

EVIL BE TO HIM WHO THINKS EVIL: THREE CASES OF SWEARING FROM ISTANBUL COURT REGISTRY IN THE CONTEXT OF GENDER CONSTRUCTION

Cem Doğan*

Öz

Kem Sözün Aidiyeti Meselesi:

Toplumsal Cinsiyetin İnşası Bağlamında İstanbul Şer'iyeye Sicillerinden Üç Küfür Vakası
İnsanların hangi nedenden dolayı küfürlü kelimeler kullanma eğilimi gösterdikleri tam olarak bilinmemektedir. Yaygın bir kaniya göre insanlar küfür ederler çünkü bu onların fizyolojik ve psikolojik doğalarındaki ilkel "ben"de saklıdır. Bir kişiye ya da şeye karşı küfür içeren kelimeler kullanmak, genellikle bu edimi ifa eden tarafın öfkesini fiziksel olarak gösteremediği zamanlarda görülmektedir. Böylece o, seçtiği kelimelerle başka bir şiddet türüne yönelmiş olmaktadır. Hatta bazen küfreden kimse, karşısındakinin en çok değer verdiği kişileri hedef alır ki, bu durum muhatap üzerinde fiziksel uyarılardan daha derin ve travmatik bir baskının doğmasına yol açar. Günümüz toplumunda küfür etmek sık sık insanları hukuk önünde karşı karşıya getirmekte ve suçlu tarafa tazminat gibi cezalar verilmektedir. Bununla birlikte, Osmanlı arşivlerini inceleyen bir kişi bu türden davaların aslında salt çağımıza özgü olmadığını görebilir. Bu çalışmada, klasik dönem Osmanlı yargı sistemine yansıyan üç farklı küfür davası dönemin şer'iyeye sicillerinden yola çıkılarak toplumsal cinsiyet bağlamında analiz edilecektir.

Anahtar Kelimeler: *Osmanlı Ceza Sistemi, Küfür, Toplumsal Cinsiyet, Kimlik İnşası.*

Abstract

We do not explicitly know why human beings show tendency to say swearwords. According to a common belief, they do so because of their hidden violent natures. Using swearwords against someone or something is mostly seen under the circumstances when a person can not harm physically his opponent. Thus he shows another sort of violence by his words. Even sometimes, swearing person aims at the most beloved people for his opponent and the harshness of his words may cause more damage than a physical attack on whom being swared. In the present day and society, most of people apply to the courts for being swared by someone and demand compensation for his adversary. Nevertheless, one may see that it is not a new resort if he examines the Ottoman archival documents. In this paper, three different swearing cases in the Ottoman local courts shall be analyzed in the context of gender.

Keywords: *Ottoman Penal System, Swearing, Gender, Identity Construction.*

* Öğretim Görevlisi, Ardahan Üniversitesi, Siyaset Bilimi ve Kamu Yönetimi Anabilim Dalı. E-posta: dogancem1@hotmail.com.

Introduction

The basic ability to communicate effectively by means of language is a truly remarkable attribute of humans. We use language to convey information, to express love, anger, excitement, sadness, and disappointment. However, there are moments when we abuse the gift of language; our words become daggers which can rattle nerves, hurt the feelings of those we love, and undermine self-confidence.¹ And there are moments in which we intentionally use swearwords against something that or someone who annoys or enjoys us. So, swearing is caused by a self-expression will of anger, desperation or in some cases, pleasure. For example, In China, you can insult someone by calling him the son of a turtle, which means his mother had him with someone other than her husband. In Italy you can call someone *pasquale*, which is equivalent to the hand gesture of a fist with the index and pinkle fingers extended, and means that the man you call that (or make that gesture at) is being cuckolded.²

