

Legal liability of international media on regional audiences by an approach on Emamieh legal culture¹

Abstract

Based on information freedom principle, international media such as press, television and satellites should transfer criticisms, reports, speeches and data. Media may provide materials by which their audiences' rights are ignored such as insults, not respecting intellectual property, financial losses, physical losses and damages to reputation. In this vein, legal liability is raised as a compensation mentioned in international laws. It is not discussed in jurisprudential books as a separated issue and, in addition to current civil liability, present paper attempts to enhance it through jurisprudential guidelines by considering Islamic teachings. It concludes that in Emamieh Jurisprudence, such rules as no harm rule (the theory on abusing the law), trickery forbiddance, wasting and causation assert that international media are liable to their audiences for their offences. Research methodology is an analytical description conducted by note-taking and library tools.

Keywords: liability, laws, media, Emamieh, international

Introduction

Transformations in recent three decades and increasingly growth of mass media and its marvelous impact on private, social, economic, cultural and social life has attracted special attention of governments and administration to media. Since 1999, emphasis by UN and UNESCO on free media by the maxim of pluralist, independent and free media has been on changing penal policy approach to develop media civil liability and full compensation of victims' losses. On this basis, in many recommendation letters and different resolutions, EC has asked for decriminalizing insulting as one of the most important criminal titles by which governments curb and sentence journalists and violate free expression and free press. Within past twenty years, most countries have taken steps toward civil liability and changing their penal procedures. It seems that the outcomes and effects of such media have yielded to particular legal discussions including audiences' rights so that one can reduce negative consequences of such initiatives by devising and providing rules and regulations in addition to more suitable supervisions. This question is raised: does Emamieh Jurisprudence have any laws and regulations for international media audiences' rights? To answer this question, one can refer to Holy Quran verses, narratives and jurisprudential rules. Despite of the ability of studying the issue in terms of verses and narratives, jurisprudential rules are addressed in present research due to their particular situation and status. In jurisprudence, there are different rules on civil liability which can be also extended to media due to their generality and these rules called civil liability root in jurisprudence can be used in different fields including media civil liability.

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1. General concepts

1.1. Civil liability concept

At the outset, it is necessary to clarify the meaning of civil liability to delineate its scope. Civil liability is someone's legal obligation and requirement to compensate losses to someone else due to the result of his/her action (Bariklu, 2008: 2). When someone hurts another person, he/she should compensate it except than cases determined by law or losses to someone is not seemed irrelevant (Katuzian 2011: 13).

The scope of civil law is damage, harm or loss and its aim is to compensate them. Such damage may be material or spiritual. Civil liability laws clarify which damages can be compensated, who is liable to compensate and how damages should be compensated.

1.2. civil liability by media operations

Civil liability by media operations means that if someone's laws and interests are damaged due to the result of an action, which person(s), by which basis and how they should be compensated; for instance, violating intellectual property or privacy in media especially international media may yield to material and spiritual losses which is an implication of civil liability and media operations (Ansary, 2008: 416).

Jurisprudential rules and civil liability in Islam

Jurisprudential rules are those general verdicts flowed in different areas of jurisprudence and are the origin of inferring minor decrees such as "no harm rule" raised whenever someone is damages and can be used in different fields like purchase, rent, divorce and so on (Makarem Shirazi, 1411: 23). In other words, jurisprudential rule is a very general formulation as the origin of inferring more limited laws and is not unique to one case; rather, it covers various basics and laws (Mohaghegh Damad, 2009: 2). In Islam, civil liability is an absolute liability which includes both guilt and non-guilt.

2. International liability of international media

2.1. Information freedom principle

One of the legal manifestations on satellite networks in international media is a broad description of information free dialogue. By the emergence of mass communication media especially in international arena, one of the concerns of media owners has been the possibility of informational dissemination while audiences' concern has been right information accessibility. Therefore, one can say that free information is in two types: one is free information sending and the other one is free information reception. Article 19 of Human Rights Universal Declaration describes these two rights: everyone enjoys the right of free conviction and expression which includes free conviction without any interference and inquisition as well as receiving and publishing information and opinions through any media without considering the borders. Article 19(2) of Civil and Political Rights International Covenant (1996) makes this right enforceable by saying that anyone should have the right of free expression which includes free research,

receiving and disseminating any information and opinion in written and artistic through any media without respecting the borders².

