

Civil liability arising from damage to the individuals' fame and prestige in Iran's law

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ABSTRACT

Civil liability means legally requiring the compensation of losses imposed on an individual. Relying on the principle of freedom of expression, the press and media are incumbently obliged to offer analyses, reports, criticisms, conversations and transferring of thoughts. In the middle of this responsibility, they may unwillingly offer materials taken as damage to the prestige and fame of the individuals or as insolence or aspersion. In the today's world, media is considered as one of the important instruments for transferring information, directing the public minds, support or destruction, creation of protestive waves and so forth. It is possible in the course of the vast media activities that a real or legal person sustain losses and lose his or her position and belongings. The present article tries dealing with the civil liability stemming from the damage to the individuals' fame and prestige with an emphasis on the responsibility of the journalists so as to introduce this area's harmful activities and explicate the rules and regulations governing them. Due to the same reason, the judicial procedures in response to the legal issues related to this subject will be identified and investigated through studying and exploring the legal works.

Keywords: civil liability, fame, aspersion, the press, law, journalist

Introduction

Dispersion and promulgation of the false news and unreal events with the intention of damaging the others' fame or distressing the general public or the formal authority's minds is termed dispersion of disinformation. In other words, a person's practical and intentional promulgation and assertion of materials and works s/he knows to be unreal against a real or legal person or formal authorities without attributing certain actions to certain individuals and his or her expressing of baseless and false materials about others are intended by the disinformation spreading. Media have a subtle and extensive effect on the ethics and social thought of every society members and, currently, the occurrence of crimes like disinformation is quite likely in the media space considering the daily expansion of the information transferring technologies in the vastest dimensions; thus, the legislator's prediction of the qualities of such happenings and the criminal pillars thereof is very vital (Mir Mohammad Sadeghi, 2013).

The civil liability law points in articles 1, 8 and 10 to the individual's personal fame and prestige and stipulates the compensation of the intellectual and spiritual losses stemming from the damage to such a fame in favor of the victims. According to article 8 of this law, an individual is responsible for compensating the defamation as well as the losses s/he has caused to the fame and prestige of another person even by confirmation or promulgation of the fake news and assertions. It is evident that the aforesaid losses might be the product of the media activities (Ansari, 2003).

Civil Liability

Civil liability has entered the various aspects of the mankind's life and the human beings are not free of responsibility upon entry into the scientific, educational, industrial and other domains. Freedom of the press is the manifestation and embodiment of the freedom of thought, opinion and expression in the present era and it is a part of the individual rights by which the individuals have the right to express and promulgate their thoughts and opinions through the same press. The notable point is that the freedom of the press is not absolute like the freedom of expression rather such a freedom has been confined in every country by the legal constraints set by its legislator. These limitations are variable in every society according to the regulations, cultural conditions and the temporal-spatial effects (Hosseini Shegarabi, 2011).

Media's Civil Liability in Iran

Civil liability is circulating in all the life affairs of the today's mankind. Responsibility becomes more important especially with the specialization of the professions and occupations. Thus, from the perspective of the Iran's rights, civil liability includes 1) existence of loss; 2) performance of a harmful action by a perpetrator; and, 3) existence of causality relationship between the loss and the loss causer. In case of the actualization of these conditions, the loss should be compensated. The press and the journalists, as well, may perpetrate an action when fulfilling their roles and responsibilities that cause losses to individual(s) and this can set the ground for the media's civil liability. Undoubtedly, in case that the victim can him or herself prove that a newspaper's action has caused material or intellectual losses to him or her and s/he succeeds in justifying it, the medium is definitely obliged to compensate them (Pakzad Kordkalani, 2010).

Theory of Fault

Fault is one of the most important elements of civil liability and it has been proposed since long ago and the civil liability law of Iran conjectures this theory as a principle. Violation and going beyond the common limits in every action or subject can be considered as a sort of fault. The three material, legal and spiritual or intellectual elements are required for every action: performance of harmful actions by the press is the material element; the legal element includes the regulations of the press law or the Islamic penal code of law; and, the intellectual element incorporates the non-observance of the regulations, exercising of carelessness and heedlessness. Violation of the common limits can be the intellectual element of the fault. Of course, the harmful action should be only attributable to the defendant and its subject should be mutually holding true about the claimant, as well. Fault can be trivial and negligible in case that it is not followed by any serious effect and/or if it is not deemed serious and non-forgivable by the common laws; however, the heavy fault is not forgivable and the common law also considers it as having influential dimensions; thus, fault is not normally ignorable whenever it is found heavy. Fault is typical (Alibakhshi, 2011).

A victim of the newspapers' violation is not required to point to the legal articles or the law of civil liability and the press law because the judicial procedure and a judge's recognition based on article 8 of the civil liability law and the press law, passed in 1985, stipulate measures for issuing sentences in case of the necessity of loss compensation. In Iran's law, the fault is a principle and the judicial procedure, as well, is inclined towards fault.

