

The crime of cursing the prophet of Islam from the view of penal jurisprudence and its challenges with freedom of expression right

Alireza Millanei and Fatemeh Khakzad

Department of Law, Electronic Branch, Islamic Azad University, Tehran, Iran

ABSTRACT

Freedom of expression is defined as the freedom of all individuals in a society in expressing their ideas and viewpoints on religious and political matters and is considered as one of the most important Islamic rights which has a vital effect on individual and social development and modification of different structures of society. Thus, Islamic teachings, Quran verses, the narrations and lifestyle of Imams not only mention it as a right but insist on it as a religious responsibility and bind everyone to use this divine endowment. According to religious teachings, fundamental rights resources and many scholars in the world, freedom of expression can have its various functions if only it is implemented in a logical framework of regulations, since unlimited and uncontrolled freedom will cause numerous damages to the individual and community. Vilification of Prophet of Islam is one of the examples of cursing the Islam sacred things, but due to its importance, the execution penalty has been fixed for it. This law is one of the definite decrees of Islam. From what we have read in religious narrations, the punishment of vilifier does not depend upon the verdict of court and the hearer of the curse can enforce the law immediately; but according to the approved regulations, the death penalty should be implemented only based on the verdict of a fair court which acts upon the law (act 36 of Constitution) and if an individual is considered as an unprotected outlaw which deserves the capital punishment and is sentenced to death, the executor should prove his guilt in the court. Sunni jurists know the insulter to the prophet an apostate, but Imam of Shiite and their followers state that the vilifier deserves discretionary punishment. The aim of present research is to study the crime of cursing the Prophet of Islam from the view of penal jurisprudence and its challenges against freedom of expression. The results indicate that cursing holy beings of Islam is not a simple crime against individuals, but beliefs, laws and even objects may be the victim of this crime. But there should be a causal relationship so that insulting them should be considered as vilifying the core of Islam. The other important point is that insulting Islam will be the subject of article 513 of Islamic penal code, unless it can be interpreted as a sacrilegious title such as "cursing the prophet" or "heresy". Therefore, differentiating these two items is of high importance.

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Introduction

Freedom has always been associated with human and human being is free by nature. God has created him free and any existing creature cannot deprive him of this right. Freedom is a humanly value. That is why we believe that any kind of freedom is genuine in human beings. Circumscribing freedom is considered as an exception which requires rational and revelation-based justification and reasoning. So, it is natural to state that all religions have been responsible for preserving human's freedom and has always resisted against captivating and enslaving human race, either materially or spiritually.

Islam has always insisted on human's freedom and has ensured it and its laws have always stood against all kind of abuse and enslaving.

One of types of freedom concerned by Islam is the freedom of expression. That is, human beings should be able to express his/her thoughts, beliefs, and emotions naturally and conventionally, since human

beings is a moving creature and needs to react to its surrounding environment and state his/her feelings. As a religion, Islam has never agreed to destroy the spirit of invention and innovation. There had been many political groups which were free to speak out their beliefs and opinions, but were never pressed by Islam and even sometimes were accepted and welcomed. According to Quran, there were some people who called prophet a magician, liar, poem, etc. or had doubt in the existence of afterlife or other Islamic concepts and decrees.

But the feature of freedom system in Islam is its special standpoint on being and life, it believes in occult and doom day (afterlife). So the freedoms should move in the same direction. Islam does not promote and encourage "freedom for freedom", but believes that freedom should serve evolution, innovation, and the course of history. So freedom of expression should be in the direction of the same human system. Considering this humanistic approach, freedom of expression is a fundamental value in the

set of humanistic values but does not include all human values. Self-esteem and respect are important as well. Granting freedom of expression at the expense of men's self-esteem and respect is an unforgivable mistake. So, if the system of freedom in Islam is based on faith in God, the extreme of this freedom should not exceed the framework of this system and result in insulting God and the books of His prophet.

According to the aforementioned statement, we study the crime of cursing Muhammad (May God send greetings to him), prophet of Islam from the standpoint of penal jurisprudence and its challenges with freedom of expression.

