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Iran Penal Law on Sacrilege in the Name of Freedom of Expression

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Abstract:

Freedom of expression is a fundamental human right that is closely related with social progress and human sublimation. However, it is among the rights which are of an optional nature besides being a social right. Thus, based on the above-mentioned characteristics, its full implementation is encountered with a number of limitations and conditions including observation of the rights of one's fellowmen, prohibition of trespassing against one's honor or social order and so on and so forth. Sacrilege is one of the most indecent offending behaviors that have been described as a crime in Iran's penal code of law. This crime is of public effect and is counted among religious crimes and it has been considered as a crime in support of religion as one of the most important values governing the societies. Sacrilege is one of those crimes which are seriously prosecuted by religious states whose beliefs are insulted. This tough stance has its origin also in the fact that man by his nature does not tolerate a certain set of actions including the act of treating a one's sacred beliefs without respect. As a result, this crime is seriously punished by religiously oriented governments. Since Iran is a religious state, if someone insults the religious and Islamic beliefs the government shall sue him. Various aspects of sacrilege as a crime, the boundaries of freedom of expression and the assessment of press law in the light of freedom of expression are among the issues which have been dealt with in present article.

Keywords: Freedom of Expression, Insolence, Sacrilege, Press.

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Introduction:

Insolence is among the crimes that one commits against an individual's honor and reputation. Insolence is a general criminal title for a set of crimes which has been predicted in the article 608 of the Islamic penal law. Insolence has different extensions some of which have been separately forecasted in the law with certain criminal titles due to their significance. Some of these independently discussed crimes are as follows, accusing one of sodomy or fornication in an insulting way (article 245 of the Islamic penal law), insulting Islamic sanctities or the Revealed Prophets, the Immaculate Imams as well as Her Highness the daughter of Prophet Muhammad (article 513 of the Islamic penal law), insulting the founder of the Islamic Republic of Iran and the supreme leader (article 514 of the Islamic penal law), insulting the foreign countries' presidents and their representatives (article 517 of the Islamic penal law), insulting the heads of the three powers (Executive, Judicature and Legislature) and the state clerks (article 609 of the Islamic penal law), insulting the women in public places or passages (article 619 of the Islamic penal law), obloquy (article 697 of the Islamic penal law), dispersing false rumors (article 697 of the Islamic penal law), mockery (article 700 of the Islamic penal law) for all of which there are certain rules and regulations specified that are highly dependent on the personality of the victim of such insolences or the subject of the insolences or the words and sentences used. Then except in the aforementioned cases the crime of insolence is considered as a routine crime of insult the punishment for which is specified in the article 608 of the Islamic penal law. Sacrilege is also counted among the crimes that target one's spiritual personality and it is specifically defined as crime against one's honor. For religious beliefs, especially in communities where people are extremely religious, is an essential part of the citizens' personality and sacrilege in any form harrows the public. The fact is that human beings have two identities, one is their human identity which is the basis of human equalities while the other one involves the individual's beliefs that make one distinguished from the others and gives an individual a distinctly separate identity and such beliefs and opinions find so much importance that might result in the individual's sacrificing of his or her life to guard them against the sacrilegious objections levelled against them. Because, as it was mentioned, the individual's beliefs form his or her identity and scorning such beliefs as baseless is tantamount to the denouncement of one's identity, the reason for this is everyone, as being aroused by his or her nature, is in need of worshipping a Supreme Entity or individual or admire or sanctify some other things and if some ones misuse their gift of freedom of expression there is this possibility of the insulted person to act most severely and intensively and it is noteworthy, as well, that there is a strict contrast between the freedom of expression and speaking about one's sanctities in a negative tone. (Eslami, 1994).

