

Investigate the Relationship between the Crime of Insulting Religious Sanctities and the Right to Freedom of Speech in Iranian Law and International Human Rights

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Abstract

Insulting religious beliefs and sanctities in some cases will intersect with freedom of speech. In this case, offenders have raided religious beliefs of other people under the guise of freedom of speech and insult them by poisoned arrows. While opponents think this is the right while opponents think, this is the right which can be limited and undoubtedly insulting religious sanctities and religious beliefs, is considered as the boundary for this human right. Way of boundaries between these two challenging concepts is the foundation of this study that leads to prevention of spreading the freedom of speech to make insulting and not so much that sanctities circle and religious beliefs can be extended that no place for free speech and thinking and criticism can be remained. This study investigate the relationship between the crime of insulting religious sanctities and freedom of speech in Iranian law and international instruments on human rights using descriptive and analytical methods

Keywords: insult, religious sanctities, freedom of speech, freedom of religion, human rights

1. Introduction

From the French revolution onwards, freedom of speech is considered as a human right and glorious achievements for humankind. In other words, freedom of speech is considered as a fundamental pillar of democracy. It can be said that in the field of human rights, none of the known freedom is not capable of abusing as the freedom of speech is. However, when this human right is considered in contradiction with some other human rights, such as freedom of religion, it shows in another way. Although the freedom of speech is, recognized human rights in international legal documents, they are not considered among the human rights and thus they will be considered with regard to other human rights. On the other hand it can not be ignored that fundamentality of the human rights does not make it absolutely safe from any harm. Thus, it can be cited several examples including the freedom of religion among the human rights, on one hand interacting and overlapping and on the other hand, the possibility of conflict between the rights of human were te serious challenges and an acceptable compromise is needed to take place . If the beliefs, convictions, and religious sanctities of various faiths be ridiculed and insulted, they would lead to rage and bloody protests that it is very difficult to control. It is therefore necessary that respecting religions and religious sanctities be protected in addition to determining the boundaries of freedom of speech and in the other hand sanctities circle must not be wide enough to be pretext for the opponents and enemies of human freedom, especially freedom of speech.

2. Statement of Problem and Objective

Today, one of the ways for secularizing and destroying people's beliefs, is attacking their beliefs and the best way to burn these beliefs, is in weakening of faith and creating suspicion and insulting sanctities. Insult the sanctities religion and religious beliefs of the followers of different religions mainly is carried out in the name of freedom of speech. Underlying challenge of this study is that the scope of freedom of speech on the one hand is dealing with abusers of this fundamental right that try to grasp their own greed in a broad interpretation and in another side, some insist on the idea that rreligious beliefs and practices of the believers are sensitive enough that in confronting them with the right of freedom of speech, the scales for the sacred and religious beliefs weighed and through this they ignore this fundamental human right. The aim of this fundamental research is development of the theory in epistemic field of human rights ,which led to the issue that this study with the mentioned purpose in

human right is for indicating the necessity of all human universal convergence and drawing their path.

3. Research Questions

- 1) Is the prohibition of insulting religious sanctities and religious beliefs of believers, a constraint on freedom of speech?
- 2) Does observance of the right of freedom of speech justify insulting religious sanctities?

4. Research Methodology

This is a library descriptive-analytic study.