History and definition of "curse" and the canon-related documents for cursing the prophet of Islam

Philologically, curse means to insult someone by words, or vilifying words (Moein, 1984). [1] Also, another definition is: "curse is vilifying and insulting by unpleasant and rude words with the intention of humiliating someone. It is considered a crime, and the criminal is called "vilifier"(Ja'fari Langeroudi, 2008). [2]

Zobeidi states: "curse means to swear, to vilify someone." (Sheikh Koleini, 1983). [3] In his book, Ibn-e Manzour mentions: "curse is the unpleasant words or sentences and does not necessarily include accusation." (Vasael al- Shiite, 1987). [4]

Tarihi remarks: "curse is to describe someone with a deficit or a negative attribute."

In the aforementioned definitions, all kinds of swearing and cursing are not considered, but only cursing the prophet of Islam, Muhammad (May God send greetings to him) is mentioned. It is necessary to study the common points of cursing the prophet and insulting ordinary people, and the various types of insults to prophet of Islam.

Ghazali defines curse as: "stating unpleasant and obscene words explicitly which are mostly convey sexual implications." (Bokhari, 2000) [5]

In French, the term "Injoure" conveys the same meaning (Brochim, 1966). [6]

In order to understand its legal meaning, the law should firstly be referred to. But since no concept or definition is presented in the law about curse and in act 224 of civil law, the meaning of words cannot be applied to their conventional concept, so we have to refer to custom in order to comprehend the meaning of curse. No synonym can be found for curse in common law of Iran, and we have to search in the accepted common law which is respected by Iranian Muslims, that is, the opinions of jurists to apprehend the legislator's real meaning from the word "curse", especially because the aforementioned term in article 513 of civil law is the exact translation of what jurists intended to convey.

Meanwhile, jurists have consensus on executing the one who curses the prophet of Islam. Their most important document for believing so is the numerous narrations of Imams and verses of Quran

which have had banned insulting the prophet implicitly.

On the other hand, some rational reasons back this idea. The necessity of killing the one who vilifies the prophet of Islam is a rational decree, since the authentic system of Islam which leads to human's prosperity should secure and protect prophet's personality and respect.

The holy being of esteemed prophet of Islam is scared like the being of God from the view of Islam. If insulting prophet had not been foreseen specifically in law, it would have been included in the general title of "insulting holy beings of Islam". So, cursing the prophet results in destroying the pillars of human prosperity and welfare, and that is why it is far more evil than killing a person, since killing someone will destroy that person's life, but insulting the prophet of Islam is the first step of annihilation of human race welfare" (Shirazi, 1987). [7] This crime has a special title in law which is influenced by numerous Islamic narrations.

Fazel- Hendi states: "the one who vilifies the prophet should be killed due to his/her blasphemy." (Fazel-e Hendi, 1983) [8]

Hassan Ibn-e Ali Vasha quotes from Imam Abol-Hassan (Peace Be upon Him): "in the age of Jafar Ibn-e Muhammad, someone cursed the prophet of Islam; the ruler of Medina summoned people. Imam Sadegh (Peace Be upon Him) which was ill was among the summoned people. The ruler of Medina placed Imam in the altar of the mosque and asked the people's opinion about the vilifier person. Abdollah Ibn-e Hassan and Hassan Ibn-e Zeid and some others stated that his tongue should be cut out. The ruler asked the opinion of Rabieh al- Ra'y, which he stated that he should be punished and reprimanded. Imam Sadegh stated: "so, shouldn't be any difference between the prophet of God and his apostles and followers?" (Koleini, 1983) [same reference]

Muhammad Ibn-e Muslim has quoted from Imam Baqer (Peace Be upon Him): a man from tribe of Hazil cursed the prophet of Islam. Some people informed the prophet on the matter. He stated: "who will be volunteer to punish this man?" two men stood up and volunteered for the mission. They headed to the residence of the vilifier man, and decapitated him after they identified him. Muhammad Ibn-e Muslim remarks: once I asked Imam Baqer: what is the punishment of a person who curses prophet of Islam: Imam responded: "if you are not afraid about your life and do not fear death, murder him."

