



STUDYING THE ROLE OF THE JURY IN THE PRESS CRIMES

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ABSTRACT

From a long time ago, individual freedom, security, equal rights are considered as basic human and citizen rights in democratic societies. Press freedom as a modern democratic pillar is now accepted by the public thought. With respect to the kind of governance it attempts to apply some specific criminal and doctrinal policies to the press freedom using some limitations. The present descriptive-analytical research aims to study the role of the jury in the press crimes using a research library method. Misunderstanding of press crimes and poor clarification as well as interference of the jury to solve press crimes are considered as democratic ways and the purpose is to apply social conscious for issuing juridical dictums, persisting in the presence of the jury in special press forums, optimizing the use of public thoughts, making a balance between press rights and duties on one hand, and making an alliance among public thoughts and lack of encounter between the government and the press on the other hand. The jury plays a significant role to form an alliance between people and the social body when it is selected and determined in a democratic way and based on its philosophy. There is no legal and practical support for the jury according to the principle of the press freedom regardless of marked affirmation in the constitution before the Islamic revolution.

Keywords: *The Freedom of the Press, Press Law, Press Crimes, The Jury.*

INTRODUCTION

In the Iranian culture, there are much conformity between freedom and self devotion. Their parallelism is also obviously assessable in objectives, methods and applications. In such a cultural environment “the press” occupies the forth position of governance and people participation in the social and political destination. The press freedom is being emphasized as a basic principle in the Article 24 of the constitution so as to guarantee its pivotal role in various social and political fields. Today, advances in technology especially in communication makes changes to define the criminal national phenomenon including the press crime.

Developments in the printing industry in both actual and virtual conceptions will lead to realize positive consequences of collecting, releasing and disseminating information, provision of the government and improving basic freedoms. However, it not only has positive effects but also have some concerns.

Changing and destroying human and racial values, imposing anti-value patterns on the society, shameless invasion of people privacy, making sense of insecurity, offending people and organizations, etc are among its unpleasant consequences.

Perhaps, Iran is a record holder of making law due to adding proviso and addendum to the law over ten times and the press museum is also seeking to recognize such natural and logical lawfulness about the press.

One year after ratifying the first constitution when the penal code had not been passed in the Islamic consultative assembly the press law (1907) was approved, however, despite all initiative

of this section, internal laws are theoretically and legally still inconsistent with international developments.

In spite of 11 times affirmation of Article 79 of the constitution about the presence of the jury in trials and applying its verdicts in various laws over 100 years ago, the jury had no effect in the press trials by 1991 in Iran. On one hand, indefinite criminal policy, ambiguity in rights and duties of the governance and the press and on the other hand the indefinite freedom of the press in the media and current conflicts among legislators cause to create a stressful environment in Iranian trials. According to abovementioned, the present descriptive-analytical research using library references aims to study the role of the jury in the press crimes. It should be noted that, to clarify research contents questions and hypotheses are studied in the framework of theoretical research bases. It is hope that the research results are used effectively for research sectors of the judiciary, legislating new laws as well as revising current laws.

- *research question*

- ✓ *primary question*

Is it possible to integrate a completely secular system with a legal system resulting from religious ideology and is it mainly possible to solve problems with a definite method in various legal systems?

- ✓ *Secondary question*

One of the first objectives of the Islamic revolution was to develop democracy and to encourage people for making decision about government and authorities, the jury seems to be the stage of people attendance in the power structure. Now the question is that:

1. Does the jury with the current mechanisms representing public thoughts in the society?
2. Can the jury overcome with the risk of exerting force, creating disturbance through state bodies as well as to going to extremes in the press works over years after the Islamic revolution?

- *research hypothesis*

In legal systems, the jury is originated from the individual freedom and basic rights resulting from democracy, however, the complexity of the secular system is in conflict with ideological thoughts with Islamic backgrounds always observing the expedient. The present research aims to have a conceptual view to the press basic issues, the role and position of the jury in press crimes, and finally reach a conclusion in this regard. It is hope that the research results are used effectively in research sectors of the judiciary, legislation stages and revision of the current law.

3. a conceptual view on basic issues of the press and the jury

- *press freedom in the law*

In a democratic society where the freedom is the basis of democracy and actively presence of people is considered as its basic pillar, the press freedom emerges a shape of political and delight life and a relationship accompany with movement, thought oppositions and a magnificent conflict is appeared.

With respect to the deep religious relationship between authorities and people in democratic systems emerging mainly after a revolution, members of the government feel a special legitimating for themselves and gradually fall into the narcissism in so much that they perceive freedom of expression as a troublemaking and bad issue (Hashemi, 279, 1997).