However, one should note that this right is facing with limitations observed in international documents and judicial procedures of countries. Article 4 of Civil and Political Rights Covenant states that in the time of public emergency in which the life and existence of a nation is threatened, member states can considered initiatives to deviate from the obligations of this covenant. Article 18 of the same covenant has considered it possible to limit freedom of religion and gatherings where they are dangerous for public security, order, health and consciousness. US courts have mentioned exclusions for free expression and information such as forbiddance of insult, fear, using hostile terms, vulgarity words, and stimulation to crime and sedition. Thus, as satellite program producers are free in sending information, receiving states are also free in not receiving and inaccessibility of such programs for audiences under certain circumstances.

Likewise, free expression for TV and radio programs of countries cannot be mentioned since free expression is considered as a human right only for people against governments not a right for governments against individuals or against another government³. Therefore, one should not be deceived by such sophism by which countries can provide any expressions against audiences of a country or a thought.

Additionally, one should note that information freedom and free communication principles should be correct and if such false information agitates public opinions, relevant government or news firm is internationally liable.

2.2. *The basics of international liability of international media*

Any wrongful act in international laws imply international liability which encounters perpetrator with several secondary commitment: stopping wrongful act, executing international commitment, compensation (including return to before wrongful act conditions, paying compensation, confess to offence, deploring or official apology⁴. If wrongful act violates a *peremptory norm* such as inducing to genocide and aggression through media, other nations are committed not to recognize illegitimate position, not to aid such position continuance and to collaborate to give an end to such conditions⁵. Concerning international media, this commitment can be interpreted as condemning wrongful act, no financial aid and stopping material and spiritual helps to such media.

In addition to general commitments such as respecting intellectual property, lack of insulting and aspersion

² UN Commission Human Rights (1998), Right to Freedom of Opinion & Expression Commission on Human Rights Resolution Res. E/CN/1998/42, Para. 2.

³ Arthur Larson, The Present Status of Propaganda in International Law, Law and Contemporary Problems, Vol. 31, No. 3, 1966, p. 442.

⁴ Draft Convention on Responsibility of States for Internationally Wrongful Acts, 2001, Article 37

⁵ Draft Convention on Responsibility of States for Internationally Wrongful Acts, 2001, Article 41

Which oblige international media, there are some unique commitments for international media. For instance, the Convention on Peaceful Uses of Outer Space (September 23, 1936) approved by 19 nations prevents member states from media intervention in each other's territory and in stimulating audiences. Thus, violating such commitment can be seen as the violation of either a general or particular international commitment. In some cases, states attempt to pose their expedience on initiatives out of their territory which influence on national security and public order of another country. Although international liability of those states that support offensive international media is important, a complexity in communications arena is the ambiguity of international media legal nature so that assigning some media to one state is too complicated and arduous. International liability legal system is executed if one can prove one media's dependency to a state while the problem happens when such dependency cannot be proved⁶.

3. Jurisprudential guidelines on international media civil liability

3.1. No harm norm and "the theory on abusing the right"

One of the most important borders of using personal and social rights and freedoms is to respect others' rights and freedoms. Harms to others which is seen as a red line of using the rights, is accepted in legal systems as "forbiddance of abusing the rights". In Emamieh jurisprudence, no harm norm can be compared to "the theory on abusing the right" in modern laws. In French laws, "the theory on abusing the right" emanates from judicial procedure and does not have a long history (Bahrami Ahmadi, *ibid*: 292) while in Emamieh Jurisprudence, "the theory on abusing the right" was raised fourteen centuries age as a ramification of *no harm rule* and was used by Islamic jurists. Although there are disagreements on proving compensation verdict in no harm rule, one cannot doubt the forbiddance of right abusing.

No harm norm is general and also includes prays and transactions. There is no important doubt that material and physical losses can be subjected to no harm norm while concerning spiritual harms, can one ask for their compensation through no harm norm? According to some jurists, considering the conditions and preliminaries of claim such as Samar Bin Handab which led to this narrative, it becomes clear that verdict issuance has been further to meet spiritual needs and to reduce interferences. However, other jurists believe that harm includes spiritual losses (in their words, loss is proved) so this narrative implies such losses (Katuzian, 2007: 148).

