Judicial-Criminal Policy of the Islamic Republic of Iran towards Traditional and Electronic Press Offenses

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Abstract

One of the main topics in Criminal Procedure Code is the recognition of a competent court over a crime. Press offense and e-publications are not an exception especially considering the fact that press offenses have been taken into account in the Constitution. Conflicts over the competency need to be resolved, however. Therefore, this article aimed to investigate the policy of Iran towards the scope of the rules of procedures in prosecution and trial. The judicial policy is statistically reviewed.

Keywords: Criminal Policy, Judicial-Criminal Policy, Press Offense, E-Publications, Print (Non-Electronic) Publications, Competent Court.

Introduction

This article aimed to study the press offense from the perspective of Iran's judicial-criminal policy. Press freedom calls to both traditional and electronic publications to be free from intimidation and fear of political authorities and criticize. Article 19 of the Universal Declaration of Human Rights states that: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers." Islamic Republic of Iran's Constitution has also recognized the principle of freedom of the press. Article 24 of Islamic Republic of Iran's Constitution state that ": Publications and the press are free to discuss issues unless such is deemed harmful to the principles of Islam or the rights of the public. The law shall determine the details of this exception." This freedom covers two types of authorization for a director of a magazine: Freedom before publishing and freedom after publishing, meaning that the individual is able to freely become the license holder of a magazine and the contents are not censored prior to the publications. The freedom after the publications calls for freedom of speech and the right to a fair trial in a competent public court. With the adoption of the principle of separation of powers, judicature is the only body to order when a press is accused of a crime. Article 156 of Islamic Republic of Iran's Constitution confirms this issue.

1. Islamic Republic of Iran's policy of judicial prosecution for traditional and electronic press offenses
Due to the importance and role of press against power-seeking nature of governments and its negative and destructive role concerning the public offense, the crime of managers of publications is politically and legally doubled. It means that public powers try to limit the constructive freedom of press in order to maintain the public peace; however they are following their own political benefits. Hence, there are three types of cases of press offenses:

**A-Private Complaint:** In Iran's Law, the victim is the one who initiates the process. In press offense concerning private complaint, the judicial procedure begins with the complaints of individuals. According to the Article 30 of Press Law¹, slander, libel, and the use of invective language are the cases begun by private complaint. Should the complaint withdraw his/her complaint, the prosecution would stop at whatever stage it might be.

**B- Public Prosecution:** Offenses envisaged in Articles 24, 25, 26 and 27 of the Press Offense are the subjects to Public Prosecution. According to the Note of Article 27 of Press Offense, these offenses and crimes including the insult the supreme leaders or senior religious authorities, encouragement of people to commit crimes against the national security and foreign policy, and publishing military confidential at the subject to be prosecuted by the official authority.

**C- Crime Report by Special Regulatory Bodies:** Press Supervisory Board, mentioned in Article 10 of Press Law, is a specific body involved in press offenses. Article 12 legislated in 1985, calls the Press Supervisory Board to report the press crime to the judiciary bodies. In 2000 Amendment, the responsibility was transferred to the Ministry of Culture and Islamic Guidance. The Amendment states that "Concerning Article 6, except for Note 3 and 4 and Note B, C, D of Article 7, the board is allowed to stop the press. In case of stopping, the board is required to the send the case to the court."

Although the condition was to guarantee the law implementation, it weakened the position of the Press Supervisory Board and the Ministry of Culture and Islamic Guidance is unnecessarily involved in the process. As a result, the philosophy of the Press Supervisory Board is questioned. It seems that neither of the bodies can be recognized as the press offense party because the prosecution and filling is the exclusive jurisdiction of court and governmental officials can only report the crime and offense. Oppositely, some support the Press Supervisory Board (Pour Ostad, 2004).

### 1.2 Prosecution in Press Proceedings

According to the Article 11 Code of Criminal Procedure Act of2013: "When an accused is being tried, Public Prosecutor is entitled to prosecute concerning the public aspect and complainant is entitled to prosecute concerning the private aspect" In 2013 Code of Criminal Procedure Act, Article 11 has given the prosecution to the general attorney concerning the general aspect and to the private complainant concerning the private aspect (Salimi and Bakhshi Zadeh. 2016, 11).

In Press Law and other related laws for press offenses, the separation has been observed to some degree. For example, according to Note 27 of press law, the crimes addressed to Article 24, 25, 26, and 27 are not the excluded.