In note 2 of Article 3 of the constitution it is stated that, “increasing public knowledge in all fields with proper usage of the press and mass media locates at the top of the national policy” and accordingly in article 24 it is specified that “publications and the press have freedom of expression”.

The mentioned article, the legal system of the press freedom, has been specified in the bill of the press laws ratified by the revolution council (2006/07/25), the press law (1986/03/13) and the law of revising the press law (2000/04/08) ratified by the Islamic consultative assembly and other amendments.

In Article 24 of the constitution the legislator introduces two necessary stipulations for the press freedom as follow:

1. it must not cause a disturb to Islamic bases
2. it must not cause a disturb to the peace

- *The jury*

According to Iranian law the jury has not long historical and social background and it can be said that what causes to emerge the jury in the Iranian law is not spontaneous developments and social needs based on intellectual and cultural maturity of the society but the existence of educated from developed countries caused to establish such a body by authorities. After ratifying the press law, the legislator discussed about the jury concerning the press crimes. According to Ja'fa Langroudi, PhD, “the jury is a group of people helping judges to deal with some crimes under specific circumstances” (Langroudi, 1994, 765).

The role and position of the jury in the press crimes

- *The press crimes*

Press crimes are those committed by the press. The press crimes have mainly no specific quality. In addition, the press as an important mental and spiritual means may jeopardize spiritual personality of people and political authorities (Ansari Lari. 1978, 175).

According to the legal press bill approved in the revolution council (1979) and the press law (1985) all committed crimes by the press are considered as press crimes and they need to be solved at the presence of the jury. The only marked difference in the current press law is that the subject of cancellation of the press license was stated for the first time in this law.

Instances of the press crimes in laws approved in 1985 and 1979 are as follow:

1. Insulting, traducing and defaming people (Article 23 of the press law)
2. Blasphemy (Article 36 of the press law)
3. Insulting the leadership council or Muslim's religious authorities (Article 27 of the press law)
4. Revelation about others secrets (Article 24 and 29 of the press law)
5. Threat (Article 31 of the press law)
6. Releasing prejudicial pictures and subjects (Article 28 of the press law)
7. Encouragement and motivate people to commit crimes against the country's security (Article 25 of the press law)
8. Publishing journals without license (Article 32 of the press law)
9. Emulating the symbol and sign of other publication (Article 33 of the press law)

- *press limitations*

Although the press freedom is a basic and important principle and governments are obliged to secure it, however, it cannot be unconditional and the press enjoys it conditionally. The press



limitation is defined as follow, “when a newspaper or publication exceeds criteria and rules anticipated in the constitution or other common rules due to publishing some subjects it will be suable (Mo’tamed Nejad, 2000, 267)”.

In addition to current restrictions in the constitution or other common regulations of each country there are some limitations in the international treaty on the press freedom, for example articles 19 and 20, “the international convention of political and civil rights” ratified on 16th December, 1966 in the united nations which was passed in by Iranian government on 4th November, 1972.

In note 3 of article 19, it is specified that, applying mentioned rights in the note 2 of the article requires special rights and responsibilities.

Therefore, it may be subordinate of definite limitations specified in the law which is important for following occasions:

- 1- respecting rights and reputation of others
- 2- respecting the peace or ethics

Then, in article 20 of the same law it is added that:

1. Spreading any propaganda for the war is legally prohibited.
2. Distributing enemy propaganda, racial or religious loathing which motivates discrimination, conflict or exertion is legally forbidden.

Article 24 of the constitution introduces freedom of expression for the press with two exceptions. Therefore, the press freedom has two forbidden limits as follow:

- limitations of disturbing Islamic bases
- limitations of disturbing public rights
- *procedures of the press crimes and the role of the jury*

Here, first of all some cases concerning the jury and then current principles on conducting a fair judgment to solve press crimes are studied.

✓ *Members of the jury for dealing with press crimes*

Article 36 of the amendment to the press law specifies members of the jury. According to the article, members of the jury in Tehran and other provinces are 21 and 14, respectively. In addition, according to Article 38 of the same law the court will recognized at the presence of at least 7 people. All members are asked to attend in the court hearing in this article. Besides, members are not divided into main or alternate in the law, therefore all members are main. According to article 34 of the press law, it is necessary to deal with press crimes at the presence of the jury; moreover, members of the jury are obliged to attend the court hearing from start to finish. With respect to abovementioned articles, members of the jury cannot refuse to attend in court hearing or appoint someone else because membership in the jury is full force. Besides, members cannot take their vote in absentia.