On the other hand, one can use swearwords when he gets an expensive gift from someone and surprised or when he achieves one of his important goals for celebrating the moment. Thus, words cannot be unsaid, any more than blows can be taken back, and both can have serious repercussions. Swearing is a perennial source of fascination for those interested in language and society, continuously provoking controversy and raising topical issues. An extraordinary range of style and content has evolved in oaths, profanity, foul language, and ethnic slurs over the centuries, on a scale from the most sacred utterances to the most taboo.³ In this context, a swearword in its meaning of general acceptance is to vituperate to someone by insulting him or her with libellous sentences and acts.⁴ When swearing is perceived as an affront to a listener, this may be considered rudeness on behalf of a speaker. Assessing whether swearing in discourse is rude involves the difficult task of determining participants' identity, relationship, social norms, intentions and motivations. Judgments of rudeness are not only determined by the propositional content of swear words but by a sense of what is appropriate in a particular situation.⁵

Even a proficient and frequent user of a language not only possesses the correct perception of emotional force but may also feel he/she is close enough to the in-group to dare use these powerful words.⁶ In some cases, this profanity among uneducated men is the result of a very limited command of words to

¹ Harran, trz.

² Napoli ve Hoeksema 2009, s. 616.

³ Hughes, 2006, s. XV.

⁴ Güçlü, 1993, s. 7.

⁵ Jay ve Janschewitz 2008, s. 269.

⁶ Dewaele 2004, s. 220.

express their feelings of impatience, anger, jealousy, spite, and hatred; in others, mere levity of mental and moral constitution leads them to adopt the common and accredited forms of blasphemy, without any thought of their import; but in too many cases the words express the real passions of coarse, hard, dull, envious, and malignant natures, indifferent to religious or moral restraints, finding a certain delight in outraging ordinary notions of decorum, flattering themselves with the conceit that in ribaldry and blasphemy they have some compensation for the miseries brought upon them by poverty or vice, and indulging in outward curses as a verbal relief to their inward “cussedness” of disposition and character.⁷

As we have pointed out above, if we consider the swearing as an assault to the intimacy, we can see that it is an accumulated inner energy at which is stated the moments of anger and fury. It is certain that the swearwords have a masculine identity. For, whether the assaulter have the power to score his rival off he will do so, but he does not have enough power, he attempts to make an harm upon him with his sexual capacity. In this way, when the rival is in the same sexuality with the assaulter, it mostly becomes a *tour de force* and swearing aims at a woman relative of the rival which is basically his mother, sister or wife. Naturally, this is seen as an assault of the rival’s intimacy and regarded as one of the greatest insultings in the Eastern societies.⁸

In Turkey, as a Muslim Eastern society, there are and were miscellaneous ways to express peculiar feelings by swearing. There are, because we almost every day hear them or more honestly, use them ourselves. And there were, because we could find them in the historical documents. In this regard, I shall attempt to dig the swearing cases in the Ottoman archival documents out and debate over them in terms of the state attitude of the Ottomans towards the cases of swearing. I assume that it will be highly enlightening to see how the Ottomans had perceived the phenomenon ‘intimacy’ and its punishable infringement by examining this particular subject over some of the swearing cases.

1. Swearing as a Means of ‘Otherative’ Discursion

In the flow of daily life, each one of us lives in an ever-changing chain of experience in which thought, memory and perception interact with our immediate environment of other people and material conditions. Beyond the physical environment of our lives there lies the world of ‘social’ reality.⁹ Though, social reality is an intricate notion. One can have a thought that the

⁷ Whipple, 1885, s. 536-537.

⁸ Erkek 2009, s. 53.

