

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 view point, 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.

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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 deviations, immoralities, and abomination. Among

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

3- Article of accusation and defamation law in criminal trial regulation, FekrSazan publication, 2nd edition, 2004, p. 305

2. Methods

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 accusation in Law and jurisprudence, legal and law books are the main sources of this study.

1- Lexical definition of accusation: accusation is suspicion and mistrust. In the book "Manjed-al-Tollab", accusation is defined as conceiving with mistrust and delusion. In comprehensive dictionary we have: accusation is talking about defects of people. Vilification is defamation but is called vilification because it confuses that when I have told this one or does this one? In this article, vilification and defamation are synonym to accusation.

Idiomatic concept of accusation in law: talking about a Muslim that bothers or is not true about him, if this saying is told in back of a person, it is called backbiting, but if it's said at his presence, it's the worst of lies. Sometimes accusation is without knowledge, that is, a person says something that is not sure about its accuracy, but sometimes a person that is sure he is wrong, says something about a person which is called defamation.

Jurisprudence sentence of accusation: in the book "Javaher-ol-kalam" there is nothing about accusation, but Shahid Sany in the book "Kashf-ol-ribeh" says: since speaking ill about a Muslim is Haram, being suspicious of him is also Haram. Haram suspicion is to declare a person guilty without any conclusive reason. A person should not be suspicious of another except when his fault be obvious and would not be interpretable. If it's not obvious but you think that it's right, be sure that Satan has made you to think in this way and you should deny it that is the worst of sins.

In religious law it's said that if a person haven't smell wine from mouth of a suspect, he is not allowed to accuse him to be drunk and punish him; because he may sip it and pour it out of his mouth, or he was forced to drink it or have supposed it as water and so on. So, being suspicious of a person is not acceptable.

Prophet Mohammad (PBUH) says: it's Haram to kill a Muslim and take his property and be suspicious of him.

He also said: if a Muslim is suspicious of a Muslim, it's better not to accept it and not to obey his feeling.

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:

«يَا أَيُّهَا الَّذِينَ آمَنُوا اجْتَنِبُوا كَثِيرًا مِّنَ الظَّنِّ إِنَّ بَعْضَ الظَّنِّ إِتْمٌ»

"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:

«ياكم و الظن فان 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 *يَقْتَرُونَ*، *اِفْتَرَى*، *اِفْتَرَيْتَهُ* as follow:

«وَمَنْ أَظْلَمُ مِمَّنْ افْتَرَى عَلَى اللَّهِ كَذِبًا أَوْ كَذَّبَ بِآيَاتِهِ إِنَّهُ لَا يُقِلُّ الظَّالِمُونَ»

"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 *اِفْتَرَى*. In these verses mostly we confront the phrase "على الله كذباً" or defamation is implied.

For example, when pagans talk about the child of God, in which they don't use the word lie or any derivatives of *اِفْتَرَى*, but it is implied in concept of the sentence. The verse "اتقولون على الله ما لا تعلمون" "say ye about Allah what ye know not?" shows this statement.

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 impute to prophet were considering him as poet, sorcerer, druid, etc.

In this regard, God says in Quran that:

« أَمْ يَقُولُونَ شَاعِرٌ نَّتَرَبَّصُ بِهِ رَبِّبُ الْمُنُونِ »

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

« وَيَقُولُونَ إِنَّا نَأْتِيكَم بِالْحَقِّ وَإِنَّا نَأْتِيكُمْ بِالْحَقِّ وَإِنَّا نَأْتِيكُمْ بِالْحَقِّ »

“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)

« إِذَا تَتْلَى عَلَيْهِ آيَاتُنَا قَالَ أَسَاطِيرُ الْأَوَّلِينَ »

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

« إِنَّ هَذَا الْقَوْلُ بَشَرٌ »

“"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 افترا is used but the words such as بهتان and تهمة that are synonym to افترا are used, as follow:

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

قال رسول الله (ص): من قال في امرئ مسلم ما ليس فيه ليؤذيه

حبه الله في ردهن الجبال يوم القيامة حتى يقضى 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:

لا قه كالبيت

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 a person accuse others by publishing printed or written matters, or spreading them or talking in meeting and assemblies, according to law this is considered as crime providing to be unable to prove accuracy of the evidences”

In article 140 of Islamic penal code, approved in August 9, 1983, after Islamic revolution, the previous article has changed to:

“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 slenderer.”