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¹ **Article 30:** Publication of any article containing slander and libel and the use of invective language and derogatory allegations, etc. against individuals is prohibited and the guilty managing director shall be referred to judiciary authorities for punishment. Legal proceedings would follow if; the victim party lodges a complaint against such offense. However, should the complaint withdraw his/her complaint, the prosecution would stop at whatever stage it might be.
subject of private complainant. Articles addressed in Article 30\(^2\) and 33\(^3\) are dependent on the private complainant. However, should the complaint withdraws his/her complaint; the prosecution would stop at whatever stage it might be (Gharibi, 2014, 81). At the moment, public press offenses such as invective language and derogatory allegations against Islam are prosecuted. This does not necessarily stop the complaints of ordinary individuals and certain groups. In practice, individuals and groups need to follow their complaints through the attorney general. However, according to the spirit of the law and the current practice in courts, non-fulfillment of duties by the Supervisory Board does not prevent the prosecution by the attorney general. For example, we can point out to the letter issued by the Public Prosecutor against Bahar editor, indicating that the Order 51 dated May 9\(^{th}\), 2002 was issued by the Court No. 1408 for State Government and complaint forwarded by Tehran Judiciary, manager of security department of Gilan Broadcasting, general manager of the Legal Protection of Broadcasting Organizations, and Information Protection Agency of Police concerning the invective language against the officials. According to Article 37, the editor was found innocent concerning the complaints issued by Information Protection Agency of Police and Legal Protection of Broadcasting Organizations (Pour Ostad, 2004, 227).

### 1.3 Specific Judicial Decisions during Prosecution

Specific decisions include temporary suspension, requirement to publish the response, and temporary summon and detain as following:

**A- Temporary Ban:** In general, Iran's press law has considered four cases for temporary ban:

1. The newspaper publishes a critical or insulting topic against an individual and avoids publishing the response. Here, the general attorney warns the press concerning the issue. If not fulfilled by the press, a temporary suspension is the next step and the file is sent to a competent court (Note 3 Article 23\(^4\)) (Mohamamdi, 2013, 123).

2. According to Article 30\(^5\) and 31\(^6\) Press Law, as long as the matter is under investigation, the publication has no right to publish anything about the issue under investigation. In case of violation,
the public prosecutor must issue an order for the temporary suspension of the publication (Note of Article 31).

3. If the publication imitates the name or emblem of another, the court can suspend the publication (Article 33).

4. Except for Note 3 and Article 6 and Note B, the Supervisory Board is entitled to suspend the publication. The board is then required to send the file to a competent court within a week.

In general, the legislator has determined three bodies to suspend the publications: Public Prosecutor, Competent court, and Supervisory Board.

Concerning the E-publication, it is claimed that all cases which cause the suspension of print publications can cause the same results for e-publications. The only difference lies in the filtering of such websites (Husseini Razlighi, 2005, 84-88).

B- Temporary summons and detains: There is no certain rule and procedure concerning the temporary summons and detains press offenders. The 2013 Code of Criminal Procedure Act with its modifications is true in this regard. The only issues worth mentioning is the Circular No. 1/79/14072 dated March 27th by the Head of the Judiciary, stating that the circular is not just for the TV and radio reporters but all reporters.

2. Islamic Republic of Iran's policy in the Court for traditional and electronic press offenses

After reviewing the policy governing the legal policy in the prosecution stage, here, the policy in the court is taken into account because the court is publicly performed with the presence of the jury.

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Note: With regards to articles 30 and 31, as long as the matter is under investigation the publication has no right to publish anything about the issue under investigation. In case of violation, the public prosecutor must issue an order for the temporary suspension of the publication before the investigation is completed. The suspension shall cover the first issue after receipt of the court order and should the publication repeat the offense the court shall ban the publication as long as the court has not issued its ruling.

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Footnotes:

1. Article 31: Publication of articles that threaten to harm or disgrace a person or disclose his / her confidential affairs is prohibited and the guilty managing director shall be introduced to judiciary authorities and punished according to the Islamic penal code.

2. Article 33 A: Should a publication falsely imitate the name or emblem of another publication even with slight changes in the original logo or name in such a way which may mislead the reader, it shall be banned and the offender shall be handed over to an Islamic court. Prosecution and punishment of such an offense is subjected to a complaint by an injured private party. B- after the shutdown of the publication, publishing any other publication in place of it in such manner that it is similar to the shutdown publication by name, logo and form is forbidden and the new publication will be shut down immediately. The culprit will be sentenced to a discretionary prison term of three to six months and a fine of two million to twenty million Rials.

3. Article 6 Note 3: Propagating luxury and extravagance

4. Article 6 Note 4: Creating discord between and among social walks of life specially by raising ethnic and racial issues

5. Article 7 Note B: Publishing a publication the greatest part of whose items are incongruous to subjects whom the applicant has undertaken to publish.