3.2. Forbiddance of astray and trickery

Proud means deception and astray means to mislead and deceive someone. According to this rule, if deceitful action cause someone's loss, deceitful should compensate the losses, provided that victim does not know the reality (Hussieni Maraghi, 1418: 440). According to this norm, if someone deceives someone else by action or behavior and damages him, deceived person is legally and religiously entitled to refer the deceiving person and demands for all compensations. Deceiving other is liable in any condition. "Deceiving is to encourage other to something harmful for others even though encourager has not been aware of losses and had no intend to

⁶ David Hemmings Pritchard, *Holding the media accountable: citizens, ethics, and law*, Indian University Press, 2000.

hurt” (Bojnurodi, 1402: 233). In many jurisprudential texts on deceit, “trickery” term is used interchangeably. Studying the opinions of terminologists indicate that they are too close concepts are sued based on deceit and craft (Makarem Shirazi, 1415: 293). Most jurists consider it as an implication of strong cause of assistant (Allameh Helly, 1418: 222).

In media operation especially publishing disseminating incorrect advertisements and news, astray rule has, *inter alia*, the most implications since broadcasting such programs induce audience to perform an action due to their trust to media and, as a result, are damaged and harmed. In such case, one can consider relevant media liable to compensate based on astray rule and media knowledge or intention on incorrect news and disseminated information is not necessary for its own liability. Thus, advertisements for trickery and abusing audiences’ trusts or based lies are surely deceitful.

3.3. *Waste and causation rule*

According to jurisprudential rules and narratives, if someone wastes other one’s properties – whether intended to not – is liable to compensate and it is so-called waste rule. To this end, jurists refer to “من اتلف مال الغير فهو له ضامن”. Thus, it covers all cases which lead into wastes and is a personal civil liability basic. It is discussed in jurists’ books in detail. Causation rule indicates that in any losses to someone’s property under any circumstances, he/she is liable and should compensate.

Some jurists believe that waste and causation are two separated norms and have separated them in expressing their guarantees (Allameh Helly, 1418; 374 and 1331). Other jurists believe that wastes may be either by assistance or cause (Shahid Sani, 1416: 162; Husseini Al-MAraghi, 1417: 435). As a result, causation rule is not considered an independent norm; rather, it is a branch of total wastes norm.

It seems that the second opinions is more adaptable to its provisions. Therefore, waste and causation are not considered as two separated rules and we provide our points under the title of waste and causation.

Considering the liability of waste and causation, there is no disagreement among Emamieh and general jurists and they have even concurrence (Najafi, 1988: 434). Some have waste rule defined as: “whenever someone wastes other person’s properties, he/she is liable to compensate by, for instance, paying its price or giving the same property” (Shahabi Khorassani, 1332: 90). Noteworthy, if waste cause does not cut direct causation relationship, it cannot prevent the right title of waste. If such generate fire and it causes damages, it cannot be exited from waste title. Jurists call it as causative actions (Rashti, 1332: 29). For instance, if international media disseminate private photos of a famous actor, that media is directly liable.

Conclusion

Considering international regulations and documents, media have the freedom to publish information while in the case of any losses to each audience, the media is legally liable to compensate. In Emamieh rules, there are rules which make each offences from international media, they are liable against their audiences including no harm norm, forbiddance of astray and trickery, waste rule and causation. Each norm is referred as a jurisprudential guideline for international media civil liability. The results of this research are as below:

1. Anyone enjoys the right of free expression and opinions which includes the right of opinion without any intervention and inspection, receiving and disseminating information and opinions through any media without considering the borders. Limiting social freedom is possible for law adoption in cases where there are risks for public security, order, health and consciousness. US courts have mentioned other exclusions for free expression and information such as insulting, fearfulness, using hostile terms, vulgar terms and stimulating to crime and sedition.
2. Any offensive act in international laws imply international liability which encounters offender with several secondary commitments: stopping criminal act, international commitment execution, compensation (including return to previous situation, compensation, confession to offence)
3. One of the most important borders of individual and social rights and freedoms is to respect others' rights and freedoms. Harms to others which is seen as a red line of using the rights, is accepted in legal systems as "forbiddance of abusing the rights". It is either general or includes material and spiritual losses and includes no harm norm.
4. In media operation especially publishing disseminating incorrect advertisements and news, astray rule has, *inter alia*, the most implications since broadcasting such programs induce audience to perform an action due to their trust to media and, as a result, are damaged and harmed. In such case, one can consider relevant media liable to compensate based on astray rule.

Considering the liability of waste and causation, there is no disagreement among Emamieh and general jurists and they have even concurrence For instance, if international media disseminate private photos of a famous actor, that media is directly liable.

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