Sahl Ibn-e Ziad quotes from Ali Ibn-e Jafar: my brother (Imam Moosa Kazem (Peace Be upon Him) told me: I was with my father when a messenger from ruler of Medina came to him and wanted him in his house. I accompanied my father to the ruler's house. All Medina jurists were there and the ruler showed me an affidavit against a man who had cursed the prophet. The ruler said: read this affidavit and give your opinion on jurists' verdict. Imam asked the audience: what is your opinion? They said that he

should be whipped and prisoned. Then Imam asked: "if someone insults one of the prophet's followers, not Himself, then how should he be punished?" They answered that the verdict is the same. Imam questioned: "isn't there any difference between the prophet of Islam Himself and His followers? My father informed me that Muhammad (Peace Be upon Him) has stated: anyone who hears someone is insulting me is bound to murder the vilifier person without need to ask the Islamic ruler's opinion. In case of referring to the ruler, he should issue the verdict for killing the cursing person." So, the ruler of Medina ordered to kill the man. This narration is stated in two books ("Foroo'e Kafi" by Koleini, and "Tahzib" by Sheikh Toosi) which confirms its authenticity.

The domain of crime of cursing the prophet of Islam from the standpoint of penal law

The common items between cursing prophet of Islam and the general meaning of insult

Philologically, "insult" means to humiliate, degrade, vilify or mock someone (Ibn-e Manzour, same reference; Moein, same reference) which often results in offending and annoying the insulted person.

"Insult" is defined as: "attributing any offensive thing, either lie or truth to someone, or doing or not doing any action which degrades or humiliates someone according to custom. (Pod, 1973) [9]"

In this discussion, it should be noted that there are some regulations and laws on the concept of insult which can be applied to the issue of insulting the prophet of Islam. For instance, cursing should be lead to damaging the incorporeal personality of the insulted person. Islamic Parliament published an inquiry in 2000/01/15 and insisted on the aforementioned point:

"According to the penal regulations, cursing and insulting is defined as using the explicit words which contradict to the customs of the society and lead to humiliation of the ones who have been insulted. If the words and terms are not applied, it cannot be considered as an insult."

The other common point between insult and cursing the prophet of Islam is that the corporeal elements of these two are usually the same. That is, cursing the prophet is understood and realized by the very words and statements which are used in insulting actions. The religious custom differentiates the incorporeal personality from the ones of ordinary people. Here, the corporeal element is the criminal's act or his/her forbearance of act which is the subject of penalty in penal code (Jafari Langeroudi, 2008). [same reference] The emergence of a corporeal element is necessary to consider an act as a crime and punish it. The reason for this is that if the criminal policy investigates the potential criminals just because of their intention (and not their deed), causes investigation in the individuals' conscience and may result in punishing people who are not practically hazardous for the society (Ali Abadi, 2006). [10] In Islamic law, the existence of corporeal elements is necessary, and the sole intention of the crime cannot

be considered the criminal act. In penal law, committing an act or forbearance an act can be considered a crime provided that it induces corporeal or spiritual damages for others people. But in Islam law, the damage imposed by the criminal itself is sufficient to know his/her act as crime. (Hashemi, 1984) [11]

The differences between cursing the prophet of Islam and insulting

In the previous discussion, the similarities between cursing the prophet and insulting ordinary people were mentioned. Although the crime of cursing the prophet is generally the same as any kind of insult, but it has some essential differences with it. For example, any individual may be the victim of insult, but in the case of cursing the prophet of Islam, the victim is the prophet or some special followers of Him. So the crime of cursing the prophet of Islam is most proper than the insult.

The other difference between the two is in their punishment which is clearly stated in article 513. This difference is huge, since there is ambiguity on the intention of the person who insults. It is stated in defining the crime of insult that it requires to have a private intention as well as a public one. But in the case of cursing the prophet of Islam, the crime is proved and confirmed even without such intention. So no one, even if he intends to prove that the prophet is not the messenger of God, is allowed to call the prophet a liar. In such cases, the accused person may claim that he/she would not really intend to humiliate or insult the prophet, but he only wanted to prove a scientific item. But can one accept his/her claim, even if he/she provides proof for it?