6. Article 7 Note C: Publishing a publication that may be mistaken in name, symbol or format for the existing publications or those which have been temporarily or permanently closed down.

7. Article 7 Note D: Publishing a publication without mentioning the name of its license holder and the legally responsible director or the address of the publication and its printing house.

8. Lawyer needs to be taken into account in press offenses. The difference between press offenses and other crimes lies in the fact that the accused has the right to use the three lawyers in press offenses while the accused in other courts can take advantage of two lawyers. This is considered a positive point in press offenses, however it is violated with other issues such as Article 348.


2.1 Competent Court for traditional and electronic press offenses

The offenses committed by unlicensed e-publications are the subject of Regular Law. Note 2 Article 1 of Press Law states that: "A publication that is publish without obtaining a license from the Press Supervisory Board is not subject to the Press Law and will be subject to regular laws." The objective of such law is punishing unlicensed publications and depriving them of the guarantees of press crimes (Moazen Zadegan and Ali Bakhshi, 2013, 52-53).

According to Article 307, the charges against the heads of the three branches of the government, their deputies and advisors, the head of the Expediency Council and its other members, the members of the Guardian Council, members of the Islamic Consultative Assembly and the Assembly of Experts, ministers and their deputies, individuals holding judicial offices, the head and the prosecutor of the Supreme Audit Court, ambassadors, provincial governors, governors of provincial capitals, general offences committed by military and police officers from brigadier general to higher ranks or crimes committed by a junior brigadier general officer serving in the position of a major general or as the commanding officer of an independent brigade, and the offences of the heads of provincial Ministry of Intelligence offices are to be heard by Tehran criminal courts, unless another body has jurisdiction to address these charges in accordance with other special laws.

Although Revolutionary Courts are kinds of Judiciary courts, According to Note 1 and 2 Article 5 of General and Revolutionary Courts Act legislated in 1994, they are entitled to order all crimes related to Iran's domestic and international security and insulting the founder of Islamic Republic of Iran and the Supreme Leader. They are also entitled to follow the courts issues for press offenses; however, the guarantees need to be taken into account for press offenses (Sheikh Al-Eslami, 2010, 95).

The competency of press crimes is not out of the general rules of Code of Criminal Procedure and the competency of the court at the crime scene mentioned in Article 54 of Code of Criminal Procedure for General and Revolutionary Courts in criminal affairs legislated in 1999. Therefore, according to the definition of press offense, the competent court must be considered the court of where the press was published. Legal Department of Judiciary responded to the following question:

If charges are falsely attributed to foreigners, are they able to follow the case in Iranian Legal system or no? What is the competent court?

The answer was in the letter No. 7/9995 dated November 30th, 1988 as follows:

With the reference to the above question, the Criminal Court in the place where the newspaper or magazine is published is competent. There is no difference between Iranian and foreigner residents (Shahri and Jahromi, 1994, 526).

2.2 Conflict Resolution concerning the Competency of Courts for traditional and electronic press offenses

In terms of the press offenses with security nature, some points need to be pointed out similar to the cases where the judges finds acts against the national security and inciting public opinion. As a result, the Islamic Revolutionary is the Competent Court to prosecute the case:

First, according to the new Code of Criminal Procedure legislated in 2013, the conflict must be determined because the press offenses are clearly, according to Article 302, entitled to the Criminal Court One. It is somehow claimed that Criminal Court One is competent in press and political offenses and this can be a conflict with the Revolutionary Court in this regard.

Second, if we assume that the Revolutionary Court is competent, Article 297 of Criminal Procedure legislated in 2013, states that: " the court, except for crimes mentioned in Notes A to I Article 302 excluded
press and political crimes, is formed with the presence of the judge and two advisors. The Revolutionary Court for other issues is held out by the presence of the judge and Substitue judge or by an advisor.” In this Article, the assumption of conflict is resolved as follows: If someone is sentenced to death because of drug trafficking in the Revolutionary Court which is the nature of competency of Revolutionary Court, the conflict is resolved with Criminal Court One, three judges, etc.

Concerning the crime of the Armed Forces of the Islamic Republic of Iran, certain military and police crimes are followed in military courts. The main question outlined here is as follows: If a military individual commits military crimes, meaning that the crime related to the scope of military duties, and it has printing and electronic nature, which is entitled, Military Court or Criminal Court One?

The reason concerning the conflict between the Revolutionary and Criminal Court One for press crimes is also true in this regard, meaning that Provincial Criminal Court is entitled to press crimes in order to support the freedom of press and positive features of press crimes. However, the crime committed by military individuals shall not be entitled to military crime due to the fact that it was published in both print and electronic press. Therefore, it becomes the press offense, in fact. This is not inconsistent with Article 172 of the Constitution of the Islamic Republic of Iran, stating that military crimes are entitled to Military Courts.

