people's emotions calm and quite after finishing its punishment and rehabilitative signs are also witnessed in criminals, so humiliating quality and its consequences wouldn't continue for indefinite time and has to be stopped and finished. Hence, such people will not be a cause of hatred in the community and will restore their prestige and privilege and can live as a normal and righteous people in the community. All these can be enhanced through rehabilitation and restoration of prestige that is a legal norm and principle, which demolishes all outcomes of Criminal history, Humiliating quality and all related affects that resist the betterment of an offender. (Danish, 1391 H.S).

Types of Rehabilitation/ Restoration

The Penal Code and the Criminal Procedure code (CPC) of Afghanistan indicates that there is no Rehabilitation/Restoration of prestige in minor or obscenity offences because they are not kept as a record against criminal. Severe crimes such as misdemeanors and felonies kept as record document of a perpetrator and saved as a criminal history of an offender that needs restoration of prestige.

There are two types of restoration of prestige indicated in the Criminal Procedure Code of Afghanistan. 1. Statutory, and 2. Judicial Rehabilitation/Restoration of Prestige. Though there are

two conditions for the fulfillment of both types of rehabilitation: 1. fully implementation and completion of Sentence (and all the related expenditures that the convict must pay, must be paid). 2. After the completion of sentence, the specific time has to be passed, though without committing a new offence, the specific time elapse differs to the types of the crimes and types of rehabilitation/Restoration of Prestige. (Criminal procedure Code of Afghanistan, 1393 H.S).

Statutory Rehabilitation/ Restoration of Prestige

It is the types that there is no need of court orders, and just law's indication is enough, that renders after assurance of stated two conditions. And after the completion of sentence, offender's prestige is restored automatically (Hindi, 1299). Except of committing new crime, the specific time lapse for the completion of this type of rehabilitation is necessary, is specified in Art 373 of CPC1393 LY as follow; based on the law, restoration of prestige is granted if the person is not convicted of committing a felony or misdemeanor during the following time periods: In a felony crime if 10 years pass from the end date of sentence enforcement or pardon. In a misdemeanor crime if 5 years pass from the end date of sentence enforcement or pardoning (Criminal Procedure Code of Afghanistan, 1393, H.S).

For granting rehabilitation based on Law, there is no need of court order, hence, it is granted automatically after the assurance of conditions. The French CPC has prescribed the restoration of both Physical and Intellectual legal entities and has brought difference in granting the restoration of prestige for both entities, if the person legal entity do not commit any Misdemeanor or Felony within 3 years and for Intellectual entities 5 years have been indicated for not to commit any crime (Habib Zada, 1394 H.S).

Judicial Rehabilitation/Restoration of Prestige

Before the completion of indicated time lapse for the restoration of prestige that is stated in CPC law 10 and 5 years for Felony and misdemeanor, convicted person can ask the court and granted with court order. The restoration of prestige based on court orders are stated in Art 364 of CPC 1393 LY, as: The request for restoring prestige shall be made in the following times: 1. In a felony crime, from the end date of the sentence enforcement or pardon after elapse of 6 years. 2. In a crime of misdemeanor, from the end date of sentence enforcement or pardon after elapse of 3 years. 3. In case of conviction of repeated felonies or misdemeanors, the interval set forth in subparagraphs (1 and 2) of this article shall be doubled. (Criminal procedure Code of Aghanistan, 1384 H.S).

Furthermore, all those who are released on any condition, the time lapse is counted from the court's order date. If the person is convicted for several offences and the sentences are implementing in sequence one after another, the time lapse starts from the implementation and completion of last sentence date. There are some differences and similarities between the statutory restoration and judicial restoration.

Similarities between the statutory restoration and judicial restoration

1. The completion of sentence has been set as a condition for both type of rehabilitation, if sentence is not completed Prestige restoration is not granted.
2. As per to different aggravating crimes the completion of time lapse.