Theory of Danger Creation

The creator of a work ground that might be prone to dangers and risks is to shoulder the responsibility of the riskiness and the contingent dangers in the same way that s/he enjoys the possible interests and benefits. "The owner of the sheep has to pay the fine". This issue is not solely exclusive to the factories or

manufacturing institutes; any task, including the press and the media actions, can fall under this purport. Based thereon, a senior manager is originally considered liable and, from the perspective of Iran's civil liability law, the owner of a right and/or privilege is surely and definitely considered responsible. In the laws of France's civil liability, as well, this same issue holds true. In case that the media makes advertisement about a commodity which happens to cause destruction of another person's fame and his or her sustaining of certain losses, s/he would be held liable and responsible. This same rule can be also generalized to the journalists and the violating media can be reproached. Of course, the method of proving and justifying the risk has certain risks and the match should be made based on the general regulations of the civil liability (Bay, 2009).

Theory of Right Guarantee or Stark Theory

In the two previous theories of fault and danger, the loss compensation can be demanded according to the harmful action's performance and sustaining of a damage of a type and this has been well-justified. However, the right guarantee theory holds that no loss should be left uncompensated; accordingly, the press and the medium that has caused losses to an individual(s) should be held liable for the compensation of them. If a newspaper or a medium enters the individuals' privacy in the use of its right of news acquisition, the free news broadcasting right and the information right and/or discloses news that damage the prestige and honor of the individuals, it has to be held liable for loss compensation. Violation of the legal regulations and misuse of the right should be proved. Generally, the claimant is responsible for proving the loss based on the three previously stated pillars, namely justification of the loss, the attribution thereof to a certain person and justifying the causality relationship between the causer and the loss. Of course, the foresaid theory should establish a logical relationship and a rational proportion between the right of expression freedom, citizen's privacy right and the general rights in such a way that the judge can eventually rule that the principle of freedom of the press is not limited and no flaw is caused in this regard; simultaneously, the privacy right of the victim should be also guaranteed and compensated. This theory was posited by Burris Stark and it is known as Stark Theory. Of course, there are put forth other secondary theories and ancillary discussions that are beyond the present study's scope (Ansari, 2012).

The Press and the Media's Civil Liability in the Realm of Individual Rights

The responsibility of the press and the managers and the media's officials is a function of their type of actions. However, based on Iran's penal law, articles 30 and 31 of the press law investigates the violations and crimes that begin with the complaint of a private plaintiff and with his or her satisfaction within the area of the individual rights. Plagiarism is amongst the special crimes that also have civil liability based on the law. Note (1) to article (6) realizes in its 20th paragraph the intentional attribution of all or a considerable part of the others' materials and works to one's own self or others as a crime and introduces it as deserving both the civil liability and criminal penalty hence compensation. Copying the name or use of the sign of another journal is also amongst the press's limitations and paragraph (C) of article (7) of the civil law has underlined it and considers the users of them as being civilly liable for loss compensation and deserving criminal punishment, if necessary. Threatening the individuals by means of the press is also a crime as stipulated in article 31 of the civil liability law and the doer is convicted to loss compensation and, probably, the stipulated criminal punishment (Bordbar, 2009).

Disclosing the others' secrets by means of the media and the press is also a crime. Although this one has been mentioned in the Islamic penal code of law, article 648, the threatening of the others by means of the press makes an individual civilly liable for the compensation of the material and intellectual losses in addition to the legally stipulated punishments. Other cases that jeopardize the individuals' rights in any form are also enumerated amongst the right violations and they may cause civil liability of the journalist or the press.

As for the method of the loss compensation in this area, payment of the material loss, requiring the insertion of an answer and asking for apology might be also subjected to courts' sentences.

Civil Liability of the Media in the Realm of the Public Rights

The territory of the public security and order and observance of the social systems incorporates limitations for the media and the press and their violation makes the media and the journalist responsible. In the area of the individual rights, a person might be damaged materially or intellectually whereas the importance of the public domain is for the reason that the loss is imposed on the community and the social system. Thus, the legislator has always considered the penalizing of the violator for safeguarding the public order. Although the legislator guards the interests of the individuals and the society and, in other words, support of the public order is also a sort of supporting the individuals' rights, the lawsuit is not terminated and stopped in the area of order and security with the forgiving of the plaintiff rather a sentence is issued for it as a case of public crime. In this area, crimes like taking measures against the country's security, disclosing of the military and foreign policy secrets, espionage, insolence to the authorities and sacrilege usually fall in this set (Ansari, 2011).