Article 599 of above law predicts that the military crimes of younger than 18 entitled to the competent court are followed in military courts by observing the rules related to children and teenagers. Therefore, it would be advisable for the legislator to pass such law for press crimes of military individuals. This way, the military forces were judged in competent courts in case of press crimes. Concerning the conflict in the competency of Criminal Court One and Special Clerical Court (SCC), it is noted that SCC is one of the courts out of the control by the Judiciary and it is directly supervised by the Supreme Leader. It was established to follow the crimes committed by clergymen. According to the articles of this regulation, when an editor of a newspaper or magazine is a clergy man and commits a press crime, SCC is entitled to follow the case. Is the presence of jury essential is SCC or not? Notably, according to the Constitution of the Islamic Republic of Iran and Press Law, the presence of jury is obligatory in SCC and it is a legal requirement because, if not so, the court is not recognizable and the decision without such legal support is not recognized (Moazen Zadegan, Hassan Ali and Ali Bakhshi, 2013, 55). The recommendations made by the Supreme Leader are the one which can be referred.

11 Article 1 of Procedure Code of the Armed Forces of the Islamic Republic legislated in 1985 with the modifications.
12 Article 172: Military courts will be formed in accordance with the law in order to investigate the offenses that are related to the specific duties or the security duties of the members of the army, the gendarmerie, the police, and the Islamic Pasdaran Revolutionary Corps. But the common court investigates their general offenses or the offenses that they commit in the capacity of guardians of the Ministry of Justice.
13 The Regulations for Special Clerical Court, Article 1
14 Due to the importance of the questions from the Supreme Leader, Ali Khamenei, the letter is mentioned here:
To esteemed Supreme Leader of Iran, Seyed Ali Khamenei,
With reference to the reports concerning the offenses made by some clergymen working press with which some are insulting, we would like to follow your instruction:
Question 1: Which is entitled to prosecute the offenses made by clergymen working press: SCC or Criminal Court?
Response: All crimes related to SCC and what causes the damage to clerical nature must be followed in SCC.
Question 2: If the case is followed in legal body, is the presence of jury required?
Response: The presence of jury can be beneficial.
Question 3: Is the presence of lawyer required in the court? Can the court prevent the lawyer to attend the court to respect the clergymen?
Response: The presence of lawyer is beneficial and essential. The court determines some competent clergymen as lawyers in order to select among them.
2.3 Deficiencies of Jury for traditional and electronic press offenses

Concerning the jury, despite the continuous presence in publication courts, the body has not managed to fulfill its duties. The most important deficiencies are as follows:

A- Newly-established Nature: The jury in Iran has not managed to retain its real position and reach its objective which is to attend in political and press courts. This is mainly associated with inconsistency of governmental systems prior to the Islamic Revelation with such bodies.

B- Appointed members and lack of real people's participation: The jury must be the real essence of people and public opinions. This requires the jury to have ordinary individuals. However, the jury consisted of three or four governmental members. The members are mainly appointed from the prominent legal and political members.

C- Judgment based on neither law nor conscience: One of the main philosophies of forming the jury and its presence in the judgment is to judge based on the collective conscience. In Iran's Law, Article 36 of Press Law(modified in 2000) states that lawyers and university lectures are the candidates to attend in the jury. The main question here is that they might play the role of judge because of their legal information. Therefore, they are not able decide based on their conscience.

D- Ambiguity in the Competence of Jury: Like England, the procedure is divided into two stages in Iran: verification of crime and sentencing. The former performed by the jury and the judge is not entitled for involvement in this stage. After verifying the crime by the jury, sentencing the judge's responsibility. This is more defendable than France Law System where the jury and judge consult to both verify and sentence. What makes the problem in Iranian Law System is lack of clear role and position of judge competency in the procedures. This leads to faded role of jury during the procedure.

2.4 Analytical and Descriptive Analysis of Judiciary in Press Offenses

The analysis of the collected data is a bridge to reach the results. This is a descriptive study where the proper statistical test is used to find the significant relationships among the variables.