5. Freedom and Its Position

5.1 Right to Freedom of Opinion and Speech

The essence of freedom and liberty is not being under the domination (1). Liberation from any shackles is the most common meaning of freedom. This is the negative face of freedom or in the words, its Isaiah Berlin's negative liberty. On one hand freedom means liberation from bondage and the yoke of strangers. On the other hand, it means the existence of selection and choice. It is choosing the same positive side of freedom and "positive freedom". Negative freedom, means freedom of people deprived of the gift of liberation; however, positive freedom is the freedom of the capables (1) Freedom of opinion as a subset of a larger part in the name of freedom of thought will be studied (2). Of course, one must make the difference first between thought and what today we call it as opinion. "Thinking is the force of wisdom to find the truth (3)." "Opinion, is the essence of think, and means free choice and thought that a person considers as the truth and in any area the mentioned freedom will be called the same name. As thought is about ethics or religion, it is called freedom of conscience or religion and if will be related to politics it is political freedom and in case of science and art, it is the freedom of art and science (4) The right to freedom of opinion is absolute in its inner dimension and it does not have any restrictions or limits and everyone has the right to have any ideas which is desired for, and principally this right to freedom of opinion is more subjective and internal and is not offensive. But from the outsider dimension of the freedom, it concludes the statement of belief or promote it as well. This recent dimension of the right to freedom of speech is not absolute and has the constraints and limitations under the law and to protect public safety, order, health, morals or the fundamental rights and freedoms of others that will be determined in case of need. Freedom of speech is lack of an obstacle that prevents the tongue from speaking and pen from writing and its also like a thought waiting for emerge. Freedom of speech is a fundamental human right and as a human right has excellent status of knowledge system of human rights. The idea of human right is established base on this that all men are the same in some respects. In a way that some good things is good for every human being and some bad things is bad for all people (5) Human rights can be described as the ability that grants the person the possibility of defense of freedom and dignity in the shadow of institutionalized guarantees (6) Human rights is inherent, inalienable and universal (7).

5.2 The Status of Freedom of Speech in Iranian Law

According to "John Calhoun", constitution is "internal structure" means construction and determination of any community (7). The third principle of the constitution, which implies a comprehensive securing rights individuals and principles 13 and 14 that points out freedom of religious beliefs and articles 22 and 28 of that have come following the third season, known as the rights of nations are the evidence considering the various aspects of individual freedom in Iran's constitution. Iran's constitution in a chapter has explored rights of nations, including the right to freedom of opinion and speech and like some of the basic rules such as the French constitution, has not brought it in separate statement to inflict any damage to the legal value. Article twenty third of the Islamic Republic of Iran's constitution declares, "Inspections of the beliefs is forbidden and no one may be molested simply for holding an opinion". There is no principle in the Iranian constitution that explicitly recognized freedom of speech generally. Most of the authors believe that the article 23 is considered only freedom of belief and its not related to express an opinion. Doctor Nasser Katouzian in this regard says: "desire and domination of the spirit and thinking of the followers in the thought of powerful men is the ideal that try to achieve that. Article 23 of the constitution has come in this regard" (8). The twenty-fourth constitution is said: "Publications and the press have freedom of speech except when it is detrimental to the fundamental principles of Islam or the rights of the public, details of which are specified by law. The greatest manifestation of freedom of speech in the world today, is the right of press freedom. Eighty-sixth principle of constitution provides: "parliamentarians are free in fulfilling the duties, their comments and votes and can not stop them for their ideas which express. This principle has total difference with the mentioned principle regarding freedom of speech and that's only it considers parliamentarians with special condition that seems is just for establishing the continuation