Because, according to article 43 of the press law the court will find the guilty of the culprit after the court hearing and members announce their final verdict after consultation. If each member of the jury cannot attend a court hearing in a definite day and time, a time which has been announced in advance, the member is obliged to give the court his/her excuse in written (note concerning article 39 of the press law, 1985). Here, a good excuse points to definite items in article 116 of the penal code (article 116 of the penal code). According to article 39, there are



some penalties for members of the jury who don't give the court their excuse including deprivation and dismissal of membership in the jury.

✓ *Governing principles to deal with the press crimes and the role of the jury*

Governing principles for dealing fairly with the press crimes includes the presumption of innocent, right of appeal, right to counsel and right to have witness. It should be noted that, abovementioned instances have been discussed in the penal code in detail and here cases are just mentioned. With regard to the penal code governing the press crimes it is worthy of attention that the lawsuit is began to deal with in the court after a crime is reported. In the office of the district attorney, after making primary and supplementary inquiries the culprit is recalled by subpoena, pursuant, announcement and dispatching the culprit in manifest crimes. Then, in two later steps, that is reading the charges and receiving an answer, the judge begins to make inquiry from the culprit. The first official measure is the issuance of a writ that is done after making inquiries by the juridical authority that except for temporary compulsory arrestment other cases are selected by the judge.

It should be noted that, the jury cannot interfere for the issuance of a writ, because according to article 132 of the penal code the judge is in charge of issuing a writ. Furthermore, according to note 4 of article 43 of the press law, members of the jury are not obliged to attend in primary inquiries and issuing legal writs. If the lawsuit is decided to be dealt with in a court, members of the jury are chosen as mentioned before and they are asked to attend in hearing court by the attorney general. The court has to officially notify members of the jury one week early (article 38, the press law 1985, and amendment 2000). After conducting negotiations members of the jury begin consultations. Members of the jury are asked to answer following questions:

- Whether the culprit is guilty of the crime or not?
- If he/she is found guilty of the crime, does the culprit deserve a commutation?

However, the jury not only cannot determine the severity and type of the punishment but also it cannot confirm or refuse it.

As the judge is in charge of determining the kind of punishment according to the crime, if the jury interferes in specifying the type and severity of the punishment, the juridical independence may blemish. Therefore, what is deducted from the press law is that the jury helps the judge to determine the crime and the public conscious is considered as the criterion. According to note 2 of article 43 of the amendment to the press law (2009), if the culprit found guilty of a crime by the jury the court can verdict on the innocence.

The verdict of the jury will valid when majority of members attend in the trial session. If the court found the guilty of the culprit the verdict would be revisable. If majority of members conclude that the culprit is not guilty he/she is exculpated. With respect to publicity of trial session for dealing with press crimes it should be noted that in the press law (1985) there was a doubt about publicity of press trials. In 2000, the press law was revised and some articles were changed. For example, article 34," the press crimes must deals with in public trials and at the presence of the jury", in which the publicity of press trials is mentioned. It should be noted that, members of the jury in Tehran and other provinces are 21 and 14 people, respectively.

The secretary of the jury conduct the lottery 10 days before the court and deputy of the judicature and town meeting members as well as the lawyer or deputy of the defendant and complainant are invited. The presence of deputy of the judicature and town meeting members is necessary in the lottery (article 10 of revised press law, 2009). Article 68 of the constitution has anticipated



three stipulations for dealing with political and press crimes including publicity, presence of the jury and court trials.

Otherwise, similar to military courts, the legislator anticipates private trials for dealing with political and press crimes in addition to public trials at the presence of the jury.

With respect to the consultative role of the jury it should be noted that, as members of the jury are people of different social strata (article 2 of the jury), they make decision and attend in the court as the agent of public thought.

Dealing with press crimes and issuing a verdict for them is considered as a juridical affair which according to the constitution the judicature is in the charge of solving it (clause 1 of article 156) and judges with specific qualities according to the law are responsible to solve the issue (article 163 of the constitution). Therefore, as members of the jury are not morally obliged to the situation, it is difficult to use the jury for dealing with the problem and issuing a verdict and generally making decision. For the press crimes, the jury as the deputy of public thoughts is able to assess the issue and to state its wellness or enormity. Under these circumstances, after studying the issue accurately, the judge independently issues a verdict with the cooperation and consultation with the jury.

✓ *Investigation in the Supreme Court and Court of Appeal*

➤ *Objection to the verdict of the jury*

According to note 3 of the press law, if the court found guilty of the culprit the verdict is revisable. The article states that the dictums concerning press crimes are objectionable. However, comparing the article with the note of article 232 of the penal code suggests a difference between them. According to contents of article 232 of the penal code, revisable dictums include innocence, absolution and staying the proceeding. Therefore, for common crimes, dictums of innocence and staying the proceeding are revisable in competent courts but press crimes are only revisable when the court found guilty of the culprit. In Article 38 of the press law ratified in 1979 it is stated that, only when the court found guilty of the culprit the verdict is objectionable according to legal regulations but it is not revisable when innocence is proved. According to an amendment to the article in 2000, the dictum is revisable only when the guilty of the culprit is found and as making an appeal in the new penal code has been removed the repleader is used instead. There is no statement about issues like determining a proper time for the appeal and the appeal authority as well as the quality of dealing with the issue in the court of appeal in the current press law, therefore, instances are assessed according to establishment of public and revolution courts ratified in 1994 and its law of procedure ratified in 1999.

