

Insolence from Viewpoint of Jurisprudence and Law

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ABSTRACT

Insolence is one of the moral ugliness, since it disturbs reputation of individuals and humiliates their identity. It is considered as one of the best examples of ignoring people's right. In recent years, insulting prophet (PBUH), Quran, etc. have evolved in society, which results in increase of insolence and similar crimes in society. This article studies the issue, their motives and bad effects in individual and social life of people based on law resources. Finally, it represents the direct impact of insolence on respect and honor of individuals, and desecration of people. In Islamic penal law and statute book, "Haad and Tazirare" are determined as their punishment according to crime situation.

Keywords: Insolence, Defamation, Qazaf.

1. INTRODUCTION

Human is the noblest and the paramount being of all living beings. This privilege is due to his free will, authority and other innate capabilities incomparable with other creatures, a gift of God that is given only to him. The main issue in dealing with human is this point. Every human should be considered as the most valuable creature. Undoubtedly, we should defend what protects humanity, morality and sublimity of human and avoid what threatens it. However, the most significant issue is protecting dignity, gentility and sanctity of human. Islam has excessively attempted to prevent deviation from this principle and sets worldly life and the hereafter enforcement order. One of the consequences of deviation from this moral and rational principle is affronts to dignity and reverence of this creature, as God Caliph [1]. In this research, I try to study the issue in today's life. Today, due to the influx of various cultures, most of mortal sins, such as insolence, have lost their meaning, and have been common among people, sometimes leads to lie, vilification, flout, and defamation. In Islam, Muslims are recommended, and sometimes forced, to respect each other, that is, rights of living beings and assuring their life and health are always valued, recommended and sometimes are obligatory, as hurting people is considered repudiating and Muslims are prohibited to do it. Islam teaches monotheism as the basis of all accomplishment and removes hypocrisy and discrepancies and replaces them with brotherhood and unity. Rules of Quran [1] are not specified for a special period of time or for special nation and tribe, but is for all nations and for all era in history. The aim of Islam is to make people free of deviations, immoralities, and abomination. Among these abominations, insolence and defamation are the worst in this era, mortal sins [2] that aim to disgrace, desecrate, and humiliate people and are example of ignoring human right.

In recent years, insulting Islamic sanctities such as insolence of prophet (PBUH) and Quran have increased which results in subjectivity of insolence and other crimes. On the other hand, some abnormalities in society make law orientation as the most willing of people. Recognizing insolence and defamation is important, but there are some misunderstandings for lawmakers, law executors, and people in general.

The main objectives of this article include: 1) describing law and jurisprudence order of insolence, 2) studying penalty of insulters from law and jurisprudence viewpoint. This study tries to find the answer of the questions, have a small step on solving this problem and start a new, extensive and deep scientific research to find identity of insolence and its penalties.

Research questions include: 1) What is limit of insolence? 2) Whether insolence has legal basics and what are its different types? 3) If law and jurisprudence have any special sentences for insulting Islamic sanctities?

The following researches have studied this subject: A) Insolence and Defamation, Juridical Conferences, Islamic Penal Law Issues, number 204; B) Article of Insolence and Defamation Law in Criminal Procedure Order [3] Jurisprudence Review of Retribution of Insolence and Defamation from View Point of Religions, Islamic Azad University, Central Tehran Branch, 2000.

2. MATERIAL AND METHOD

This research is descriptive and uses Quran verses and narratives, ideas of Jurists and legal experts in a library study way. The collected information is presented in 5 parts as definition, division, comparison, analysis, description, and argumentation. Due to the fact that this article focuses on insolence in Law and jurisprudence, legal and law books are the main sources of this study.

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3. RESULTS AND DISCUSSION

3-1- Lexical and idiomatic definition of insolence:

3-1-1- Lexical definition of insolence: The root of insolence is “وهن” means to discourage and humiliate. In Arabic, insolence is usually used to contempt and humiliate, the lexical meaning of it is to weaken. Therefore, it seems the word insolence is nothing but discouraging, humiliating and weakening.