⁹ Furniss 2004, s. 12.

world around him is provided substantially and perceive the reality that of unique to himself. But if he desires to comprehend the essential natures of things in the society, he needs to distinguish the reality and societal reality from each other, at first. Indeed, there are several realities for us in our everyday lives and we act accordingly in which reality we live at this very moment. Berger and Luckmann put it perfectly in their work as below:

“Among the multiple realities there is one that presents itself as the reality *par excellence*. This is the reality of everyday life. Its privileged position entitles it to the designation of paramount reality. The tension of consciousness is highest in everyday life, that is, the latter imposes itself upon consciousness in the most massive, urgent and intense manner. It is impossible to ignore, difficult even to weaken in its imperative presence. Consequently, it forces me to be attentive to it in the fullest way. I experience everyday life in the state of being wide-awake. This wide-awake state of existing in and apprehending the reality of everyday life is taken by me to be normal and self-evident, that is, it constitutes my natural attitude”.¹⁰

The social realities have the power to make us a set of changes in our ordinary experiences and give use clue how to act in certain times and positions of the society. Par instance, all adult speakers acquire curse words, which mean we know what words are curse words, as well as how to use those words correctly and effectively in multiple contexts. Whether one decides to use curse words or not is a different matter. It is essential for us to know what kinds of curse words exist in our native language so that we can tell when someone is emotional or when someone is insulting us. An implicit knowledge of cursing is necessary for understanding how native speakers express emotions verbally. Although we need to know how people use curse words to express emotions, not everyone has to use curse words to express emotions. Many restrained speakers will try not to curse under any circumstances.¹¹

Despite their different views on what swearing actually is and how it is best described, the studies above all set up certain basic criteria that in their opinion have to be met in order for an utterance to count as swearing. There is often considerable agreement concerning the majority of these criteria and many or even most of their creators would agree with most – but not all – of my own four criteria for what constitutes swearing. These criteria are: **(a)** swearing is the use of utterances containing taboo words, **(b)** the taboo words are used with non-literal meaning, **(c)** many utterances that constitute swearing are subject to severe lexical, phrasal and syntactic constraints which suggest that most

¹⁰ Berger ve Luckmann 1991, s. 35.

¹¹ Jay 1999, s. 86.

swearing qualifies as formulaic language, and (d) Swearing is emotive language: its main function is to reflect, or seem to reflect, the speaker's feelings and attitudes.¹²

Sociocultural influences on swearing vary from culture to culture and take some time and experience within a culture to be fully appreciated. Swearing is influenced by pragmatic (contextual) variables such as the conversational topic, the speaker-listener relationship, including gender, occupation, and status, and the social-physical setting of the communication with respect to whether the swearing takes place in a public or private location, one's jurisdiction over the location, and the level of formality of the occasion.¹³ Thus, we use the shapes of the words by altering them-most of the time allegorically- and put ourselves in a fit situation with what social environmental issues that surrounding us. If we success to look at the situation in this given way, we can see that in spite of the claims that have in the past been made to the contrary, there exists not the slightest evidence that there is such a thing as an innately determined drive or urge to swear.

The evidence indicates that swearing constitutes a learned form of behavior, a culturally conditioned response to the experience of certain conditions.¹⁴ Now and then, the deed of 'swearing' becomes a learned societal response to the stimulant factors and it depends upon the very *sui generis* social criterias of the societies which have been existed in the past and still exist in the present day. We could see what it means and how widespread it is in one of Hughes' passages:

"Swearing now encompasses so many disparate forms that some broad distinctions need to be made at the outset. We swear *by*, we swear *that* (something is so), we swear *at* (somebody or something), and sometimes we swear simply out of exasperation. These different modes might be retermed by a variety of classical equivalents, assertion, invocation, imprecation, malediction, blasphemy, profanity and ejaculation, with an admixture of that most complex and unstable category, obscenity. Although we are familiar with all these types now, they have not been constantly present in the past. They represent an agglomeration of various linguistic modes which have evolved over centuries".¹⁵

When we consider the swearing concept in its communal sense, we come across a number of traditions. Particularly, the masculine patterns of discourse

¹² Ljung 2011, p. 4.

¹³ Jay ve Janschewitz 2008, p. 272.

¹⁴ Montagu, 2001, p. 56.