Accusations against Publications

✓ Table 6: Frequency and Percentages of Accusations against Publications

<table>
<thead>
<tr>
<th>Accusation</th>
<th>Frequency</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Roorbačk</td>
<td>344</td>
<td>42.2</td>
</tr>
<tr>
<td>Insult or defamation</td>
<td>226</td>
<td>27.7</td>
</tr>
<tr>
<td>Gossip and Rumor</td>
<td>164</td>
<td>20.1</td>
</tr>
<tr>
<td>Spreading vice and publishing immoral photos and material</td>
<td>106</td>
<td>13.0</td>
</tr>
<tr>
<td>Press Offense (Not publishing in allotted time)</td>
<td>100</td>
<td>12.3</td>
</tr>
<tr>
<td>Abusing Men and Women Images in Images and Contents</td>
<td>81</td>
<td>9.9</td>
</tr>
<tr>
<td>Encouraging individuals and groups to act against national security</td>
<td>46</td>
<td>5.6</td>
</tr>
</tbody>
</table>

Question 4: In some issues, a public court is requested in which the court thinks it is not useful. Who decides about the public or hidden court?

Response: The judge decides about the issue.

God helps you
<table>
<thead>
<tr>
<th>Unlicensed Magazine or Newspaper</th>
<th>42</th>
<th>5.1</th>
</tr>
</thead>
<tbody>
<tr>
<td>Insulting officials, bodies, organizations, and natural and legal persons</td>
<td>40</td>
<td>4.9</td>
</tr>
<tr>
<td>Creating conflicts in society</td>
<td>22</td>
<td>2.7</td>
</tr>
<tr>
<td>Publishing materials against Islamic rules</td>
<td>21</td>
<td>2.6</td>
</tr>
<tr>
<td>Insulting Islam</td>
<td>18</td>
<td>2.2</td>
</tr>
<tr>
<td>Insulting the Supreme Leader or Prominent Clergymen</td>
<td>15</td>
<td>1.8</td>
</tr>
<tr>
<td>Publishing materials threatening for the personal disclosure</td>
<td>12</td>
<td>1.5</td>
</tr>
<tr>
<td>Promoting opposition groups against Islam</td>
<td>11</td>
<td>1.3</td>
</tr>
<tr>
<td>Plagiarism</td>
<td>6</td>
<td>0.7</td>
</tr>
<tr>
<td>Reveal the secrets of the Armed Forces</td>
<td>4</td>
<td>0.5</td>
</tr>
<tr>
<td>Publication against the principles of the constitution</td>
<td>4</td>
<td>0.4</td>
</tr>
<tr>
<td>Distorted materials of others</td>
<td>3</td>
<td>0.4</td>
</tr>
<tr>
<td>Promoting extravagance and wastefulness</td>
<td>1</td>
<td>0.1</td>
</tr>
<tr>
<td>Publication of secret negotiations of Parliament</td>
<td>0</td>
<td>0.0</td>
</tr>
<tr>
<td>Other</td>
<td>158</td>
<td>19.4</td>
</tr>
</tbody>
</table>

Table 6 shows the frequency and percentage of press based on accusations. According to this table, Roorback (42.2%), Insult or defamation (27.7%), Gossip and Rumor (20.1%), Spreading vice and publishing immoral photos and material (13%), Press Offense (Not publishing in allotted time) (12.3%) are the most frequently committed crimes by the press.

✓ The Sentence by the Court of First Instance

Table 7: Frequency and Percentage of Press based on the Sentence by the Court of First Instance

<table>
<thead>
<tr>
<th>Sentence</th>
<th>Frequency</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prosecution</td>
<td>269</td>
<td>33.0</td>
</tr>
<tr>
<td>Cash Fine and Fines instead of imprisonment</td>
<td>228</td>
<td>27.9</td>
</tr>
<tr>
<td>Innocence</td>
<td>221</td>
<td>27.1</td>
</tr>
<tr>
<td>Imprisonment</td>
<td>85</td>
<td>10.8</td>
</tr>
<tr>
<td>Imprisonment</td>
<td>67</td>
<td>8.2</td>
</tr>
<tr>
<td>License Cancellation</td>
<td>67</td>
<td>8.2</td>
</tr>
<tr>
<td>Temporary Suspension</td>
<td>47</td>
<td>5.8</td>
</tr>
<tr>
<td>Suspended Imprisonment</td>
<td>22</td>
<td>2.7</td>
</tr>
<tr>
<td>Excluded Press Responsibility</td>
<td>32</td>
<td>3.9</td>
</tr>
<tr>
<td>Whip</td>
<td>17</td>
<td>2.1</td>
</tr>
<tr>
<td>Issuance of culpability</td>
<td>3</td>
<td>0.4</td>
</tr>
<tr>
<td>No sentence</td>
<td>59</td>
<td>7.2</td>
</tr>
</tbody>
</table>

According to table 7, Prosecution scored the top (33%). Then are Cash Fine and Fines instead of imprisonment (27.9%) and Innocence (27.1%)
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