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 مَنْ أَظْلَمَ مِمَّنْ افْتَرَى عَلَى اللَّهِ كَذِبًا أَوْ قَالَ أُوحِيَ إِلَيَّ وَلَمْ يُوْحِ إِلَيْهِ شَيْءٌ وَ مَنْ قَالَ سَتَأْتِلْ مِثْلَ مَا أَنْزَلَ اللَّهُ وَلَوْ تَرَى إِذِ الظَّالِمُونَ وَ الْمَلَائِكَةُ بِأَسْطُورٍ أَيْدِيهِمْ أَخْرَجُوا أَنْفُسَكُمْ الْيَوْمَ تُجْزَوْنَ عَذَابَ الْهُونِ بِمَا كُنْتُمْ تَقُولُونَ عَلَى اللَّهِ غَيْرِ الْحَقِّ وَ كُنْتُمْ عَنْ آيَاتِهِ تَسْتَكْبِرُونَ »

“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:

ومن وراءهم برزخ الى يوم يبعثون

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

In another verse, he talks about destination of slanderers:

«ان الذين اتخذوا والعجل سينالهم غضب من ربهم و ذلك في الحياة الدنيا و كذلك نجزي المفترين»

"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:

«و يَوْمَ الْقِيَامَةِ تَرَى الَّذِينَ كَذَبُوا عَلَى اللَّهِ وُجُوهُهُم مُّسْوَدَّةٌ أَلَيْسَ فِي جَهَنَّمَ مَثْوًى لِّلْمُتَكَبِّرِينَ»

"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 Tazir 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:

Ali-ibnSae'idAlkandi states from IbnMobarak and Moammad and Ibn Hakim and his Father and he from his father that prophet prisoned a man who had accused another man.

In another narrative from Ish'aq-ibnAmmar states from Imam JafarSadeq that:

«ان عليا(ع) يعزر في الهجاء و لا يجلد الحد الا في الفرية المصوحه»

From narratives, it's concluded that only Qazaf has Haad and the other defamations doesn't have Haad but its punishment is Taazir based on the idea of judge

Ayat-ollahKhansari talks about this issue:

Any fault that doesn't receive Haad, Tazir is obligatory for it.

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.

So, it's concluded that punishment of defamation except for adultery or homosexuality is Tazir that its type and amount is determined by 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 Qazaf, 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 otherworldly disadvantages can decrease material disorders of society caused by these crimes.

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References:

1. Bandrigy, M. R., Arabic to Persian Dictionary, translated by Monjad-ol-tolab, Islamic publication, Tehran, 1991.
2. Sayyah, A., Comprehensive Modern Arabic to Persian Dictionary, translated by Almonjad, Islam library, Tehran, 1998.
3. Tousi, Khajeh Nasir-aldin, Akhlaghe Nasery, edited by Minouey, M., Heydari, A. R., Kharazmi publication, Tehran, 1994.
4. Amely, Z (Shahid Sany), Kashf-ol-ribeh, Resalat publication, Qom, 1987.
5. Bokhari, Abi A. M. ibn I., Sahih Bokhari, Dar-almarefat publication, Beirut
6. Makarem Shirazi, M., Tafsir Nomouneh, Dar-ol-kotob-al-islamic publication, 1974.
7. Mohammadi Rey Shahry, M. Mizan-al-Hekamt, Dar-al-hadith publication, 1998.
8. Tabatabaei, M. H., Tafsir-al-mizan, Dar-ol-kotob-al-islamic publication, Tehran, 1982.
9. Almaleki, Ibn Arabi, Sahih Tarmazdi, Dar-al-ehya-trathol arabi publication, 1415.
10. Khansary, S. A., Jame'-al-madarek fi Sharhe Mokhtasar-al-nafe', Sadough library, Tehran, 1405.
11. Mohammadi Gilani, M., Islamic Criminal Law, Sayeh Publication, 2000.