of the separation of powers and performing the duties of popular representation. The hundred and seventy fifth principle of the constitution provides: "freedom of speech and dissemination of thoughts in Islamic Republic of Iran Broadcasting (IRIB), must be provided in conformity with Islamic criteria and interests of the country." The principle has brought the words of publication and advertisement freedom before the revision, instead of freedom of speech and dissemination of thoughts and meanwhile, interests of the country mentioned along with Islamic criteria after the reviewing. Probably the reason is that tasks and activities of broadcasting is including publishing and promoting. However, this principle has mentioned the general phrases of Islamic criteria and interests of the country as a condition. On the other hand a political and ideological system of the Islamic Republic of Iran and Islam necessity of programs, should not make the radio and television to a state of a closed circuit. According to Article 7 of the Law on general policies and principles of the Islamic Republic of Iran Broadcasting approved in 17/04/1982, Islamic Republic of Iran Broadcasting (IRIB) belongs to the whole nation and must be a reflector of life and the status of all walks of life and different ethnic groups in the country. It can be inferred that radio and television is obliged to fair and impartial publication of statues of all of all political parties except atheists, ideas, and statements, which are in contrary to Islam. The press law amendments passed by the Iranian parliament on 01/30/1988 made some changes in press Law, passed in 12/28/1364. The second chapter of the press law is entitled mission of the press that its second article says: "Missions that the press in the Islamic Republic are responsible for is to shed light on public opinion and raise the level of their knowledge." Using the word mission if means having a task for the press is inconsistent with freedom, but if the word mission doesn't have the concept of the task or duty, in this case the mentioned mission is commendable in the press law that seems that the recent understanding is more reasonable. According to Article 3 the press have the right to insert opinions, constructive criticisms, suggestions, people and the officials explanation in conformity with Islamic criteria and the interests of society and publicize them. Here again if assume that the purpose of legislator from the Islamic principles is the same principles of Islam and the interests of society or public rights, mentioned items are the other topics that can be indicated. But the legislator with the addition of the phrase "constructive" after the word "criticism", in practice, overtaking the constitution, in addition to more restriction of that law, it also has created dark and unclear space which may not have a good outcome. In accordance with Article 6 that determined the scope of the press, issues and publication except in cases of violating the Islamic principles and codes and public and private rights, are free. In addition, Article 6 refers to the promotion of extravagance and wastefulness. In addition, paragraph four of Article 6 of the Press Law, has prohibited sow discord between segments of society, particularly through racial and ethnic issues. Although the second part leads to strengthening unity among people and is aimed at preventing divisiveness.

5.3 *The Status of Freedom of Speech in International Human Rights Documents*

Although so-called freedom of speech has not mentioned in the United Nations Charter, but the importance of this freedom, from the beginning of the formation of the United Nations has been considered. However, it can be stated with certainty that freedom of speech is a part of the fundamental human rights and is the source of all laws that the United Nations has relied on it (9). Economic and Social Council of the United Nations established Human Rights Commission in early 1946. The Commission became initially responsible for the preparation of an international bill of human rights; but soon it revealed that approval of an advisory text is much easier to ratify an agreement that is legally binding for the signatories (24).

- **Universal Declaration of Human Rights (1948):** This declaration dedicated its nineteenth article to identifying the right to freedom of speech and in addition to ensuring the freedom, it emphasizes on freedom of speech without cross-border caring and considering.
- **International Covenant on Civil and Political Rights (1966):** United Nations Commission on Human Rights attempted to prepare a draft of two covenants on human rights. The substantive rights identified in this covenant, is including rights of freedom of speech (9). Accordance with paragraph 1 and 2 of Article 19 of the convention: "1. everyone has the right to be immune from interference by others, have ideas. 2. Everyone has right of freedom of speech. This right includes freedom to search, receive and impart information and ideas of all kinds, regardless of frontiers. Either spoken or written or visual or any other art form or by any means."
- **United Nations Convention on the Rights of the Child (1989):** Convention on the Rights of the Child, was accepted by the United Nations General Assembly in November 20, 1989 which is the most popular sessions at human rights documents in history (10). The convention in its thirteenth article has recognized the right of children to freedom of speech. It should be noted that Article 14 of the Convention states: "The States Parties to the convention respect the right to freedom of thought, conscience and religion to the child."