The history and the importance of sacrilege as a crime:

To begin with it worth to note that because the sense of worshipping a higher existence is rooted deep in human nature and human beings, propelled by a Gnostic internal force, tend to

sanctify the thing or the one they worship. Accordingly, the history of paying respect to the sanctities and supporting and glorifying such sacred entities dates back to the dawn of humanity on earth. The studies performed by the western sociologists on the primitive clans in various points of the world corroborates the existence of similar religious beliefs, rituals and worships in such types of communities and since such communities enjoyed the most primitive stages of life one can feasibly claim that mankind, at the beginning of his history, had a religion and the primitive religions have gradually evolved into the advanced religions of contemporary world (Shari'ati, no date, p.59). Thus, it is noteworthy that believing in religion and the religious sanctities has been born on the same date when human communities took shape and such beliefs are the integral part of the human life. Of course, religious sanctities in the primitive societies most often took place in the form of worshipping ghosts and/or the other natural powers and also it sometimes occurred in the format of sanctifying objects and/or animals. Therefore, one can say that holding holy entities in high regard is indeed a factor that has played a key role in the evolution of human life. Sacrilege and blasphemy have been mentioned in the Roman ancient rules. Montesquieu writes "there was one rule in Rome based on which the individuals who questioned the accuracy of the king's decrees or expressed their doubts regarding the competency or the qualification of the individuals appointed to conduct certain duties or jobs, were punished under the title of breach of sanctity of the religion" (Montesquieu, 1976, p.345). The expression of *crimes against the religion* can also be seen in common law system which is an ancient legal order. Similar expressions in the law systems have been pointed out under various titles such as "breach of the sanctity of religion, disrespecting the God or the holy things, insulting the church's rites, showing disrespect to the God's day, abusing the church's privacy, defaming swears". In the historical letter written by Tansir to the Tabaristan King there are introduced four categories of crime, one of which is "crime against religion", very much like insulting the sacred objects or holy shrines (Noorbaha, 2000, p.88). The works of great Greek philosophers also highlight the crime of sacrilege. For example, Plato lists the extensions of this crime according to their importance and this in turn endorses the aforementioned claim: insulting the sanctities in public alters, insolence to the private worshipping places and the graves, insolence to the parents, taking the properties belonging to the state authorities and/or the reputable individuals or stealing such items, abusing the individual's social rights (Najafi Abrand Abadi, 1995-1996). The Islamic jurisprudents provide an explicit classification of the crimes against religion and they count the "religion", "ego", "reason", "lineage" and "property" as quintuple interests. Imam Muhammad Ghazali has stated, in this regard, that "every statutory rule which intends to lead the society towards felicity and emancipation it should not by any means stay negligent to the abuse of this fivefold issue" (Feyz, 1990, pp.74-75).

History of Legislation regarding Insolence to Islamic Sanctities:

Before the victory of Islamic Revolution, the necessity of respecting religious sanctities and Twelver Shiah Islam as the State Religion of Iran was reminded in a set of statutes without

declaring sacrilege an independent crime in Iran general penal code. These statutes included the amendment to the constitution of Constitutionalism enacted in 1897 (Acts 1, 2 and 20), the law on the press supervision approved in 1922 (articles 1 and 2), the public penal law enacted in 01/23/1925 (article 127), the corrections made to the press law in 12/03/1948 (paragraph (a), of a single article), the press statutory bill approved in 08/10/ 1955 (articles 13, 17, 23 and 38). After the victory of Islamic Revolution, some of the rules and regulations explicitly or implicitly dealt with the breach of the sanctity of the religion and they are as follow: the press law enacted in 1979 by the Islamic Revolution Council (articles 20, 21 and 22), the Islamic Republic of Iran's constitution enacted in 1979 and its revision in 1989 (Acts 2, 4, 12 and 13), the press law enacted in 03/22/1985 with its later revisions (paragraphs 1 and 7 and article 6, article 26, note to the article 27), the law on query regarding the term "vilification", "insult" and/or "irreverence" as cited in the criminal regulations (single article). Of course, the Islamic criminal law held a silent stance regarding the breach of the sanctity of the religion and the judicial courts referred to the credible and authentic jurisprudential sources as recommended by the act 167 of the constitution in this regard until the time that Ta'zirat law and the preventive punishments law were enacted in 1996. (Yazdi, 1996).

Sacrilege as a Crime:

Sacrilege in the sense of the violation or injurious treatment of a sacred object is one of those cases which are harshly responded by religious states. For human beings audaciously react to such acts of irreverence as insolence to the sanctities. As a result, these crimes are toughly managed by the governments having religious claims. Since Iran is a religiously minded state, if someone is found slandering the religious and Islamic beliefs of the people the government will fight with him or her. (Radmand, 2000).

