Retribution of Accusation in Jurisprudence and Law

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Abstract: Accusation and defamation is one of the mortal sins and the worst lies, since it disturbs reputation of individuals and humiliates their identity and is considered as one of the best examples of ignoring people’s right. From jurisprudence viewpoint, it’s believed that people are pure and without sin, it’s not acceptable to accuse them without obvious reasons only by supposition. In recent years, individual freedom and social mobility have evolved in society; struggle and difference in tastes, viewpoints, and positions of individuals have increased which results in increase of accusation and defamation in society. This article studies the issue, their Jurisprudence and Law basics and their penalties based on law resources. Finally, it shows that accusation and defamation are the crimes that have direct relation with respect and honor of individuals; it will desecrate people. In Islamic penal law and statute book, Haad and Tazir is determined as their punishment according to crime situation.

Key words: accusation, defamation, vilification, 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. 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 accusation, 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 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 these abominations, accusation and defamation are the worst in this era, mortal sins that aim to disgrace, desecrate, and humiliate people and are example of ignoring human right.

In recent years, individual freedom and social motivation, struggle among different ideas, views and individual and legal characters have increased, which results in subjectivity of accusation and crimes such as defamation. On the other hand, some abnormalities in society make law orientation as the most willing of people. Recognizing accusation and defamation have been 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 accusation, 2) studying penalty of traducer 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 accusation, detraction and their penalties.

Research questions include:
1) What is accusation and defamation?
2) Whether accusation and defamation have legal basics?
3) I flaw and jurisprudence have any special sentences for accusation?

The following researches have studied this subject:
1- Legal review of backbiting and accusation from viewpoint of religions, Islamic Azad University, Tehran central branch, 2000
2- Reviewing backbiting and accusation in Quran and Hadith, Islamic Azad University, Tehran Central branch
Islam wants to construct society based on best appearance and mutual trust, so that incertitude and suspicious is ignored. In order to avoid suspicion, God says:

"O ye who believe! Shun much suspicion; for lo! Some suspicion is a sin"

Ibn-Joreir, Ibn-almanzar, and IbnAbiHatam and Beihaghy quote that god forbids Muslims from being suspicious about others.

In fact, it’s not allowed Muslim to be suspicious of his religious brother without any clear evidence. It’s believed that people are pure and without sin, it’s not true to accuse their pure respect with supposition. Prophet Mohammad says:

"لا كذب في القرآن الكريم والظن فإن الظن الكذب الحديث"

Law and jurisprudence basics of defamation

Jurisprudence basic of defamation

Here jurisprudence basic of defamation is studied which include studying this crime in Quran verses and sayings.

1) Defamation in Quran

In Quran, defamation and its derivatives are repeated 60 times that can be classified as follow:

a) Defaming God: In Quran, Defamation to God is shown in different types:

First group is that defamation and its derivatives are clearly stated that are in the form of verbs such as اقتُلُوُن ﻋﻠﯽ ﷲ ﻣﺎ ﻻ ﺗﻌﻠﻤﻮن ﻟو ﻣﻦ اظْﻠُﻢ، إِنْ ﻣَنْ اﻓْﺘَﺮَى ﻋﻠﯽ ﷲ ﮐَﺬِﺑَاءٌ ﺑِﺎﻳﺎتِﮫ اِﻧْﮫُ ﻻﯾُﻔﻞ و ﻣﻦ اظْﻠُﻢ ﻣِﻤْﻦ اﻓْﺘَﺮَى ﻋﻠﯽ ﷲ ﮐَﺬِﺑَاءٌ ﺑِﺎﻳﺎتِﮫ اِﻧْﮫُ ﻻﯾُﻔﻞ و ﻣﻦ اظْﻠُﻢ ﻣِﻤْﻦ اﻓْﺘَﺮَى ﻋﻠﯽ ﷲ ﮐَﺬِﺑَاءٌ ﺑِﺎﻳﺎتِﮫ اِﻧْﮫُ ﻻﯾُﻔﻞ و ﻣﻦ اظْﻠُﻢ ﻣِﻤْﻦ اﻓْﺘَﺮَى ﻋﻠﯽ ﷲ ﮐَﺬِﺑَاءٌ ﺑِﺎﻳﺎتِﮫ اِﻧْﮫُ ﻻﯾُﻔﻞ و ﻣﻦ اظْﻠُﻢ ﻣِﻤْﻦ اﻓْﺘَﺮَى ﻋﻠﯽ ﷲ ﮐَﺬِﺑَاءٌ 

"Who doth greater wrong than he who invented a lie against Allah or denied his revelations? Lo! The wrongdoers will not be successful.” (An’am, 21)

Lie has different levels; lie is saying something that is not true, whether in speech or written form, in act or idea. Defamation is specific type of lie about others that talk about deeds of others while it’s not true, and closest in meaning to accusation.