- **Convention on the Protection of Human Rights and Fundamental Freedoms (1950):** this Convention is also interpreted as "European Convention on Human Rights". Article Ten of the European Convention in the declaration of the right to freedom of speech provides: "1. Every person has the right to freedom of speech. This right includes freedom to hold opinions and to receive and impart information and ideas without interference of the competent authorities and regardless of frontiers"
- **American Convention of Human Rights (1960):** American Convention of Human Rights was adopted in 1969. In article, 25 of the convention a list of civil and political rights and different freedoms, including freedom of speech is mentioned (9). The right to freedom of thought and speech has been accepted in Article XIII: "1. everyone has the right to freedom of thought and speech. This right includes freedom to hold opinions and to receive and impart information and ideas in all kind regardless of boundries. Either spoken or written or visual form of art, or through any media or elected person. "
- **African Charter on Human and Peoples' Rights(1997):** The result of the African human rights system, was adoption of the charter known as the "Banjul Charter". This Convention was signed in 1997 by fifty-three member states of the Organization of African Unity (12). Its tasks are more like the United Nations Commission on human rights. Convention includes social, cultural, civil and political rights(9) .Article 9 of the Convention, recognized rights of freedom of speech and says: "(1) Everyone shall have the right to receive information 2. Every person has the right to express and reveal his opinions within the law"
- **The Cairo Declaration on Human Rights (1990):** Article twenty second of this declaration on freedom of speech has decreed: "A) Every person has the right to express his opinion in freely any manner but not inconsistent with the principles of Shariah". It can be seen that this declaration has placed limit and condition on freedom of speech, which is vague at end, and it is contentious.
- **Arabic Charter human rights (2004):** Article 33 of this charter is upheld right to freedom of speech as: "The present charter guaranteed the right to information and freedom of opinion and speech, including freedom of search, receive and impart information regardless of frontiers by any means."

6. Libeling Religious and Criminal Law

6.1 Libeling Religious Sanctities and Beliefs in Criminal Law

Intellectual freedom, like physical freedom is one of the blessings to which respect is required, thus honoring the dignity and honor of one's family, occupation or community, their religious sanctities and beliefs, and preventing aggression and violation of their personality, credit and beliefs within the framework of provisions is the indispensable function for social life (13).

Libel is the noun of "to libel" referring to the act of "loosing, weakening, humiliating, scorning, and defaming" (14). Some legal scholars have defined libel as follows: In legal terminology, libel refers to the same customary meaning; hence, libel is applied to any action that exerts some kind of insult, one way or another, to the honor of the victim of the offense (libelee). The term libel is a general concept and scurrility is an example thereof. The single article related to the interpretation of Articles 513, 514, 607 and 609 of the Islamic Penal Code and sections 7 and 8 of Article 6 and Articles 26 and 27 of the Press Law state that in pursuit of criminal provisions, libel and insult and so on refer to the act of using clear and unambiguous terms or committing acts or performing gestures, which are against the customs of the society; and, can defame and humiliate individuals with regards to their circumstances of time, place and situation; and shall not be considered libel in the lack of words (15).

According to this single article, it could be concluded that actions and gestures are involved in as instances of libel. In Islamic sources, Sabb (سب) is one of the manifestations of libel to sanctities. The term has been translated as insulting and abusive language in Persian dictionaries, and is highly similar to libel. Literally, Sabb means curse. In criminal terminology, Sabb comes with the intent to insult and degrade, since it is not pure degradation, but rather it denotes belittling. Thus, Sabb is among "intentional categories" and is only realized with an intention (16). In a sense, insulting and cursing are both conditional on the existence of the intent to libel. Intentionality of Sabb subordinates it offensiveness; that is Sabb is not mere speech but address, and the presence of addressee is a constituent elements of it. Sabb is an offense wherein the addresser intends to disparage and belittle the addressee whether present or absent. This definition makes Sabb similar to "locution" because locution has both aspects of rhetorical and speculative; because it reflects what is inside. Sabb is also indicative of the belittlement of the libellee by the libeler.

Literally, *sanctities* are the plural form of *sanctity* of the infinitive *sanctum*. The term *sanctum* denotes the sense of purity and blessing (17). Larousse dictionary says, "Sanctum: purity, piety; Santity: Pure, Clean, blissful. Mobin

dictionary says, "Sanctity means to get clean and holy". Moein dictionary provides three meanings "1-Clean, pure, sublimate, 2-Man of God who refrain from what is refrained. 3-What is of interest and sanctified." In the holy Quran, the word and other words from the same root are used in different situations. Sanctuary refers to a place, and The Sanctum is an attribute of God's. The word is also considered as Gabriel's attribute (18).