Legal element:

The most important legal document involving statutory rules for such types of crime as breach of the sanctity of the religion is the article 513 of the Islamic penal law which imported this crime into the criminal law for the first time because the criminal law and discretionary codes approved in 1983, had no reference made to such types of crimes. The aforesaid article states that "should anyone found slandering the sanctities of Islam and/or any of the great prophets or the immaculate imams (peace be upon them) or her highness Seddiqeh Tahereh (may Allah bestow her with His best regards), would be sentenced to death if s/he is found liable to be included in the verdict of insulting the Great Prophet of Islam, otherwise the individual will be sentenced to 1 to 5 years of imprisonment". Regarding the aforementioned article, by the Immaculate Imams here the twelve Imams are intended as accepted by Twelver Shiah and by Seddiqeh Tahereh here her highness Fatemeh Zahra (may Allah bestow her with His best regards) is intended. There are several ideas proposed regarding the Great Prophets:

1. Some are of the belief that by the Great Prophets (the prophets with Revealed Books) are intended.

2. Some believe that here those Messengers are intended whose names have been cited in the Holy Quran the total number of whom reaches to 26.

3. But, some believe that here the entire Messengers delegated by God are intended. Because the word “the Great” has been used therein for the purpose of veneration and admiration of such Messengers and it is not used here as an appellation to limit their number, because all of the Messengers are immaculate and innocent and they all possess a undefiled position and there is no difference between them in this respect for us to separate one from the other. In the meantime, our submission to Islam is hinged upon the acceptance of all revealed religions and the divine messengers. Therefore, insulting any of the individuals who, based on Islamic beliefs, have been realized as one of the one hundred and twenty four thousand Messengers sent by the God can be regarded as an example of the aforesaid article (Mir Muhammad Sadeghi, 2003, p.165). So, there is no difference between the Lord’s Apostles in this regard. Moreover, article 26 of the press law is considered as a statutory reference source in judging sacrilege as a crime. Article 26 states that “should anyone insult the revealed religion of Islam and the sanctities therein via printing it in the press or by other media in case that it has been found resulting in apostasy the verdict of apostasy would be issued and enforced for its case and if it does not result in apostasy the case would be judged according to the opinion of the canonical judge based on the discretionary law codes”. The most important and the biggest flaw which can be detected in such statutory rules is that insulting other religions as well as the officially approved religions of the country has been neglected and there has not been made any reference to it and this, in general, contradicts the constitution spirit. Of course, in the press law enacted in 1979, the issue had been taken into consideration in article 20 in this manner: “if anyone insults the doubtless religion of Islam and the sanctities therein and/or the other formal religions of the country, s/he will be sentenced to 6 months to 2 years of minor imprisonment”. But, in later rules and regulations approved by the legislative body of the country within the format of the press law the article is removed and only insulting Islamic sanctities remain in the article 26 which is not an appropriate issue. That is because the law should be following an evolutionary trend in the course of history and try to preserve the human reverence to the maximum extent possible, and it is not acceptable that the law undergoes a backward move and gets back to the previous states of the rules and regulations instead of experiencing a growing and advancing trend. Therefore, it is better for the constitution to respect the sanctities of the other religions and the formal religions of the country based on explicit texts inserted therein and also enact laws indicating separate punishments for the insults to them and/or at least along with the punishments enacted for Islam’s sanctities vilification.

Material element:

Besides blasphemy and desecration, sacrilege can come in the form of certain gestures. For example, an individual who, with an intention of insult and affront, on a normal religious day appears in public fully dressed in red and gets busy in jubilation and cheerfulness, or an