It seems that the legislator has considered aspersion, insolence and abuse as deserving both civil liability and criminal punishment. Considering the fact that most of the complaints filed against the press include these same crimes, it seems that the corroboration of the civil liability and emphasizing on the loss compensation with the goal of the public order and rule and observance of the individual rights is closer to the expediencies and sentences should be consequently issued based thereon.

Jurisprudential Regulations Governing the Development of the Media and the Press's Civil Liability

The basics of the media serve such a function from the jurisprudential perspectives as decriminalization of the cases and strengthening of the civil liability, including exercising benevolence and corroboration of no-loss axiom or non-misuse of the rights as well as promulgation of the maxim of enjoining good and preventing depravities. Based on these regulations that govern the foundations of the press's function, emphasis can be placed on the reinforcing of the civil liability meanwhile practicing decriminalization.

Kinds of the Media Activities

In line with the classification of various kinds of loss in the media, two groups of loss should be noted subject to the effect of them. Some of the imposed losses are public in terms of the media's nature and some others are losses specific to a given medium considering the expediencies of its activities (legal responsibility of the journalists).

Written Media

The press and the books are amongst the most well-known media having a subtle effect on the public thoughts. Corresponding to the law of the goals and duties of the ministry of Islamic culture and promotion, passed on 3rd of March, 1987, the enforcement of the regulations related to the press and the journals and determination of the corresponding criteria and regulations and concentrating the distribution and publication of the state declarations inside and outside the country are the duties of the aforesaid ministry. Generally, perpetration of the harmful actions by the press is the foundation of the media's loss compensation. In regard of the journals and newspapers, note (4) to article (9) of the press law has stated that the (generally criminal and legal) responsibility of the materials published in a journal as well as that of the other affairs related thereto is to be shouldered by the editor-in-chief. Article 6 of the law on the modification of the press law has appended several notes to this article; in between, note 7 can be pointed out that stipulates that "the responsibility of the articles and materials published in a journal is to be shouldered by the editor-in-chief but this responsibility does not cancel the responsibility of the author and the other persons who have been involved in the crime perpetration" (legal responsibility of the journalists).

Audiovisual Media

In our country, television and radio work as strong and unique media in the society's arena due to their monopoly by the government and this same governmental nature of them has made the Islamic consultative assembly's representative not to codify the special criteria for the civil and criminal liability stemming from TV and radio programs. The law on the administration of Islamic Republic of Iran's TV and Radio, passed in 1980, expresses the independence of the television and radio and simultaneously explicitly elaborate the

supervision of the three governmental branches and the method of their heads' appointment. Although the generalities of article 16, 19 and 40 of the foresaid law convey the procedural unity in prohibiting the insolence and requiring the honesty and tolerability, article 16 of the aforesaid law emphasizes on the honest expression of the social events and happenings and it has been stipulated in article 19 of the TV and radio law that they should not broadcast the issues containing slandering of the institutions, organs, groups, ethnicities and fractions in their programs, particularly the news; in article 40, upgrading of the culture of enjoining good and preventing depravity through setting the ground and creating the sound space for welcoming criticism and free debate and sound encountering of the thoughts has been introduced. However, all these cases do not seem to be enough for legally pursuing the losses stemming from the harmful actions by the TV and radio (legal responsibility of the journalists).

Digital Media

In Iran, the law on the prohibition of the application of the equipment for receiving programs from satellite, passed on 12th of February, 1994, by Islamic Consultative Assembly, and its procedures, passed on 29th of March, 1995, are only pertinent to the satellites. Although the citizens' negligence of the foresaid law has separated this law from its legal functions, it has to be still considered as an indispensable law in legal terms due to the non-conclusion of the counteracting regulations. In the article 10 of the aforementioned procedures, the promulgation of advertisements through various ways in the press and TV-Radio or intraurban banners that entail acquiring the permits for the use of satellite programs is forbidden, article 14 of the previous law states that the unit heads using the foresaid equipment in their organizations and institutions can be held responsible for any illegal use thereof (legal responsibility of the journalists).

The civil liability stemming from the internet communications speaks about the compensation of the losses caused by the actions of each of the various individuals who work for various reasons with the internet to the other individuals' rights or surely obtainable interests. In the risky internet environment, if a person jeopardizes the rights of the intellectual or material members of the creators of the scientific, literary and artistic works or the trademarks or even disperses a false news and so forth and exposes their personalities to jeopardies and causes intellectual losses to them; can this loss be compensated? Who should be held liable? (legal responsibility of the journalists).

The imposition of damage stemming from the internet activities can take place in the following default formats: 1) outrage, 2) illegal intruding into the privacy, 3) violation of the trademarks, 4) violation of the author's right (copyright), 5) imposition of loss through computer viruses, 6) internet communication (unauthorized links), and 7) promulgation of false news (legal responsibility of the journalists).