Differences between the statutory restoration and judicial restoration

1. Law based rehabilitation is granted automatically and there is no need of court order, though Court based restoration is asked by convicted person as a written application.
2. Law based restoration needs the time lapsed of 10 years for felony and 5 years for misdemeanors that the person has not to commit other felony or misdemeanor, and his or her prestige is restored automatically. On the other hand, in court-based rehabilitation there is 6 years in felony and 3 years in Misdemeanors, either after completion of sentence or pardon, and not to commit felony or misdemeanors in stated time lapse, to be granted court-based restoration.

Consequences of Rehabilitation/ Restoration of Prestige

The aim for the restoration of prestige is to allow convicted person to pertain his status and life as it was before committing offence. That's why, if the convicted sentence is completed or pardoned, Parole or comes under time lapse then the prestige is restored either Based on Law or court, the following consequences can be noticed: 1. Consequential penalties are demolished, meant that the convicted person who were restricted of using of its political, social, civil or other rights, can use and get benefits of its above stated rights (Ardibli, 1382 H.S). 2. The criminal history is omitted from criminal record document and presumes that person has not committed any offence. (Sabir, 1379 H.S).

Article 371 of the Afghan Criminal Procedure Code indicates that if it is proved for the court that the applicant meets conditions set forth in this chapter, the court may issue a ruling to restore the applicant's prestige. With the issuance of the ruling, it shall be presumed that the convict has never committed the crime. If a convicted person is granted restoration of prestige either Law or court based, all consequences of conviction is demolished, and if he commits a new crime, it is not considered as recidivism and is not called recidivist, also it is considered simple crime and no aggravating measures are implemented. (Criminal Procedure Code of Afghanistan).

Implementation in Nangarhar Province, Afghanistan

In discussing its practical implementation within Judicial departments, unfortunately in both circumstances, either someone's status, prestige, and privilege is violated that has to be restored in a very first opportunity and perpetrator has to be convicted. If it is done the process is too lazy or if there is the issue of rehabilitation/restoration of prestige of itself perpetrator, in practice there is no action taken and this norm is underneath. Because in practice there isn't any single case of Rehabilitation/restoration of prestige in Primary or Appeal court of Nangarhar. The community is not aware about the importance of the issue, also courts are not willing to make the people aware of this status. Because both types of rehabilitation/ restoration are considered as a great opportunity for betterment and reintegration of convicted within the community, to live as a simple and righteous person. If someone is granted any type of rehabilitation, his criminal data, conviction, the continuation of consequential penalty is omitted from police, prosecution and court documents, and can be hired in both governmental and non-governmental departments.

Conclusion

Human Dignity and sympathy call for respecting others honor, prestige and privilege. If someone's prestige and dignity is violated due to a cruel act as soon as possible the perpetrator has to be convicted by court, that the victim's prestige, privilege and status is renovated and restored.

Whether someone commits offence and convicted by court, he or she loses his prestige and privilege in the society, to resume his or her life normally after the completion of sentence, consequential penalties are taken away and can practice all his tied rights due to rehabilitation/restoration of prestige. Law based rehabilitation/restoration of prestige aims to support convicted person to get restored their prestige and reintegrated in society to live as a normal person and practice its rights. That can be recovered automatically in felonies after 10 year and in misdemeanors after 5 years, of punishment. Court based rehabilitation/restoration of prestige can be prevailed after 6 years in felonies and 3 years in misdemeanors, after the completion of sentence. So, they can sue an application to prosecution and court in regard to their betterment and not committing offences for restoration of prestige, can prove themselves as a righteous person and can practice all their deprived rights.

Recommendations

1. Lawmakers should amend the Criminal Procedure Code to segregate the felonies and misdemeanors as to their types like Homicide, Battery and laceration, robbery, forgery, arson, pocket-robbing, etc.).
2. The time lapse for restoration of prestige has to be specified as per to each crime, that the crime and time lapse is clear for Judicial departments and society.
3. In Afghan CPC, both law and court-based rehabilitation/restoration of prestige is indicated for physical entities, though there is no indication for the restoration of prestige of intellectual entities. It will be a positive approach, If the restoration of prestige is also stated for Intellectual entities.
4. As many people in Afghanistan are illiterate and do not know the importance of restoration of prestige, so it is good, if the judges declare the principle of both law and court-based rehabilitation with the time lapse within their verdict and criminals will know the importance in the future.

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