3-1-2- Idiomatic concept of insolence: What is come from the definition in law book, the term insolence means to humiliate and contempt others which can be in various forms. In the book “Legal Terminology” [4], insolence is defined as “an action embodies no documents and news and tries to humiliate. Insolence is often with malison and humiliation.” In Law dictionary [5], the term insolence is defined as “insolence in penal code is to humiliate a person using words and actions that is regarded as ill-manner to that person.”

3-2- Jurisprudence basic of insolence

Here the insolence and its place are described. First insolence in Quran is studied then its place in narratives. So, this part is divided to studying insolence in Quran and narratives.

3-2-1- Insolence in Quran: In Quran, insolence from the root “وهن” and its derivatives are repeated 9 times. Contemplating on translation of Quran verses it's considered that derivatives of the root “وهن” are used in its lexical meaning not in idiomatic concept. As it's said in Quran that:

ذَلِكُمْ وَ أَنْ اللَّهَ مَوْهِنُ كَيْدِ الْكَافِرِينَ

“That, and also because Allah is he who makes feeble the plans and stratagem of the unbelievers”

In another verse we have:

«إِنَّ أَوْهَنَ الْبُيُوتِ لَبَيْتُ الْعَنْكَبُوتِ»

“But truly the flimsiest of houses is the spider's house”

The verses with the meaning of weakening people can be included in classification of insolence since one of the lexical meanings of insolence is to weaken. It's clear that when a person is weakened, he is despised.

One example of these verses is the verse «إِنَّ الْقَوْمَ اسْتَضَعْفُونِي» (AL-ARAF, 150) that refers to despising Haron, Brother of Moses (PBUH). In this verse the word «استضعفوني» means they did poorly and ignored me.

3-2-2- insolence in narratives: Reviewing narratives it can be clear that insulting speech of God and infallible Imams is prohibited and those who humiliate Muslims are blamed.

In a narrative from prophet Mohammad (PBUH), God says:

مَنْ أَهَانَ لِي وَلِيًّا فَقَدْ آرَضَ لِمُحَارِبَتِي

“Anyone who wants to insult me ambushes to my war”

In another narrative of Prophet Mohammad it's cited that:

«مَنْ اسْتَحْفَ بِفَقِيرٍ مُسْلِمٍ فَقَدْ سَخَفَ بِحَقِّ اللَّهِ وَ اللَّهُ يَسْتَحِفُّ بِهِ يَوْمَ الْقِيَامَةِ إِلَّا أَنْ يَتُوبَ»

“Anyone who humiliate a Muslim, humiliates God, God will humiliate him in the day of resurrection unless he repents”

Regarding above-mentioned narratives, insolence is blamed from view point of God and Imams, in a way that a person who insults other is considered as combatant to God.

3-3- Jurisprudence elements of insolence

In this part we refer to law books [6, 8, 9] and different legislations passed during time and their retribution to describe jurisprudence elements of retribution on insolence including law, material and spiritual.

3-3-1 law element of Retribution of insolence: The general law of insulting ordinary people in Islamic penal law, article 608 states: “The punishment of insulting people in various ways such as scurrility and cursing if is not to the extent of Qazaf, is 74 slashes or 50000 to 1 million Rial of fine”

This article is described in books on crimes against public security as follow:

- Even if violence at speech is considered impolite, it is not considered as insolence.
- The addressee of insolence should be a person other than person who insults; in that case it is insulting others, e.g using obscene words in public against general discipline and morality [6].
- Regarding the word “توهين” in this article, insulting legal individual [7, 8] is not considered as insulting their members and managers, and is wanted.

The term obscene words and curse in this article is described as follow: “Obscene word is obscene and absurd words and curse is to continue crudeness more than enough.” “The criterion of realizing obscenity of the used words is the conventions and the characteristic of people should be considered. For instance, using the word poor, miser and beggar to a scientific or cultural character are considered as insolence while it's common among ordinary people.”