The second group is the verses that figuratively states defamation about God but don’t use the root of the verb اقتَرَى، اَقتَرَيَ، اَقتَرَيُه ﻋﻠﯽ ﷲ ﮐَﺬِﺑَاءٌ ﺑِﺎﻳﺎتِﮫ اِﻧْﮫُ ﻻﯾُﻔﻞ و ﻣﻦ اظْﻠُﻢ ﻣِﻤْﻦ اﻓْﺘَﺮَى ﻋﻠﯽ ﷲ ﮐَﺬِﺑَاءٌ ﺑِﺎﻳﺎتِﮫ اِﻧْﮫُ ﻻﯾُﻔﻞ و ﻣﻦ اظْﻠُﻢ ﻣِﻤْﻦ اﻓْﺘَﺮَى ﻋﻠﯽ ﷲ ﮐَﺬِﺑَاءٌ 

"Where is the one who has invented a lie against Allah, or denied Allah’s revelations? Lo! The wrongdoers will not be successful. “ (An’am, 21)

For example, when pagans talk about the child of God, in which they don’t use the word lie or any derivatives of اقتَرَى، اَقتَرَيَ، اَقتَرَيُه ﻋﻠﯽ ﷲ ﮐَﺬِﺑَاءٌ ﺑِﺎﻳﺎتِﮫ اِﻧْﮫُ ﻻﯾُﻔﻞ و ﻣﻦ اظْﻠُﻢ ﻣِﻤْﻦ اﻓْﺘَﺮَى ﻋﻠﯽ ﷲ ﮐَﺬِﺑَاءٌ ﺑِﺎﻳﺎتِﮫ اِﻧْﮫُ ﻻﯾُﻔﻞ و ﻣﻦ اظْﻠُﻢ ﻣِﻤْﻦ اﻓْﺘَﺮَى ﻋﻠﯽ ﷲ ﮐَﺬِﺑَاءٌ 

b) Defaming Prophet Mohammad (pbuh): The other form of defamation stated in Quran other than defamation about God, is defamation to prophet. The most common defamations that pagans impune to prophet were considering him as poet, sorcerer, druid, etc.

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3- Article of accusation and defamation law in criminal trial regulation, FekrSazan publication, 2nd edition, 2004, p. 305
In this regard, God says in Quran that:

»أَمْ ﯾَﻘُﻮﻟُﻮنَ ﺷﺎﻋِﺮٌ ﻧَﺘَﺮَبﱠﺺُ ﺑِﮫ ِرَﯾْﺐَ اﻟْﻤَﻨُﻮنِ «

"Or do they say: - "a poet! We await for him some calamity (hatched) by time!"

وَﯾَﻘُﻮﻟُﻮﻧَﺄَإِﻧﱠﺎﻟَﺘﺎرِﻛُﻮاآﻟِﮭَﺘِﻨﺎﻟِﺸﺎﻋِﺮٍﻣَﺠْﻨُﻮنٍ «

"And say: "what! Shall we give up our gods for the sake of a poet possessed?"

Poet and possessed here refers to prophet Mohammad (PBUH).

c) Defaming Quran: Reviewing history of Islam reveals that after denying prophet, pagans of Makah began to deny Divine revelations in Quran. Many verses in Quran show it such as:

d) "أَذِ اﻧْتَﻠَى عَﻠَیہ آِﺑَﺎتَا قَالَ اسَاطِﯾرِ اﻟﻠُّوْلُوْنًَ ﯾَدُوْدُ ﺑَهْرُ اﻟْﻤَﻨُﻮنِ "

"When to him are rehearsed our signs, "tales of the ancients", he cries!"

"وَھَذِھَ اﻟْﻗُولُ ﺑِھُرُ ﺛُمَّ ﯾَدُوْدُ ﺑَهْرُ اﻟْﻤَﻨُﻮنِ "

"This is nothing but the word of a mortal!"

Some interpreters say this verse emphasizes the previous one, although they have different meaning but both talk about that Quran is not Divine revelations.