This issue is highly critical. On one hand, the people should not be permitted to utter everything they want even with the intention of analyzing or studying the sacred things. On the other hand, the people who really intend to scientifically discuss the prophet of Islam and Imam without making any insult to them should not be sentenced to death. The term "curse" has some obscene signs with the intent of insult, and the one who does not want to insult never applies such terms in his/her scientific discourse. Also, this probability can be considered with certain rules such as prudence rule on bloods. (Zera'at, 2002) [12]

The concept of freedom of expression right in Imami and Sunni jurisprudence based on the article of Constitution

In the logic of Islam and Quran, the freedom is not only allowed in thinking and expression, but also it is sometimes necessary, and it is considered one of the most important preferences of Islam comparing to other religions (Mir Muhammadi, 2003). [13] Quran and Tradition as the two genuine Islamic resources, have summoned people to use their thinking power and contemplate the mundane and religious affairs, and have asked people to freely express their beliefs. The esteemed prophet of Islam insisted on educating and training the Muslim as freethinkers to help them choose their lifestyle with awareness. So, He allowed

his followers to discuss jurisprudence-related issues and talk about verses of Quran. This process contributed to the mental and spiritual growth of Arab society of that era. The discussion of Abdollah Ibn-e Masoud Ibn-e Abbas and other followers on the decrees and interpretations of Quran confirms the aforementioned statements.

Numerous narrations on freedom of expression have been quoted from Imams. Imam Ali (Peace Be upon Him) indicates the necessity of freedom of expression in His book, "Nahj ol- Balagheh" and orders the Muslim not to talk to Him in the way that people typically talk with the tyrants. He states: "do not refrain before me and say the right things to me and do not pretend before me out of fear, since I can stand the truthful statements. Consult with me and give your opinion about my governance freely." (Seyed Razi, 1993) [14]

Philosophy and the necessity of freedom of expression according to the articles of Constitution

The ability to "think" is human's essential privilege and is identified as the essence of humanity. This creative privilege is the origin of a "natural right" and considers "thinking" as the essential right of all human beings. So, with the acceptance of "this right", the "requirements" of this right should be accepted all the same.

The expression of every individual reflects his/her contemplative identity and humanly personality and is a tool for presenting one's thoughts, ideals, values, emotions and feelings. In fact, expression is a significant communicative tool which conveys human's thoughts and culture among different generations and societies. The conflicts among various thoughts result in development of science and thoughts of human societies, both scientifically and politically and can bring numerous advantages for individual and society, as depriving people of this freedom will lead to stagnation of human sciences and distort the evolutionary movement of society. That is why the freedom of expression emerges as one of the most important and beautiful manifestation of thoughtfulness. (Mir Muhammadi, 2005) [15]

Throughout the history, freedom of expression has always been one of the most essential factors of success and continuation of divine movements, as Mr. Motahari considers the freedom of expression as the only way of protecting Islam during the history: "every individual should be free in writing, thinking and expressing his/her thoughts. This is the only way that our Islamic revolution can protect and secure its right intentions. If our society can have the freedom of speech so that different groups of people would be able to express their beliefs freely, Islam will continue to grow and influence more and more people in such a healthy society."

Freedom of expression which is the most comprehensive and inclusive form of freedom is practically associated with all parts of personal freedom and is seen as one of the genuine examples of legal freedom. This type of freedom is confirmed by

Human Right Declaration and International Covenant on Civil and Political Rights and is secured under the supervision of international regulations. This type of freedom which is called "freedom of belief" includes the principle of free and uncensored expression, so that people are not forced to ignore their moral courage and hide their real opinions out of fear of punishment. Generally, freedom of expression can be defined as the freedom of different individuals of the society in expressing their beliefs and viewpoints on religious and political issues. This is one of the most significant Islamic values and rights and plays a major role in promoting the individual talents and the corporeal and spiritual evolution of various structures of society. So Islamic teachings mention it not only as right but also as a religious responsibility and bind every individual to observe and use this divine endowment. Thus, Islamic Republic of Iran has followed the mentioned teachings and indicates this right as one of people's fundamental rights and presents the executive strategies for implementing and preserving it.