3-3-2 material elements of insolence retribution: According to article 608 of Islamic penal law [7], the conditions of insulting others are defined as:

- **Insulting behavior:** In this crime the doer should act, in speech or written or behavior, in a way to insult and humiliate others, e.g. behave and use such movements to insult others. The criteria of realizing its insolence is conventions. In this regard we have: The first condition of retribution of insolence is to do something to insult others. Material act of insolence can be in written form or oral, in presence or absence, in act or written, or it can be in speech. Also, the aim of the person who insult can be to tarnish the reputation and dignity of people, ex, to tarnish honesty, righteousness, and purity of people or to degrade reputation and honor. About material element of this retribution we have: "If not considered as defamation, insolence is concluded in this article, i.e. not to attribute a crime to someone else; in this case the aim of person determines the type of crime, e.g. when a person does something to insult the other, even if his action is defamation, but the aim is insulting, the aim is prior to action."

According to above-mentioned definition, insolence is always a positive material action, while it can be sometimes without any action, e.g. one can ignore doing an action that shows respect to others according to their prestige and insult him. There are different viewpoint on criteria of visibility of the action, e.g. Goldouzian [9] believes the publicity of insolence is necessary, while Sadeghi [11] believes its publicity where is required in law such as article 517, otherwise publicity is not necessary.

- **Specified party of insolence:** The second criterion is that the action, speech or writing should be about a specified character [12], that is, the person who is insulted should be clarified. From this criterion it can be concluded that insulting one's own except insulting others is not punishable.

3-3-3- mental element of retribution of insolence: Insolence, like other crimes needs a mental element, one of which is to insult intentionally, that needs to have cognition about the person to be insulted. Therefore, anyone who doesn't know the meaning of words and allusions and use them is not wanted because of insolence. Special bad intention, e.g. annoying or sadden a person, is not the case. In another word, this crime is an absolute crime and need no result; that is, even if the person has great character or is very carefree, and won't be sad of it, the action of insulting have been occurred. In general, retribution of insolence is always assumed and need no prove, and proving its contradiction is responsibility of the accused, since type and essence of using humiliating words shows intention of the doer. But, when accused proves that he has no bad intention and the action was only to make fun, his action is not insolence and there is no need for punishment."

It's concluded that, in retribution of crime, knowing insolence of the action is required for realizing this crime; when a person unintentionally and unknowingly does something to insult or humiliate others because of his lack of knowledge to insolence, his action is not punishable.

3-4- Retribution of insolence in Islamic penal Law: In this part we study retribution of insolence in Islamic penal Law. In this regard, penalty of insolence in Islamic penal Law is discussed in two parts classified as insulting saints and insulting individuals.

3-4-1- penalty of insulting saints: Examples of saints are not clear and accurate and there is doubt on including some examples in Islamic saints, but what is clear is that there is no doubt in holiness of some things and individuals and there are some texts about them. Here we discuss penal orders of those issues.

- **Insulting prophet Mohammad (PBUH):** In a Hadith from prophet it's stated that:
عن رسول الله (ص): من سب نبيامن الانبياء فاقتلوه و من سب وصيا فقد سب نبياً
"HE says: anyone who curse one of prophets, kill him, and anyone who insult their successor, insults the prophet" In a narrative of Imam Ja'far al-Sadiq it's stated that [13]:

« من تناول النبي (ص) فليقتله الادنى قيل له : قبل أن يرفع الى الوالى ،
قال : نعم يفعل ذلك المسلمون ان امنوا على انفسهم »

"Anyone who curse prophet, he should be killed by anyone near him; if not, the next person near him should do it." According to narratives and Jurisprudents views, it's deduced that the ideas on insulting prophet are in agreement, so it's necessary to save life of the doer and other Muslims.