Examples of the Journalists' Loss Causing

Some interventions by the journalists cause losses to the others and they are considered as criminal actions considering the activity type and the governing regulations hence deserving punishment. It is evident that the perpetrators' punishment is per se a solution for tranquilizing the victims psychologically and emotionally. The enforcement of the criminal punishment and/or legal loss compensation enforceable for the crimes of the mass media should be inter alia in match with the type of the crime and action perpetrated by the media and investigated in separate (legal responsibility of the journalists). The harmful actions of the media causing material or intellectual losses to the others can occasionally take place in one of the following forms:

Violation of Privacy

In Iran's legal system, principles 22, 23 and 25 of the constitution and articles 570, 580, 582, 641 and 669 of the Islamic penal code of law, some issues related to the privacy of the individuals have been taken into account because no other person has the right to enter the private territory of an individual (legal responsibility of the journalists).

Act 22 of the constitution: the honor, life, properties, house and job of an individual should be kept immune of the abuses unless otherwise has been stipulated by the law (legal responsibility of the journalists).

Act 23 of the constitution: inquiring the beliefs and opinions is forbidden and nobody can be abused and reproached for the mere possession of an idea (legal responsibility of the journalists).

Act 25 of the constitution: searching an individual and blackmailing him or her, recording and disclosing an individual's telephone conversations, dispersing an individual's telegraphs and telexes, censorship, disallowing the individuals' communication and frightening of them, eavesdropping and any sort of spying is prohibited unless by the rule of law (legal responsibility of the journalists).

Article 570 of the Islamic penal code of law has stipulated the confiscation of properties, detachment from service and deprivation from the governmental jobs for 3 to 5 years and incarceration for 6 months to three years for the governmental agents violating the abovementioned cases (legal responsibility of the journalists).

Articles 582 and 641 of the aforesaid law realizes the abuse to the letters and telecommunications and telephone conversations of the individuals in an illegal manner as deserving punishment. In all of the abovementioned cases, the article 1 of the civil liability stipulates that should a person intentionally and without legal permit or through carelessness damages the life, the financial properties, freedom, honor and business fame of another person, s/he has to compensate the losses and the victim can sue him or her (legal responsibility of the journalists).

Unauthorized Dispersion by Courts

Although the publicness of the courts is one of the principles indicating the promoted nature of our country's constitution (act 65 of the constitution), the question is that can the journalists disperse the reports of the public court sessions or not? Article 188 of the civil procedures law on the criminal affairs realizes the court's publicness as meaning creating no barrier for the individual's presence in the courts but it announces that the dispersion of a case's whereabouts in the media before the finalization of the judicial sentence is not authorized. Article 13 of the law on the administrative justice court, as well, asserts that the insertion and publication of a violation in the newspapers before its justification is forbidden. It has been stated under the article 225 of the criminal procedure law that the dispersing of the court's hearings through the mass media and/or filming and preparing images and disclosing the specifications and identity of the culprits is forbidden and the violators will be sentenced to the legal punishment inserted in article 648 of the Islamic penal code of law. Children have a special stance regarding the law on the media. For example, the press do not have the right to offer trial reports related to the individuals under the guardianship of an individual. Furthermore, dispersion of the Islamic Consultative Assembly's non-public negotiations, as well, is amongst the examples of illegal promulgation (legal responsibility of the journalists).

Misleading Through Advertisements

Newspapers are capable of showcasing a fake thing as authentic and vice versa. Offering incorrect advertisements in the financial (commercial) or cultural or political (presidency election, congress, council of leadership experts and city and village councils) areas are all likely to actualize losses; media should not go in each of these domains beyond the rules and regulations governing the subject or seek destructing through advertisements (legal responsibility of the journalists).

The procedures of the establishment and supervision on the work method and activity of the advertisement centers, passed in 1978, by the Islamic Revolution Council has clearly stated the method of their advertisements and information-provisioning. According to article 12 of the foresaid procedures, media should avoid misleading materials and unjustifiable advertisement claims and they should not take advantage of the unconfirmed scientific materials (legal responsibility of the journalists).

Based on the foresaid article in the procedures of the establishment and supervision on the work method and activity of the advertisement centers, the use of the unethical images and pictures contradictory to the religious beliefs and public chastity as well as the insolent materials is forbidden. Paying no attention to each of these regulations can cause civil and, even, criminal liability of the violators (legal responsibility of the journalists).

Misuse of the Trademarks and Intellectual Works

For supplying themselves with financial resources, newspapers are generally obliged to use commercials and introducing works and so forth. Trademarks of the companies include any signs distinguishing the goods or services offered by certain manufacturing or service companies; for instance, Coca Cola logo and Benz logo or Iran Khodro's logo and so forth as well as the scientific and artistic and cinematic and musical and commercial works and their dispersion without the authorization of the owners is an abuse to their rights. Although His Highness Imam Khomeini (PBUH) believes in Tahrir Al-Wasileh, volume 2, that the existent rules and regulations do not feature a canonical dimension and the author's right is not authenticated in publication and promulgation monopoly, Mr. Dr. Abolghasem Gorji has presented some materials later on about Imam (may Allah consecrate the honorable soil of his tomb)'s negation of his previous sayings in this regard (legal responsibility of the journalists).