individual who burns divine books or an individual who having an intention of insult and vilification in mind dirties the holy shrines with garbage or other sordid things. All of the aforementioned examples have happened in the form of individual actions. Sacrilege is a binding crime in terms of its psychological (spiritual) element. That is to say that there is a need for an intention to violate the law and an intention to vilify the sanctities. Therefore, an individual who has no intention or will in doing so cannot be held liable. But, in terms of the material element of such crimes there is another possibility that such a crime can be considered as an absolute crime very much like a simple vilification and insult that means the actualization of such a crime should not be dependent on the occurrence of vilification in the outside world, particularly when it is held that Islamic sanctities are not so weak to be humiliated by the insults and affronts made by one or several persons. Such crimes might be counted among binding crimes that means it cannot be said that any crime has happened unless the individual humiliates and denounces Islamic sanctities before the people or in public. It has to be reminded that vilification causes a defamation and abusing of Islamic sanctities. In any case, one can conclude that the necessary prerequisite for the breach of religious sanctities is an abuse of their good fame and reputation and by expressing the phrase “breach of religious sanctities” we do not intend to show that Islamic sanctities lose their sacredness and credibility; rather, staining and blemishing the sacred realm of the sanctities is intended and such a blemishing automatically takes place via vilification and affront. Another interpretation that can be offered in this regard is that the perpetrator of the breach of religious sanctities should be aware of criminal nature of abusing the good reputation of the sanctities. In other words, when the individual knows that s/he is insulting Islamic sanctities, it means that the religious sanctities have lost their value and credibility for him or her, therefore any type of affront and vilification of religious sanctities is equal to their humiliation. To state the matter otherwise, this result should be incontrovertibly assumed and there is no need for it to be justified. Another clue which confirms the aforesaid idea is that in religious crimes and as regarding the canonical sins, the Islamic legislator gives a high importance to the issue of impudence and boldness and many of the jurists consider the sole forwardness and boldness in committing crimes as something which can be sued (Allameh Heydari, 2001, p.191). Regarding the breach of religious sanctities we cannot apparently enforce punishment in cases that religious acts are abandoned for example considering punishment for the individual who refrains from praising and greeting the Great Prophet of Islam (better known as *Salavat*), albeit for the purpose of and intending to insult (Mir Muhammad Sadeqi, 2003, p.89). However, some believe that even with leaving the action one still may commit the crime (Zera’at, 1998, p.97). Of course, there is little difference seen in the press law, with the only discrepancy being that the positive material action happens through writing and/or drawing disdainful materials and pictures in the newspapers and journals. Therefore, the actions taken by the perpetrators of such crimes have been limited to the writing and the pen and written works and drawings such as poetry, painting, caricature, gibes, printing photos and so forth in any of the newspapers and journals and tracts and in the press in general. It is

also worth mentioning that in fact the idea that seems to draw a distinctive line between the crime of breaching the religion sanctities by the press and the crime of vilifying the religious sanctities of interest to the article 513 of the Islamic penal lore is the mean by which the crime is committed and if it is perpetrated by means of the press and the tracts it will be treated according to the press law. But, regarding the definition proposed for the press and its examples, the article 1 of the press law states as following: “the press includes the printed media which is published regularly and consecutively under a constant name and inserted with the date, number and tier in various areas such as news, criticism covering social, political, economical, agricultural, religious, scientific, technical, military, art, sport subjects and their likes”. It is inferred from the phrase “and their likes” that the cases and the examples mentioned in the article are by no means limiting; rather they have been used as an example.

Therefore, every leaflet, newspaper, or weekly or biweekly or monthly or seasonal journal and annual journal and even the ones which are published once upon a time, if released with a constant name and date and tier number in any of the aforementioned areas according to what has been specified in the article 1 of the press law and the other types of the press of the like in which there is seen a vilification of the religious sanctities it will be regarded as a means for committing the aforesaid crime.

Spiritual element:

Like other general crimes and offences, sacrilege requires to be preceded by ill will and intention and it must be done for the sake of humiliation (Zera’at, *ibid*, 2002, p.494). To put it otherwise, besides being intentional the blasphemous act of sacrilege must be done for the purpose of humiliating and belittling Islamic sanctities. But as to the spiritual element of sacrilege one has to take the following points besides what has been proposed concerning a simple crime of insult:

Outrageous Sacrilege:

If an ordinary act of sacrilege is done out of anger and outrageousness, the court can mitigate the punishment specified for the convict and in regard of the vilification of the sanctities it seems that there is a need for the anger which results in the person getting lost of his or her control to be distinguished from the anger which does not reach this threshold.