Overall, sanctities can be literally defined as affairs that are of a certain respect to a religion in a way that the public are commanded to respect them, and desecration to them by the followers of other religions is forbidden. With this vision, Islamic sanctities is defined as "Affairs that are of honor to the Lord and respect to them is a duty and violation of them is forbidden" (19). In Islam, sanctities have examples, such as the Almighty Allah's, the holy Quran, Imams (AS), the necessities of religion, the rituals of Zoroastrianism, Judaism, and Christianity, certain religious figures, holy places and holy Layali (Ramadan, Laylatah-Qadr, etc.).

6.2 Constituent Elements of the Crime of Libeling Religious Sanctities

Most jurists consider crime composed of legal, material, and intellectual:

- **Material element of crime:** The material element is that the act or omission, which the law considers it a crime, is carried out by the criminal and come to exists (20). The material element of crime in Article 513 of the Islamic Penal Code, according to the text of the article is as follows: "Libeling/insulting Islamic sanctities." The intent of crime is not punishable until it comes to an external, objective, and material manifestation (13). The material element of the crime of libeling on religious sanctities has four components:

- **Committing a criminal act:** the crime of insulting religious sanctities needs a positive material action and cannot be realized by omission. In addition, in "Query of terms libel, insult or defamation under the criminal provisions of Articles 513, 514, 608 and 609 of the Islamic Penal Code and sections 7 and 8 of Article 6 and Articles 26 and 27 of the Press Law", using clear and unambiguous words, or committing obscene acts and moves, are essential for the realization of libel.

- **The subject of crime:** The material element of the crime of libeling on religious sanctities is achieved if the subject of the crime is one of the sanctities in Islam.

- **The inducement for committing crime:** Since Article 513 of the Islamic Penal Code does not have any reference to the inducement or inducements for committing a crime, the crime of libeling on religious sanctities is committed by any means.

- **Outcome of criminal act:** Insulting religious sanctities under Article 513 of the Islamic Penal Code and Article 26 of the Press Law, is among absolute crimes and is not subject to a certain outcome, and just depend on the fact that the degrading action addresses one of the above-mentioned subject of the offense.

- **Mental element of crime:** The mental element of crime is realized if the insulting person, intends to insult one of the things that he knows them to be sacred. Accordingly, the mental element is examined on two axes:

- **Knowledge of the sanctities of Islam:** When libeling, if the libeler has knowledge of the sanctity of something under libel, he/she would be liable. The knowledge need not to be detailed, but a summation is enough.

- **Intent:** Further, the libeler is known liable, only if he/she intends to libel and be conscious of the words and behaviors.

7. Analysis of the Conflict between Freedom of Speech and Libeling Religious Beliefs

All citizens are equal in the right to have free religious beliefs. A's beliefs; regardless of the truth or falsity of the belief is a right just as is B's different beliefs. If the speech of A's belief ignores B's right to have beliefs, that speech leaves the circuit of equality and thus is limitable. The right to have a belief, including freedom of belief, means being free from interference of others. When speech of A's belief insults B's beliefs, that is the right for B to believe has been overlooked; insulting a belief means overlooking the freedom to believe. Insulting a belief equals disturbing for the believer. The forms of the conflict between libeling religious sanctities and the right to speech could be investigated as follows:

- Disagreement and conflict between freedom of expression and libeling religious sanctities: Possibility and refuse

In the realm of international human rights, in the event of a conflict between human rights norms, usually from among the two norms, with the aim of maximum support of human rights norms, the norm receives higher priority, which is best to lead the implementation of human rights (21). The problem of and conflict in the realm of rights, could be considered is in the form of two approach. The first is the definitional approach (22). In this approach, the right must be identified and defined as limited and bounded from the beginning. It seems that in this assumption,

the problem of conflict of rights will not be essentially considered. However, the limitation approach, the problem is examined in terms of conflict. In this case, restricting the rights in front of each other is addressed. In any case, in the present debate it seems that the latter approach is noteworthy, because on the one hand freedom of speech and religion, and on the other hand freedom of speech are human rights.