Provoking to Crimes Against Security

In case of taking actions in line with provoking the people or certain groups for performing against the security, the journalists should accept the responsibility of their actions. In line with this, article 25 of the press law has transformed the criminal punishments to those stipulated in the former general punishment law and the contents of articles 512 and 504 of the Islamic penal code of law have made stipulations regarding the subject. However, based on the existent legal generalities and the various jurisprudential regulations, the civil liability stemming from the media's actions is also notable. Taking actions parallel to the provocation of measures against the security has a lot of and endless examples amongst which advertisement against Islamic Republic, stimulating to take rebellious actions in the armed forces and creation of the ethnic and tribal provocations can be pointed out (legal responsibility of the journalists).

Dispersing Confidential Governmental and Military Documents:

Dispersing the secret and confidential governmental documents is unauthorized and deserving punishment based on the law on the punishment of the armed forces and the law on the punishments for the dispersing and disclosure of the confidential and secret governmental documents, passed in 1974. The secret and confidential and other classified documents have procedures of a specific type and all the media are prohibited from dispersing such documents without first acquiring permission. If such documents are dispersed and harms and damages are sustained by a person, a group and/or even the government, the violator has to compensate the losses. During the recent years, as well, the publication of the confidential document belonging to the ministry of intelligence in Salam Newspaper caused it shut-down and penal treating of its editor-in-chief (legal responsibility of the journalists).

Resources of the Journalists' Civil Liability

Constitution

Constitution is the reference law determining the policies, strategies and principles governing the quality of guaranteeing the individual rights and freedoms as well as the other things. Thus, paying attention to the issue of civil liability is a completely expectable issue therein. In the constitution of our country, this expectation has been positively replied to some extent. The two acts 22 and 40 of Islamic Republic of Iran's constitution have dealt with the expressing of certain rights without explicitly defining the civil liability; these rights have been accordingly supported and abuse of them would be accompanied by the civil liability of the abuser. Act 22 of the constitution stipulates that "the honor, life, properties, rights, house and occupation of the individual has to be kept immune of any sort of abuse unless otherwise has been prescribed by law". The immunity described in act 22 means the improperness and liability-causing nature of any abuse and violation of each of them whether it is done by the government or by the people and whether by the institutions like public state or private media or others.

In act 40 of the constitution, it has been stated that "nobody can cause losses to others or abuse their public interests". This principle has prohibited the causing of loss to the others even in case it is found being performed for enforcing a right thing. One result of such inhibition is the emergence of the "civil liability" for the individual enforcing the right, on the one hand, and the limits of enjoying the legitimate rights by individuals or public media, including the press.

Civil law

In order to elucidate the civil liability in the civil law, it is necessary to investigate three general topics, namely usurpation, wastage and causation.

1) Usurpation:

Literally, usurpation means perpetration of such a transgression as occupation of a place without permission; legally and based on article 308 of the civil law, it is "dominating the other's right by use of force". The domination mentioned in this article means taking possession of another person's right and occupying a landed property as ruled in article 309 of this same law and the scale for judging about this issue is the common law. So, when a person prevents an owner from occupying his or her property without s/he him or herself dominating it, s/he is not a usurper but s/he is held liable in case of the personal or causal wastage of the property.

2) Wastage:

Based on article 328 of the civil law, "any person wasting another person's property would be held liable and has to pay an equivalent price for it whether s/he has happened to intentionally or unintentionally waste it and whether s/he has happened to waste the exact property or an interest thereof; if the property is flawed, the perpetrator is liable for paying the price of the flawed part".

As it is seen, in order to recognize as liable the person who has wasted a property, the legislator has not found it necessary for the wastage to be exactly intentional and he has introduced the unintentional property damagers or wasters as also being liable. The legislator has also stepped a little more forward and does not realize carelessness and heedlessness as the lifters of the liability resulting from the wastage. This way, the civil law has predicted a sort of typical liability or, in other words, a faultless responsibility for the waster of the others' properties thereby to guarantee the owner's rights. Therefore, in order to actualize the civil liability stemming from wastage, it is enough to verify the direct causal relationship between a person's action and the wastage of other's property in such a way that it can be stated that causality relationship in regard of the wasted property's characteristics is amongst the instruments of the typical liability.