Skeptic Sacrilege:

Sacrilege might take place on various motives. For instance, an individual may insult the sanctities with the intention of demonstrating his or her enmity to Islam or he may try to mock the Islamic creed or he sometimes may commit such a crime believing in what s/he says or performs or the perpetrator carries out such a crime through verbally insulting the Islamic sanctities and believing in what s/he says. For example, the individual is found believing in the idea that the present Holy Quran is not the same Quran which was revealed to the Great Prophet of Islam (may Allah bestow him and his sacred progeny with the best of His regards),

so the individual burns the book. Is the punishment for the affronter in the latter case the same as the previous forms? One has to say that the motivation for committing a crime does not have an effect on the criminal liability, unless otherwise has been stated as an exception(s). But here it cannot be stated that the perpetrator commits vilification of the religious sanctities solely being motivated to defend his own beliefs. Rather, this one is an ambiguous case which is an indicative of a doubtfulness issue, and if we compare this case with the other similar cases expressed by the jurists there are two possibilities that can be proposed, one possibility is that the mere occurrence of the material element of the crime suffices its actualization and as for the spiritual element it is only enough that the perpetrator knows expressing such doubts and suspicions is considered as the vilification of the sanctities. The late Saheb Javaher has accepted the aforesaid idea regarding the issue of apostasy. A great many of the narratives imply that anyone who is found defying or denying the necessities and the fundamental pillars of the religion is Kaffir and there is no need for it to be investigated to figure out whether it has been because of doubtfulness and suspicion or not (Najafi, 1983, p.48). Contrarily, some of the jurists consider the nonexistence of doubtfulness and suspiciousness as being a prerequisite to the aforesaid idea. Therefore, if the offender or better said affronter reckons that whatever s/he is saying or whatever s/he is doing is not a vilification of the sanctities or if s/he is found unaware of his or her actions or sayings being an insult and humiliation of the Islamic sanctities then s/he cannot be sued in the courts for breach of sanctities of the religion. This recent theory has also been found to be more consistent and complying with the law rules and regulations. That is because the ignorance or the lack of knowledge residing here is a topical illiteracy and the topical ignorance has been considered as removing the criminal liability by a great majority of the jurists, particularly, when the crime of vilification needs a specific type of malignant intention which is the very idea of determination for mockery, while such a determination and malignant determination and ill will is lacking here. Another detailed theory can also be presented here, in the way that whenever the perpetrator has been found doubtful and suspicious s/he will be given enough time to do research and if the individual ceases performing and saying whatever s/he was doing before during this period and after doing research then s/he will not be sued any longer, otherwise there would be an opened venue for trying and consequently punishing the individual in the courts. A fault which is found in this theory is that the convict might be continuing and insisting on his or her false beliefs and wrongdoings as before after doing the research in case of which the suspicion and doubtfulness factor would be still persisting and if being doubtful and suspicious has to also be taken as removing the criminal liability, then the violator cannot also be held criminally liable in this latter case, as well.

Having Baseless Beliefs:

One might believe in baseless matters and he may even have expressed that he does not accept many of the Islamic beliefs. However, such a belief cannot be merely considered as the individual's intention to vilify the Islamic sanctities rather it has to be objectified in the form

of taking an action or being expressed verbally in order for the crime of Islamic sanctities spiritual credibility abuse to take place. Act 23 of the constitution can be applied as a premise based on which such a claim can be verified and confirmed, accordingly, “inquisition of the beliefs is forbidden and no one should be reproached and blamed solely for holding certain beliefs”.

There is an important question here that one has to raise to the effect that should we condemn scientific discussions of religious creeds as sacrilege and punish the writers? It is noteworthy that Islam is not a religion of pure obedience in a negative sense of the term. True obedience is shown in the form of one’s adherence to reasoning and logical thinking. Thus critical assessments of religious issues, particularly in view of the contemporary human situation, are definitely indispensable. Then it is not that easy to punish a man of science or knowledge who studies religious phenomena based on evidences merely upon some shallow claims. So, impartial scientific and intellectual discourses of religion and its related issues are by no means sacrilegious. Therefore, dissidents must be given the opportunity to express their views in a logical fashion. Of course the intellectuals and men of science should also size this invaluable opportunity to exchange their ideas without any partiality or sacrilegious intentions.