Discussion

Freedom of expression means the freedom of different groups of society in expressing their ideas and standpoints on religious and political issues and has major effects on development of personal talents and corporeal and incorporeal evolution of society. So Islamic teachings, Quran verses and Imams' narrations not only consider it as a religious responsibility, but also recommend everyone to apply this divine endowment. Intellectual and political authorities of Islamic Republic of Iran have been always insisting on the necessity of realizing this type of freedom in various social levels. Cursing the prophet is one of the cases considered as an insult to the holy beings of Islam and due to its importance and severity, the criminal is sentenced to death. Shiite jurisprudents do not apply the word "prophet" solely to the prophet of Islam, but they include insult to other prophets and also Imams of Shiite as the examples of cursing the prophet. Cursing the prophet covers any kind of insult. On the basis of religious narrations, the punishment of vilifier does not depend upon the verdict of court and the one who hears the curse is allowed to enforce the law immediately; but according to the approved regulations, the death penalty should be executed only based on the verdict of a just court which acts upon the law (act 36 of Constitution) and if an individual is considered as an unprotected outlaw which deserves the capital punishment and is sentenced to death, the executor should prove his/her guilt in the court.

From the view of religious teaching, fundamental rights resources and many scholars and legal experts all over the world, the freedom of expression should be implemented and realized in the framework of logical regulations and conditions to have its utmost efficiency, since unlimited freedom can cause numerous damages to the society, such as:

1. Provoking and intriguing the society to do acts that may induce damage to the society and government
2. Cursing and insulting religious, national, and political authorities
3. Publishing private issues and secrets of people and authorities and revealing military and security affairs of the government
4. Publishing and producing wrong news, making gossips and disturbing the intellectual security of the society
5. Demolition of social accepted values and moral principles
6. Causing intellectual obliquities, and misleading people
8. Harming the society, independence and weakening social correlation

The most important limitations which are considered for preserving freedom of expression are: prohibition of insulting Islamic holy beings and disrespecting people, the prohibition of conspiring and subversion, the necessity of preserving religious and moral values, the necessity of maintaining the discipline and order of society and commitment to the legal regulations, avoiding exacerbation of tribal and religious conflicts, observing national security and dependency, and the necessity of the speaker's sufficient information and scientific knowledge who uses his/her freedom of expression. Both people and authorities are responsible to control and prevent all kind of probable abuses of freedom of expression. (Katouzian et al. 2003) [16]

Conclusion

Insulting Islamic values is foreseen in Islamic penal code as a crime. This law implies the plain insult most of the time and follows other similar rules which are approved about it, but some special rules also exist which should be investigated in the canon-related resources, since article 513 of Islamic penal code and other legal documents have stated "Islamic holy beings" generally, not providing a clear interpretation of it. Based on article 167 of Constitution and article 214 of Civil Procedure Code of Public and Revolution courts, the judges have to refer to the canon-related resources on penal cases. Since extracting different regulations from those resources is not possible for all judges, a comprehensive research is necessary for guiding lawyers and esteemed judges.

From what has been stated, we can conclude that one should differentiate religion from what is inferred from religion to discern Islamic holy beings. For instance, Quran and prophet's tradition (Sunnah) are considered as pure religion, but what is interpreted as jurisprudence-related or philosophical laws from Quran verses is in the category of Human knowledge, so they are not considered sacred and holy, unless they are fundamental principles of Shiite. Moreover, the holy things of a given Islamic ideological branch which are denied by other branches cannot be considered as "Islamic holy beings", albeit there are some doubts on Shiite which is the official religious branch of Iran. Cursing holy beings of Islam is not a simple crime against individuals, but beliefs, laws and

even objects may be the victim of this crime. But a causal relationship between them is necessary so that insulting them should be considered as vilifying the core of Islam. Disrespecting Islam is the subject of article 513 of Islamic penal code, unless it can be interpreted as a blasphemous name such as "cursing the prophet" or "heresy". Therefore, differentiating these two items is significant.

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