Generalizing the criterion in article 329 of the civil law, it can be stated that a person is responsible for the wastage or flawing of another individual's property whether it has been done by complicity or causation and whether the property be movable or immovable. The thing intended by the legislator is the reparation of the wasted property and/or making payments for it. In case that the reparation of the flaw is not possible and the remaining part(s) feature value and usability, the wasting party should pay an amount of money for the differential of the sound and flawed property and not the whole property's price. Based on article 3 of the civil liability law, a court can determine the amount of loss and the method of its compensation considering the case's status, especially in certain cases that there is no possibility of favorable and proportionate repair of the flawed property for which the liable person is sentenced to make an equivalent price payment.

It is worth mentioning that the first article of the civil liability law, 1960, speaks about the general maxim of liability and the verdict of article 328 of the civil law is specific to wastage hence it has not been obliterated by the declaration of the general maxim.

3) Causation:

Based on article 331 of the civil law, "every person causing the wastage of a property should pay an equivalent price or a similar property; if s/he happens to flaw the property, s/he should shoulder the price for the flawed part(s)".

In causation unlike in wastage, the person recognized responsible for the loss compensation has not wasted the other's property in a direct and non-intermediated manner rather s/he has just set the ground for such a happening and this has contributed to another person's sustaining of a loss such as when a person who starts a fire near a house when the wind is blowing towards the house and causes it to go on fire.

Civil liability law passed in 1960 is the most important law in the area of the civil liability and it deals with this issue in a general manner. Based on the first article in this law, fault is the basis of the civil liability which is indicative of the legislator's inclination towards the theory of fault and distancing away from the theory of danger. The necessity for loss compensation (material and intellectual) or the principle of perfect loss compensation and some examples of the material and intellectual losses have been mentioned in the articles 1, 6, 8, 9 and 10 of the foresaid law.

Loss compensation method is quite dependent on the judges and public prosecutors' options for the selection of one of the loss compensation ways considering the case's situation, their inclinations and willingness for penalty mitigation as stipulated in articles 3, 4, 5, 6, 8, 10, 11, 12, 13 and 14. Additionally, some of the most important examples of the losses stemming from the press activities, including damage to the fame and prestige and position of another person, have been introduced in articles 8 and 10 of this law.

Effects of Journalists' Civil Liability:

Offering a perfect image of the civil liability effects stemming from the press activities entails identification of the methods of loss compensation and its various branches. It is also necessary to identify the issues like the court qualified for trying the civil liability claims against the press activities and recognize the interested parties and the conditions of the demandable loss in such claims so that the effects of the discussed liability can be introduced. Therefore, this chapter has been dedicated to the aforementioned issues.

Loss Compensation Methods

A) Financial Methods

Method of compensating the losses originating from the defamation is implemented in two ways in various legal systems:

- 1) Loss compensation by paying money
- 2) Preventing the promulgation and dispersion of the insolent materials or false accusation

In the laws of Iran, although the necessity of compensating the intellectual losses have been explicitly mentioned in various regulations, the judicial procedure has not still reached a clear-cut result about the intellectual losses. This is while paying money sums is occasionally better than leaving the intellectual loss uncompensated considering the loss compensation goals one of which is satisfying the person who has incurred loss. Due to the same reason, prediction of a particular legal text prescribing the necessity of compensating the intellectual losses by paying moneys seems to be necessary.

B) Non-Financial Methods

1) Requiring the correction or apology in the press

Loss compensation by reimbursement includes the sum of money or a property paid or given by the convict for repairing the losses incurred by a private claimant. Financial loss can be compensated by paying of money in a perfect manner but the intellectual loss and psychological damage cannot be completely repaired in this way.

In order to more completely compensate the intellectual loss and remove the effects of insolence or false accusation, the legislator has allowed courts to issue sentences for paying of money for compensating the incurred losses and also devise other methods of intellectual loss compensation. Article 10 of the civil liability law has stipulated in this regard that "whenever it is required by the type of fault and importance of loss, a court can issue sentences for the compensation of the financial damage in case of the guilt justification and simultaneously rule the compensation of loss in other ways such as requiring the apology and insertion of the court's sentence in the newspapers and others of the like".

Requiring the defendant to express apology in the public media has been accepted in article 10 of the civil liability law but the aforesaid article's approach can be criticized in a limited manner and in regard of its result: first of all, the aforementioned method has not been independently introduced and it has been

declared as a supplementation to the other ways of financial loss compensation. Secondly, the resort to this method is just done in exceptional cases and it has been suspended on the “importance of loss” and “type of fault”.

2) Insertion of the Defendant's Conviction Verdict in the Journals:

Like expressing apology in the public media, the insertion of the defendant's conviction in the journals occasionally compensates and/or repels the imposed losses. The selection of each of these two methods is up to the plaintiff. If s/he wants, s/he can select both of the wants or one of them through filing a lawsuit, particularly when a false claim is made against another person, s/he finds it better to disregard the material losses and only demand the issuance of the defendant's conviction verdict and its dispersion in the public media from the court and this same issue provides him or her with satisfaction of mind because this method is also considered as a sort of punishment.