Freedom of Expression: Place and Semantic Framework

“If all mankind minus one, were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind” (Mill, 1970). Freedom is a sacred word about which there are talks in all of the divine and human schools as deemed appropriate based on their ideologies. The first stage of freedom is in thinking and all of the divine religions have insisted on the freedom in thinking and thoughts as being an absolute concept, in such a manner that the human beings should not be suffering from any type of limitations and constraints in this area. The second stage of freedom in thinking is the freedom in ideas and beliefs. This is to say that human beings should be free to accept any ideas (Amini, 2003). In freedom of expression the individual has the right to have, inside oneself, a belief or an idea regarding ethics, religion, politics and philosophy and no one should scorn another individual for holding such beliefs and jeopardize his or her life. Since the beliefs reside in the hidden realm of human existence and finding a way and inquiring into the quality of such hidden thoughts and beliefs is very difficult and sometimes impossible so more attention is paid to the outside expression of ideas that is the external manifestation and demonstration of the beliefs and thoughts in the rules. But, history shows that dissidents were cracked down heavy handedly e.g. in medieval times by the church. This crackdown was sometimes due to merely one criticism. Freedom of expression is one of the basic human rights. If one deprive a man from this basic right s/he has deprive him from the right to live. According to John Steward Mill, freedom of expression is the flagship of the entire array of the civil freedoms. Since freedom of expression reveals itself in the form of freedom in writing and speaking it is

highly dependent on the type of the governments and the press and the political structure. In democratic communities, the freedom of expression is one of the political pillars of democracy. Freedom of speech and democracy are interdependent. Democracy means speaking and conversing; but in the totalitarian communities because informing and enlightening the public thoughts are the essential components of the independent press the ruling delegation fears them and it has always tried to take over the press, as put by Napoleon who knew a newspaper as being more dangerous than a thousand artillery and a thousand armed military forces. In sum, it can be said that no government has the right to expel from the society any individual for having an idea albeit one hundred percent opposing and the same way that the government grants the pro-state ideas the freedom of expression it should also provide the one-hundred percent opposing ideas with an opportunity to be able to be freely expressed and written and it should value them, as well. That is because the freedom in thinking, freedom in speaking and freedom in writing cannot be isolated and he who has an idea should be able to express his ideas in complete freedom and feel free to follow his thoughts (Rah Chamani, 2004).

Press, Freedom of Expression and Sacrilege:

The press manifests the civilization of a nation. It is also the symbol of enlightenment. The growth of press is a function of the cultural state of a society. Accordingly one can judge a nation based on its press. Holy Quran takes oaths to the pen and what it inscribes as a pure and lofty phenomenon and gives them so much respect which is reflective of the significance and the value given to the books and writing media . The press is one of the effective tools and instruments for supervising the public and state affairs and it is regarded as the eyes and the ear of the nation. Liberalism believes in the press as the fundamental and essential foundation of the democratic regime and unconditionally respects it. For without having access to the correct and accurate information and news making valid and documented judgments regarding the public and political affairs and decision-making and subsequently running a democratic state cannot be fulfilled. Everyone knows that today the press plays a significant role in the social and political life of a country. Due to the critical role of the press in enlightenment of the public, no ruling body would be easy with it. Likewise in Iran the constitutionalism revolution and the Islamic Revolution considerably owe their existence to the media barons and the press who dispersed the reformist and novel ideas and thoughts among the people and assisted them in fighting with the despotism and dictatorships. Nevertheless, it has to be said that the press freedom is not absolute and unlimited. Such a freedom has limitations like other freedoms, because the media barons may commit crimes through publishing articles or forging fake news in the press, against the government and other individuals, for which they have to be held liable and the individual who has been granted with a license of such a type is responsible in regard of the newspaper's general career and policy. If the articles and are seek to fulfill the objectives of a certain group of people or an individual a lawsuit or complaint would be filled. Accordingly, the editor in chief of the magazine should expose the writer of the article and be ready to shoulder its

responsibility unless it is justified that the responsible chief editor has fulfilled all of the normative duties and responsibilities under which circumstance the person who has committed a guilt should be held liable. If the press commits a crime against the government or the other individuals through publishing articles and forging fake news which also been predicted in the press law, the government and the interested individuals have the right to file a lawsuit in the justice department (Tabataba'ei Motmeni, 2003, p.83). One of the crimes that could be committed by press is violation of sanctities of Islam and other formal religions. It is true that the press is free to publish anything but if it is found perpetrating the crime of affronting the sanctities it will be treated as specified in the corresponding law. The common method of insulting religious sanctities is through the press and several points need to be highlighted in this regard:

1. The editor in chief's responsibility: according to the article 30 of the press law, whenever a leaflet releases a written material incorporating accusation or aspersion and slanderous words or vilifying attributions, the editor in chief of the leaflet will be exposed to the judicial courts to be sued and punished. It has not been determined what would the punishment be specifically in this article. One possibility is that the editor in chief would be sentenced to the punishment of an accomplice of the breach of the sanctity of the religion. Such a possibility is rather a faint one because the preconditions for sentencing an individual for such crimes are not existent regarding the editor in chief's case and the determination and bad will to insult or the use of vilifying words is missing. Another possibility is that the editor in chief can be sued as the abetting the crime, but the flaw residing in this latter possibility is that the editor in chief's operation has happened after the crime has been actualized and, essentially, there is no unified intention between the writer of the article and the editor in chief. There is a third possibility which seems to be a justified one according to which the editor in chief can be sued corresponding to the article 35 of the press law and sentenced to pecuniary punishments (Zera'at, 1998, p.102). The aforesaid article explains that "any violation of the law is a crime and if there is no punishment specified for such a crime in the Islamic penal law and the present law, the violator can be sentenced to one of the following punishments: a) pecuniary punishment ranging from one million to twenty million Rials; b) leaflet closure for a period no more than at most 6 months regarding the newspapers and at most one year in case of the other leaflets.

2. The juries standpoint regarding sacrilege as a crime: the proponents of the juries believe that the toughness and the inefficiencies of the rules and regulations, on the one hand, and the extreme desire and interest established in the magistrates and judges during the course of time in enforcing the law and executing what is discerned from the appearance of the statutory articles, on the other hand, in some of the cases, causes the law verdicts to lack their correspondence to the general public's conscience and in doing so the expedencies and exigencies of serving justice and fairness principles are therefore not fully observed and thus the convicts should be given enough chance to be able to enjoy the assistances and contributions made by the juries which is deemed as a reflector of the public conscience regarding some of the crimes such as political crimes and the press violations which are very

much connected to the public feelings more than other crimes and, subsequently, the rough and tough rules and regulations will turn out to be more fitted and consistent with the justice and fairness expediencies. The history of making use of the jury in the trials gets back to the ancient Greece. It is said that in the famous trial held for sentencing Socrates, 501 individuals issued their ideas as the members of the jury and declared Socrates guilty of advertising against the Government and sentenced him to drink a glass of hemlock (Tabataba'ei Motmeni, 2003, p.92). The jury in its current form has been excerpted from the England's law. This institution was made common after England was conquered by the Normans in the 11th century and it found its way to the other parts of the world from there. In the past, in some of the countries such as England it was customary for the members of the jury to be present in civil lawsuits. But, it is nowadays a common procedure mostly considered in political and the press crimes. The presence of the jury might take place in suing a crime, indictment stage or in trial stage, but it is in this latter stage that the jury's auspicious verdict in favor of the convict can result in deterring him or her from being sued and announced as not guilty (Spencer, 2004, p.42). In Iran's system of law, the jury had been taken into consideration in the article of 179 of the constitutionalists' amendment of the constitution which was approved in 29th of May, 1904. Based on this article the presence of the jury had been deemed as necessary regarding the political and the press law (Tabataba'ei Motmeni, Ibid, 2003, P:112). Corresponding to Islamic Republic of Iran's constitution, the political and the press crimes should be tried in open courts and it takes place while the jury is present in the justice department related courts. Act 168 of the constitution deals with the method of trying and the reference courts issues regarding the crime of breaching the sanctity of the religion perpetrated by the press. To find in-depth explication of the Act see the article 34 of the press law, stating that "probing the press crimes can be taking place in the general or Enqelab courts or these can be examined by other judicial department authorities according to the rules and regulations found of relevance to the intrinsic qualifications and they are anyhow held in open courts and with the presence of the jury. Note: the press violations are dealt with in the competent courts of the city centers of the provinces". According to this article it is no necessary to exclusively try the press crimes in the general courts; rather the crimes performed by the clergymen are dealt with in the clergymen-specific courts, the crimes against the country are tried in Enqelab courts and the military men crimes are probed in the military courts (if they are found to be of a specific type of military violations) and the crimes committed by the other individuals are examined in the general courts, although this article is in a conflict with the act 168 of the constitution regarding the non-judicial department authorities to the non-judicature-related since trying the press violations has been exclusively placed at the jurisdiction and qualification realm of the justice department courts therein" (Zera'at, 2002).