2) Defaming narratives

In many Islamic narratives there are references to defamation in various times. Generally, not only the term اﻓﺘِرَا is used but the words such as ﯾَدُوْدُ ﺑَهْرُ اﻟْﻤَﻨُﻮنَ and ﯾَدُوْدُ ﺑَهْرُ اﻟْﻤَﻨُﻮنَ that are synonym to اﻓﺘِرَا are used, as follow:

In Mizan–al-hekmat, stated from Kanz-al-omal, we can see:

قال رسول الله ﷺ: "من قال في أمرى مسلم ماليس فيه ليودى حسبما الله في ردعه الجبال يوم القيامة حتى يتصدى بين الناس "

Prophet Mohammad (PBUH) says: if a Muslim vilifies others to annoy them, in the day of resurrection God keeps him in a yellow mud in hell until the Doomsday.

In another narrative it’s said:

لافوه كالهت

No Obscenity is like vilification.

3) Elements of defamation crime

a) Law element of Retribution of defamation: Here we discuss law elements of defamation and its changes through different legislations. In this regard, codified rules of this issue are discussed from past to this time.

Article 269 of general penal code approved in 1925 about defamation states:

"Whenever an accused that has been given recognizance or bail does not appear when necessary without a valid excuse, the recognizance deposit will be obtained by the director of the district, court, and the pledge is confiscated. The determined Haad is up to 74 slashes for slanderer."

b) Material elements of defamation retribution: This crime is like other crimes contain material elements that here is discussed based on article 697 of Islamic penal code.

Based on article 697, if a person impute a crime to a special person and can’t be able to proof it, it’s defamation, even if they don’t use the term defamation in their context.

Based on what is written, content of this article can be classified as:

- Explicit assigning something to someone that is considered as crime based on law
- Way of committing crime including writing printed and manuscript matters, publishing printed and manuscript matters, pressing in papers, and speaking in meetings, etc.
- Disability of slanderer in proving an issue of accused

Therefore, if a person imputes a person of doing a thing but his statement is not clear, he is not under this article.

Retribution of defamation in Islamic penal Law

In this part, we study retribution of defamation in Islamic penal Law. In this regard, penalty of defamation in Islamic penal Law is discussed in two parts classified as penalty of defamation and accusation in Quran and Hadith, and Qazaf (special type of defamation) that is studied using Quran and Hadith and sayings of Foqaha. In talking about penalty of Qazaf we refer to religious books and exploring retribution of Qazaf penalty.

Punishment of Qazaf in Quran

Referring to Quran verses, it’s observed that all verses about penalty of defamation and slanderers, talk about punishment of the Hereafter and punishment of slanderers in hereafter, but there is no mention of worldly punishment, that is, Tazir, and only mentions Qazaf.

About slanderers to Allah, God talks about their punishment and says:

وَ هَمْ اھْلُ الْقُوْلِ يَقُوْلُونَ ﯾَدُوْدُ ﺑَهْرُ اﻟْﻤَﻨُﻮنَ "وَ ﻣِنْ اظَلِمُ اﺑْنَاءَ اﷲ ﯾَدُوْدُ ﺑَهْرُ اﻟْﻤَﻨُﻮنَ "

"Who can be wicked than one who inventeth a lie against Allah, or saith, "I have received inspiration," when he hath received none, or (again)
who saith, "I can reveal the like of what Allah hath revealed"? If thou couldst but see how the wicked (do fare) in the flood of confusion at death! - The angels stretch forth their hands, (saying), "yield up your souls: this day shall ye receive your reward, - a penalty of shame, for that ye used to tell lies against Allah, and scornfully to reject of his signs!"

And also says:

وَمِﻦ وَراءَهُم بَرْزَخ اﻟْيَوْمِ ﻣَنْ يُبْعَثُونَ

"Behind them there shall stand a barrier till the day that they shall be resurrected"

In another verse, he talks about destination of slanderers:

اَنَّ اﻟذِّينَ اتَخَذُوا اﻟْكِفْرُ وَالصَّدَقَاتِ ﺑَنِي ﺝَاثِرٍ ﺑَنِى اﻹِسْرَأَئِيلِ وَمَنْ كَانَ ﻓِﻲ اﻟْأَجْرِ ﻣِنْ اﻟْأَخِاءَرِ ﺑَنِى اﻹِسْرَأَئِيلِ

"Those who took the calf (for worship) will indeed be overwhelmed with wrath from their lord, and with shame in this life: thus do we recompense those who invent (falsehoods)"

In this verse, it’s implied that wrath of God is not only to Muses tribe but is a common and is through all nations who slander to Allah.

In another verse it’s said:

وَأَيُّوْمَ ﺍﻟْقِﺑَـرَةِ ﻳَدُ أَلْـمِ ﻣَنْ آَذَنتُوا ﻋَلَى ﷲ ﻋَـزُّ وَارْجَاهُ ﻋَـرزُ وَأَذَنَّ ﻣَنْ آَذَنتُوا ﺑِإِنْتِرَاءِ ﻣَنْ آَذَنتُوا ﻋَلَى ﷲ ﻋَـزُّ وَارْجَاهُ ﻋَـرزُ وَأَذَنَّ 

"On the Day of Judgment wilt thou see those who told lies against Allah; - their faces will be turned black; is there not in hell an abode for the haughty?"