➤ *The court of appeal*

According to note 3 of Article 43 of the press law “the jury is not obliged to attend in the court of appeal”. Accordingly, dealing with press crimes only in its embryo is within the purview of the jury. But in the press legal bill authorized in 1979 attendance of the jury in the court of appeal was still in debt because article 38 is just about conclusive and inconclusive votes and anticipating the conclusion in the aforesaid article means that the reappraisal authority is just allowed to estimate the lawsuit in terms of its shape and it cannot make any comment about it’s the nature of verdict issued by the jury concerning the conviction of culprit and decision of the jury as a public vote is not mainly revisable. Legal ambiguities about attendance of the jury in



the court of appeal were removed according to the note 3 of Article 3 (2009) in the amendment to the press law.

Therefore, the court of appeal can only express its view about substantial objections such as hearing stages, how the jury makes decision and the issued verdict; Moreover, it can decline verdicts in which legal formalities has not been observed.

For example, if the court of appeal find that the jury has made a mistake to count votes or the judge has deducted wrongly insomuch that it leads to change the punishment the verdict may rejected.

Therefore, as the decision of the jury is indispensable when the substantial objection is only about the issued verdict, the court of appeal is obliged to revise the verdict according to decision of the jury and based on current penal code without the need to hold more hearing courts. But when the substantial objection is related to the competency of the jury and as a result it causes to blemish the decision of the jury, the court of appeal is obliged to reject the issued verdict and the judge order a retrial.

Therefore, the court will deal substantially with the lawsuit and according to article 168 of the constitution and article 34 of the press law the case is investigated at the presence of the jury.

The judicial office of the judicature in notion 7.2895 (1998/10/16) states that, “according to article 34 of the press law (1985) press crimes are dealt with at the presence of the jury, therefore the presence of the jury in the hearing court is required because it is absolutely stated in the forgoing article even in making appeal”.

But as mentioned before, when the jury’s decision is blemished and making substantial statement is necessary having a hearing in the court of appeal at the presence of the jury is required. Therefore, if the court of appeal rejects the objection of the convict on press crimes, the issued verdict may perform without the need to hold more hearing courts.



CONCLUSION

From a long time ago, the jury has had a pivotal role to deliver verdicts in many courts. The presence of people in the jury is actually the reflection of the public conscience towards the lawsuit; therefore, it helps judges to deliver verdicts. A fair trial would be held in the jury and it inhibits influential persons to corrupt the jury by illegal means. Besides, in the jury judges can easily pace the justice route. In addition, the jury is the stage of public thoughts and people can state their expectations directly to juridical bodies and gain confidence in conferring with trials. As legal claims motivate public feelings less than criminal ones so according to civil laws there is no need for a jury, therefore in many countries like Iran according to law the jury only attends in courts of political and press crimes. But it seems that the presence of the jury in more common crimes is essential too because public thought plays a considerable role in the treatment of crime. As criminal codes are regulated to support the society against convicts and the law must give convicts punishment due to disturbing the peace and public feelings, therefore it should be noted that when the jury is not perceived as a decision maker body it means the common people are excluded from it.

However, it should be mentioned that, verdicts of the jury are only acceptable for crimes which are not perceived in divine limits. According to above, despite long history of the jury in the Iranian law, it seems to be secluded from its foundation purpose that is making decision based

on public conscience. Studying the jury from the viewpoint of Islamic jurisdiction indicates that it is sampled from the west and people-oriented schools; however, its nature is not in conflict with jurisprudence and traditions.

With respect to Article 16 of the constitution, in order to solve press crimes, the hearing needs to be held publically in the presence of the juries; but it is not absolute because each article has some exceptions.

For the clerical press crimes, a clerical court has the authority to address the issue but it's worth mentioning that existence of the jury in clerical courts is arbitrary. In clerical courts two references are used includes the internal regulations as a categorized form of Imam Khomeini answers and other Iranian statutes.

Finally, it should be noted that, the press crimes don't perceive as special ones and using a pen in a different way makes it possible. Therefore, its material is dissemination. As a result, as long as no subject is published no crime is occurred as well and it just perceives as the beginning of committing a crime at most.

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