Thus, it seems paragraph 3 of Article 18 of the Covenant on civil and political rights, anticipating the possibility of disagreement and conflict among human rights, has been developed to overcome the right of religion to freedom of religion, which means that among the rights listed in the Covenant, only the fundamental rights are in conflict with the right to religious freedom. In addition, since fundamental rights have priority over all other human rights, such conflict may actually be possible, and therefore debatable. However, it is essential to ensure the limits of rights, and resolve the conflicts. The concern of human rights is freedom, not the discovery of truth and falsehood of beliefs or protection of right beliefs. Libel is an act, not speech. Contempt is not a thought to have speech as the medium; but libeling means ignoring the respect for freedom and the right to choose one's belief. Beliefs could be criticized, but the freedom of choosing them could not be negated. The rightness of a belief could be negated, but the right to have that belief could not be negated. Libel refers to insulting the freedom of one who has chosen that belief.

- Libeling religious beliefs; discrimination between human beings

Expression is an informative affair, but libeling or insulting is an expository affair, expressed through information (23). Expository statements are also acts. Expositions are false and non-truth and could not be criticized. In addition, what is not criticized could not be included as knowledge and belief so that the guard of freedom of speech can guard it against the attacks of others. Expression, when in the position of narration, will be the subject of the right to freedom of speech. Each word is an arbitrary mean tool to reach an agreement in an attempt to influence the content of the expression at the listener. Expositions and information are the result of a joint venture, because speaking is a purposeful act. Libel or insulting is not exclusion to this, and one who insults the other, induces in the listener the sense that he/she lacks dignity and, in a sense, humanity and dignity that shields him or her against offensive expression. Although such discriminate between human beings is formed based on belief and religion not race, both kinds of discrimination, share anti-human, and denial of the equality of human beings.

8. Conclusion

In a world where human beings want a social life next to each other with the acceptance of the social contract among themselves, providing minimum living conditions in the social context for them is a dream that is not unattainable. Rights that human want to benefit from is religion believing which includes maintaining the sanctity of their religious belief. Considering all aspects of the issue, criminal law should be considered as a tool in the hands of government that is oriented for protecting the rights of citizens. This tool of course will include a diverse range of interventions. Criminalizing a behavior does not have any concomitance by criminal sharp reaction sequence; it is also to prohibit a behavior, means intervention criminal law in free zone that made being free to the criminal behavior dominant. Criminal law also has the role of education and extension and with the awareness of citizens through crime declaration, reminds values supported by society to cover the norms to its stature. The idea of fundamental human rights has targeted human rights values must be located in side of criminal law to create global convergence. This support becomes objective by prohibiting violate behaviors of human rights, those behaviors that insult to the beliefs is its clear examples. Freedom of speech as a human right, is common in all international, documents, is a right which is credited to serve right on the believing and is supported as well. In other words, what has originality is human understanding and belief that is constitutive of human identity and expression, the servant of the servant of this inherent value. Human rights system is in the wake of sitting all rights together and does not sacrifice one in other leg. Therefore, make a right absolute and the other bound and all right coexist may be possible. Freedom of speech in this system with all the dignity that is imagined is considered as actual right to human thought freedom dose not face with threats. The statements that wants to be hinder the freedom of believing, of course could be delimited. On the other hand, every right has been validated as a credit issue to a valid purpose and if it will use against the flow, means it will be misused. The abuse that another right of freedom does not respect it. The right to freedom of speech in the context of human rights has been credited and should be proportionate to the revelations of human rights. Therefore, if in the name expression just ruine the of human rights roots, there is no way to cover this abusement even with the mask of freedom of speech. Contempt with spread hatred and the promotion of discrimination based on claimed beliefs on human makes discourse of hatred real. From the perspective of this study, the insult of having a belief is not of course an expression in which challenge of one thought with another thought can be illustrated. Insulting is a behavior, which of course can take the form of speech, but the expression is not protected by the right to freedom of speech. The expression is a behavior that is in form of story ,the story of thought which

reveals the explanation was secretly in mind and explicitly bring the light of expression. Insult is not eligible of such characteristic and is empty of knowledge and ideas. Insult is an action, the act of spreading hatred and shouts of feelings of hatred towards a pious, faithful, man and his believing.

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