Based on the verses, it’s obvious that Quran don’t talk about Taazir of defamation, but only talks about punishment of the Hereafter and punishment of slanderers to Allah.

Punishment of defamation in narratives

Referring to narratives, when there is a talk about defamation, accusation and so on, only Qazaf is important that is wrongfully accusing a chaste Muslim man or chaste Muslim woman of adultery or homosexuality.

In the Book “SahihTarmazdi” it’s said:

أَنَّ ﻣَنْ آَذَنتُوا ﻋَلَى ﷲ ﻋَـزُّ وَارْجَاهُ ﻋَـرزُ وَأَذَنَّ ﻣَنْ آَذَنتُوا ﻋَلَى ﷲ ﻋَـزُّ وَارْجَاهُ ﻋَـرزُ وَأَذَنَّ

"In the Book “SahihTarmazdi” it’s said:

And in another narrative from Ish’aq-ibnAmmar he talks about Qazaf Haad:

أَنَّ ﻣَنْ آَذَنتُوا ﻋَلَى ﷲ ﻋَـزُّ وَارْجَاهُ ﻋَـرزُ وَأَذَنَّ 

"And in another narrative from Ish’aq-ibnAmmar he talks about Qazaf Haad:

It’s not totally true but in most narratives we can imply it. For example, SahihAbd-ollahibnSanan says: I asked Imam Jafar about two men who accuse each other, He answered he is not receiving Haad and his punishment is Tazir.

Sheikh Mofid says:

If a person attributes obscenity to a Muslim other than adultery or homosexuality, Haad of adultery or homosexuality is not signed to him but its punishment is Taazir based on idea of judge.

In article 697 of Islamic penal system, punishment of defamation is imprisonment and 74 slashes or one of them.

Defamations punished by Haad (Qazaf)

Qazaf is wrongfully accusing a chaste Muslim man or chaste Muslim woman of adultery or homosexuality.

1) The way of proving Qazaf

Qazaf is proved by testimony of two righteous men or two times testimony of Qazef, confession of Qazaf is valuable when the criterion of confession is qualified. Legislative jurisdiction determined in article 153 of Islamic penal law states that “Qazaf is proved by confession of 2 righteous men”. In article 154 it’s said that: confession is valuable when the confessor is matured, wise, and free and messenger”.

Based on the terms of evidence in adultery and homosexuality that is subject to confession of 4 righteous man or 4 times confession, it’s concluded that in Qazaf, no matter the person is liar or honest, if he can’t prove his claim, based on Sharia, he is liar, debauchee, and deserving Qazaf Haad.

2) Main and secondary punishments of Qazaf

About punishment of Qazaf there are three verses in Quran:

Verses 4, 5 and 23 of Sura Nur talks about sentences such as main punishment of Qazaf and considers it as 80 slashes for man or woman, free or slave. Secondary punishment of Qazaf is his debauchery and ignoring his confession. In article 140 of Islamic penal law it’s said that “Haad of Qazaf for men or women is 80 slashes.”

3. Conclusion

From early times, accusation and defamation have been considered as crime; the crime which has been noticeable in legal issues. In so far as in the oldest legal book “Majma-ol-qavanin Hamourabi” there are retributions for this crime.
In this article, reviewing accusation in law and jurisprudence, the following results have been obtained:

1. Sometimes, accusation in unknowingly, that is, to attribute a deficiency to someone without being sure about it. Sometimes this attribution is intended and the speaker is sure that accusation is wrong, in that case it’s called defamation.

2. Accusation and defamation are the crimes that deal with respect and honor of people and results in desecration. In Islam, honor and respect of people is of importance, and defamation is considered as crime which deserves punishment in Hereafter. There are many verses in Quran that talks about defamation, defaming God, prophet and Quran.

3. In Islamic penal law, legal provisions of before Islamic revolution of Iran has been modified significantly but there are some problems, yet.

4. Defamation is a bounded crime, that is, its pursuit and punishment depends on complain of slandered person. If for any reason slandered person avoid complaining, slanderer is not pursuit.

5. In Islamic penal system there is a retribution for this crime, the retribution is Tazir, but for Qazaf (special defamation), Haad is determined (80 slashes).

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 other worldly disadvantages can decrease material disorders of society caused by these crimes.

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