Article 10 of the civil liability has recognized this method as somehow a completer of the financial loss compensation. However, this does not mean that the judge can use this method independently according to the plaintiff's demand and article 3 of the civil liability law. Article 27 of the law on the support of the rights of authors, composers and artists, as well, has the following stipulation in this regard: “private plaintiff can demand the court issuing the final verdict to announce the contents of the verdict in one of the newspapers as chosen by him or her and at his or her cost”.

Of course, publication of the verdict in the newspapers as demanded by the private claimant features a reparatory aspect and it is enumerated amongst the means of intellectual loss compensation but, when it is carried out by the rule of law and without the claimant's demand, it lacks the reparatory aspect hence viewed as a sort of punishment or preventive measure.

3) Raking the Harmful Works and Preventing their Promulgation, Broadcast and Offering:

Based on article 29 of the law on the support of the authors, composers and artists' rights, judicial courts can investigate the private plaintiff's complaint and, simultaneously, take measures in line with preventing the publication, broadcast and offering of the complained works and their confiscation and issue the required orders to the justice department's law enforcers. Article 9 of the law on the translation and publication of the pink books, journals and works, as well, stipulates that “the judicial authorities are obliged to investigate the complaints by the private plaintiffs and adopt expedient decisions regarding the prevention of the publication, broadcast and offering of ... journals ... for which complaints have been made as well as their confiscation”.

4) Temporary Shutdown or Confiscation of the Medium:

Article 23 of the procedures on the establishment of and supervision on the printing shops and the affiliated units stipulates that “violation of the regulations of these procedures causes the prevention of activity or temporary shutdown of the printing ship and its affiliated units”.

The note to the article 23 of the press law, as well, stipulates the temporary confiscation of the journals within at most ten days based on the order by the head of justice department and substantiated on the non-insertion of a specific response by the interested party in that journal; this purport has also been reemphasized in the note to the article 31 of the same law.

Additionally, article 7 of the procedures on the issuance of the permission for establishment and dissolution of and supervision on the means of foreign mass media and their representatives stipulates the followings in this regard: “as for the violations for which legal sanctions have not been predicted in these procedures, the ministry of the Islamic culture and guidance can take measures in a case-specific manner parallel to the invalidation of the license, shutdown of the agency office, prevention of activity continuation and so forth”.

Moreover, according to the note appended to article 12 of the press law, the supervision committee can confiscate the journal regarding some of the violation subjects of articles six and seven in which case it is needed to send the file for investigation to a court within one week.

5) Responding:

Responding is a right applied for defending the personality and compensating the losses imposed on the honor. In the laws of Iran, the right of responding has been manifested in article 9 of the press law, 1955, and it has been now completed in article 23 of the press law passed on 13th of March, 1986 and its later reformations. It has been stated in this article that “when insolent materials or false accusation and/or untrue criticism of an individual (real or legal) is observed in the press, the interested party has the right to send the answers within one month to the same journal which is subsequently obliged to publish the explanations and answers in one of the two issuance numbers circulated after the receiving of the answer free of charge in the same page and column and with the same letters with which it has published the criticisms provided that the answers should not exceed two times the volume of the original criticism and include no further insolence and false accusation.

Qualified Court (Authority Trying the Civil Liability Claims Stemming from the Press Activities):

A) Qualified Authority in Pure Civil Liability Claims:

Civil liability claims against private persons are tried in the justice department courts and, in case of the specialized divisions, in its legal courts. Based on article 3 of the law on the formation of the general and revolution courts, passed in 1994, trial of all the civil and criminal matters and non-litigious affairs is within the jurisdiction of the general courts in every judicial domain considering the local territories.

B) Qualified Authority for Trying the Civil Liability Stemming from Crime:

“Crimes with two aspects can cause two claims:

- a) General claim for the preservation of the divine limits and public rights and order
- b) Private claim for the demanding of rights like retaliation, reparation of false accusation and loss compensation of the real or legal persons”.

“When the suing of a judicial case is stopped or ended in acquittal for a legal aspect or another, trying of the other aspects can be carried out” with the trial of the private claim being one of these dimensions.

It has been with the formation of the general and revolution courts in 1994 and considering the elimination of the legal and criminal courts from the country’s judicial organizations that the individuals incurred losses are to incumbently file private lawsuits (like criminal claims) in the general courts. Based on article 12 of the general and revolution courts’ trial procedures regarding the criminal affairs, “when the court recognizes a culprit as guilty, it is obliged to issue a penal sentence and, simultaneously, determine the private claimant’s loss according to the existing documents and proofs unless trial of the loss is found in need of further investigation in which case the penal sentence is issued and the loss plea is subsequently investigated till the achievement of an expedient sentence”.