- **Insulting Quran:** In this regard, Shahid Dastgheib says [14]: "Criterion of recognizing insolence is convention, any speech and act about Quran that humiliates it in convention, the speech that violate Quran, is mortal sin and Haram. Therefore, if a person tramples Quran or throws it in excrement, since the appearance of his action is humiliating Quran and denying its sanctity, the doer is pagan and killing him is lawful, unless he confesses his action was unintentional and done in rage and he is likely to be in abnormal state."

- **Insulting Kaaba**

In this regard, Shahid Dastgheib also says [15]:

"Any sin and unlawful action that happen in Kaaba is disrespecting the place, since doing contrary to His sentence is impolite, imprudence, and ignorance".

- **Insulting mosques**

Another evidence of forbiddance of insolence is insulting mosques, the place where God is prayed, obviously insulting it is considered as insulting God. From what is stated about insulting saints it's concluded that in jurisprudence mostly the focus is on insulting prophet and Imams and retribution of this insolence. In the

case of other sacreds they only talk about desecration of them and Haad or Taazir is not included for them. However, these insolences are not ignorable in Islamic society to let people to question believes and saints of Muslims and insult them. As it was stated, article 513 of Islamic penal law talks about death penalty of those who insult prophet, otherwise they are punished of 1 to 5 years of imprisonment.

3-4-2 retribution of insulting individual: Here, we discuss about retribution of the insulter based of law and jurisprudence sources. In this regard, Sheikh Mofid says in Al-Moqana [16, 17]: “If a person attribute a Muslim as sting, ignoble, dog or pig, etc. it’s necessary to punish him by Taazir” From narratives on this issue it’s concluded that insulting Muslim is Haram and gets Taazir.

Prophet Mohammad says:

سباب المؤمن فسق ، قتاله كفر و اكل لحمه معصية و حرمة ماله كحرمة دمه

“Insulting a Muslim is vice, killing him is blasphemy, backbiting him is sin and saving his wealth is like saving blood.”

The result of this discussion is that any insulting, cursing and humiliating that annoys a Muslim is punished by Taazir that is 80 slashes, or determined by the judgment of ruler. According to above-mentioned issues, and referring to articles 609 and 517 of Islamic penal law, lawmaker should punish these people as follow: According to article 517, insulting president of foreign countries, or political representative of them is Iran domain is punished by imprisonment from 1 to 3 months, providing that the other party act Iran with honor [17, 18].

According to article 609, anyone who insult one of heads of three branches, or vice presidents, prime ministers or members of Islamic parliament, members of Assembly of Experts or Members of the Guardian Council, judges, employees of ministries, institutions, state companies or city halls is punished by imprisonment from 3 to 6 months or 74 slashes or 50000 to 1 million fine.

4. CONCLUSION

In this article, reviewing insolence in law and jurisprudence, the following results have been obtained: 1- Insolence is one of the crimes that deal with reputation and respect of individuals and desecrate them. In Islam, honor and respect of people is of importance, and insolence is considered as crime which deserves punishment in Hereafter. 2- There are significant reforms on retribution of this crime in Islamic penal law legislated after Islamic Republic. However, there exist some problems. 3- Insolence is an absolute crime, need no conclusion. It is ascertained with insulting action or speech and is punishable. 4- In Islamic penal system there is a retribution for this crime, the retribution is Tazir determined by discretion of judge – except for insulting prophet and Imams that is punished by death penalty. 5- It seems obscenity of this crime, which deals with honor and reputation of people, is not clarified, yet. It is speared easily and there is no punishment for the doers.

At the end, suggestions are given to prevent occurrence of these crimes or decreasing them in society: 1) Presses as an extensive tool, can be a suitable place for clearing identity and its obscenity; 2) Culturalization and persuading society to explain retribution of defamation and their worldly and otherworldly disadvantages can decrease material disorders of society caused by these crimes.

Regarding vacuities of Tazir rules, it’s suggested the following issues to be included in law: a) Determining punishment for insulting saints of other monotheism religions; B) Determining punishment of insulting religious scholars

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