3. The enforcement mandate of the crime of sacrilege in the press law: the verdict of apostasy is the most intensive enforcement mandate of the crime of breaching the sanctity of religion specified in Iran's press law. Apostasy (with its Persian equivalent of Ertedad) means turning back to where a person has come from and the apostate is a person who becomes infidel after his or her submission to Islam. And in case of denying the essential elements of

the religion, the essential denial of the religion, refuting the Islam's great apostle's truthfulness and mocking the religion the person is considered as being an apostate. Of course the effects of such a verdict differ depending on the convict being a man or a woman and it also depends on the fact that the apostate is a national or a natural one. Additionally, it has to be mentioned that there is a need for five conditions to be provided in order for an individual to be considered as an apostate and these are maturity, sagacity, determination, volition and knowledge and in case it is found that there is a lack of one of the aforesaid conditions the verdict of apostasy cannot be issued. (Horr Ameli, 1980).

Conclusion

Sacrilege is one of the crimes predicted in Islamic penal law and it is noteworthy that although many of the decrees and the regulations therein pertain to the simple vilification of the religious sanctities but there are also specified decrees which are required to be sought for in the canonical sources. That is because the article 513 of the Islamic penal law offers a general definition for the term Islamic sanctities and a clear-cut and definite interpretation of such sanctities is missing. Based on the act 167 of the constitution, the judges also are obliged to refer to the canonical and religious sources and because it is not readily possible for all of the judges to get access to the canonical and religious sources, therefore there is a need for an extended research on the subject in order for it to be referred to by the respectable judges as a general guideline. It can be concluded from what has been presented up to the current point that there is a need for the religion and whatsoever can be inferred thereof to be distinguished in order to be able to easily and readily recognize the Islamic sanctities. For instance, the Holy Quran and the Islam's great apostle's Sunna (tradition) are the exact items reflecting the religion and the Sharia (canonical regulations), but whatever is deduced as the jurisprudential and discourse decrees from the Holy Quran and the narratives is part of the human knowledge and therefore they can be said to have no sacrosanctity unless it is found of an essential nature to the religion or the Shi'a Islam. Vilification of the Islamic sanctities, despite the simple insults, is not only a crime against the individuals rather the beliefs and the faith of the other religions can also be the subject of such crime as breach of the sanctity of the religion but there is a need for a correlative association between such violations and the essentials of the Islam in such a manner that insulting them can be taken as affronting the essentials of the Islam. But, in the end, it has to be mentioned that there is always a need for a delimiting border line in order for the expression of thought and ideas not to be inhibited and the freedom of expression can be preserved. Since Shia jurisprudence is dynamic and such dynamicity stems from expressing thoughts and notions regarding various issues it is necessary that not all of the things be considered as the essentials of Islam because everything other than the Holy Quran can be criticized because if it were not of the quality to be approached critically there were no such things as the Science of Biographical Evaluation of the Narrators (Elm al-Rijal literally rendered as the Knowledge of Men) and discourse science and so forth or there were no discrepancies observed on the originality or the lack of originality in the Hadith issued by the Immaculate Imams. So, the gate of criticism and

expression of ideas should be always open in order for the lean truths to be extracted thereof and in order to for us, as well, to get to our intended destination.

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