The notable point is that article 11 of this same law realizes the loss demand as entailing the observance of the civil trial procedures’ formalities and this has been previously explicitly asserted by the procedural unity order of the general assembly of the country’s supreme court.

Based thereon, if one of the public media perpetrates a criminal behavior followed by a loss, the loss-incurred person can demand the compensation of the loss in the course of the qualified court’s trial of the criminal action and the court is obliged to simultaneously try the case and issue a sentence regarding the loss compensation.

Furthermore, the trial of the crime stemming from the public media’s activities is occasionally beyond the jurisdiction of the justice department’s general court in some of the cases and within the jurisdiction of the clergymen-specific or revolution courts and this issue is per se in need of more contemplation because the nature of the press crimes is in such a way that the required guarantees should be maximally observed and, due to the same reason, the constitution has stipulated in act 168 that the trial of the public crimes should be heard in public and in the presence of a jury. This necessitates that the trial of the public media’s crimes should be conducted in the general courts of the justice department and recognition of the private courts for trying the press crimes should be avoided for the private courts sometimes have special trial procedures that are not in coordination with the general courts’ trial procedure hence hurting the defense rights of the culprits.

Conclusion

The country's stipulations about media disinformation is very weak in such a way that reference should be made for the investigation of its qualities to the general laws, i.e. the Islamic penal code of law and it contains general regulations in this regard and ignoring the special attributes of the mass media about the perpetration of disinformation; thus, considering the intensive technological growth in the area of the mass media, more exact prediction of the criminal nature of disinformation in the mass media and that in separate and based on the specific expediencies of the media is amongst the necessities of the jurists duties in Iran.

Relying on the act 24 of the constitution, the fourth political-social development, article 130, the fifth political-social development, article 211, and the macro-level judicial procedure, Islamic Republic of Iran has taken measures in line with decriminalization of some crimes by the press such as aspersion, insolence, defamation and disinformation as stated in articles 30 and 31 and enumerates these crimes as torts and civil transgressions; this way it has been able to organize the existent vague regulations of the press. The public media's comprehensive legal bill has paid a special attention to this matter.

Considering the experiences made by various countries that have reached the end of this line, it can be stated that the crimes against the intellectual personality of the individuals in Iran should be investigated through corroboration of the civil liability based on torts. By issuing sentences on the loss compensation and pecuniary punishment and punitive ordinances, the courts can transform the developments in the civil liability realm in the legal literature and executive system of the media into judicial procedures. This process also results in the separation of crimes from transgressions and it is followed by the reduction in the crime titles. It has to be also announced that measures can be taken in line with decriminalization and removal of lacing and incarceration for the press crimes based on the legal authorities and the macro-level judicial policy as focused by the judicature, the enactments of the system exigency council and commands of the supreme leader and replace them with the administrative, civil, disciplinary, educational and supportive punishments. This has been already carried out in various countries. This measure is not in contradiction to the jurisprudential and canonical basics and its legal grounds have been set.

Promotion and development of the civil liability is consistent with the judicial procedure of the Islamic Republic of Iran and, in line with this, emphasis can be placed on the syndicate-related regulations and trial by the dispute-resolution councils confirmed by the judicial system thereby to set the ground for the reduction in the number of the press lawsuits filed to the judicial system and, on the other hand, more rapidly try the cases so as to help the loss-incurred individuals achieve their flawed rights and loss compensation.

It has to be also underlined that the development of the civil liability causes flexibility and trial capability of the torts and the transgressions and crimes perpetrated by the modern media technologies and enable the possibility of judicial system's on-time entry into the unexpected and unpredicted issues stemming from the modern electronic technologies and this is of a great importance in itself. From the perspective of the jurists, there is a circle of certainties and definite verdicts in Islam that, though being few, are unchangeable and the rest of the decree and verdict changes are up to the Islamic jurisprudents and scholars.

Thus, the press and media crimes fall in the Ta'azir punishments and the general axiom of "Ta'azir punishments are set by what the rulers see" enables us to change the subject, time and place as well as the social conditions and situations thereby to instigate actions for changing the verdict in such a way that sculpturing, miniaturizing, photographing, blood selling and purchase and autopsy and some others that had been previously announced forbidden have been transformed into permitted jobs.

Therefore, criminalization related to the individuals' intellectual personalities can fall within the inclusion circle of the torts. The present study's emphasis is on the development of the civil liability in match with the general policies of the judicial system. As stated in article 130 of the fourth and fifth development programs of Iran, the goal of decriminalization and incarceration alternatives is the promotion and corroboration of the individuals' civil liability and, considering the unknown aspects of the technological development, the maxim of the "crime and punishments' legality" does not naturally cover many of the newly emerging issues while the civil liability and its basics can be matched with all the posited matters at any time and it leaves no loss uncompensated in practice.

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