¹⁵ Hughes 1998, p. 4.

of the societies have been hereditated from the past and they can not be easily seperated from their social roots. It is also possible to note here that somehow most of the swearwords have a masculine pattern. Truly, in the paternalistic societies, swearing habits have been developed under the domination of traditional and paternal verbal behaviours. If we accept that a swearword consists of only one or a group of words, then we ought to stress out that when a person has the intention of swearing, he is going to use the most common terms of it and it will probably be about sexual perpetration.

Swearwords have an important role in the group motivation, too. Generally speaking, swearing is more tolerated in informal and private or ingroup settings relative to more formal and public settings. The formality of the situation in which swearing occurs matters.¹⁶ Swearing can act as an ingroup solidarity marker within a shared colloquial style. Used when a higher style is expected, it is likely to cause offence and may be especially used to offend, but in both cases it reflects discredit on the speaker. It is not only the style expected, but also the relative status of the interlocutors that affects the perceptions of profane swearing.¹⁷

2. *Sebb-ü Şetm* and its Punishments in Ottoman Penal Tradition

Ottoman judiciary showed no mercy on swearers. But again, there were mainly three kind of swearing and punishment of it. First one was swearing against Islam or the Prophet himself and in these cases there were absolutely no forgiveness for the criminal. Second one was swearing to Padişah or the government. Saying bad words against padişah or the government was also a great crime in the eyes of the Ottomans. However these sorts of crimes were not treated as the first one was. There usually were some debates upon what was going to be happening to the criminal at first. Then wrongdoer was beaten or condemned or maybe exiled in some cases. Last kind of swearing was against unqualified citizens and they were generally handled between the sides of the case. But in some cases, authorities interfered in the situation and punish the criminals with imprisonment, penal servitude or fine.

Making fun of a person for his or her intelligence, level of knowledge, physical features and faults or defects, ascribe to that person some not-human-like things, imputating him or her vulgarly and rudely by sexual actions; attributing some humiliating or insulting temper, behaviours or habits constitutes the deed of swearing.¹⁸ Besides, Insulting by swearwords can be

¹⁶ Vingerhoets etc. 2013, p. 292.

¹⁷ Allan ve Burrige 2006, p. 78.

¹⁸ Cebe 2011, p. 33.

accomplished with a number of acts. If the insult is consisted of an effect directed to the victim's body, it is ranked as an actual deed. For instance, a hand gesture, sticking out the tongue, imitating one of the victim's physical defect to the victim and so forth.¹⁹ Islam severely forbids insulting acts as well as it does about using bad words against individuals.

Behaving rudely or making funny mimics/moves could change according to culture, region or religion. In a religion some words would be welcomed when they have been used but maybe it is a great swear in another religion. Thus we may explain the meaning of swearing as a rude act by considering that it is a consequence of sociocultural and psychological process. It is perfectly natural to see that the words in curse show tendency a great change with regard to the situation and current conditions of swearer. Once we intend to examine the essence of swearing habit, we should also think over gender issues. As it is well known, men are potential swearers compared to women. Men are psychologically more prone to swearing by their nature somehow they lose the control over themselves when they get angry at something.

In Islam, the crime of insulting (*sebb-ü şetm*) had a ta'zir punishment. In the result of using bad words against the prophets, noble people, descendants of the Prophet Muhammad, Muslim theologians and scholars (*ulema*) and authorized individuals, the perpetrator was punished with pounding or imprisonment or the both.²⁰ On the other side, Islam deemed some swear-like words or acts more harshly. For example, the most drastic kind of swearing in Islam is *kazf*, namely false accusation for fornication (*isnâd-ı zinâ*). The punishment for false accusation against an innocent woman or man is punished with hadd. Even if it occurs between the man and woman, it still needs hadd. However when a man accused his wife with fornication and he can not prove his claim, he is castigated by eighty struck in accordance with the 24/4 of Qur'an.²¹ Notwithstanding any kind of swear word deserves a penalty, Islam comprehends some sort of it as rejecting the circle of religion. Especially swearing against Allah or the Prophet himself is an unforgiven crime in the eyes of shari'a. In the surah al-Hujurat (49: 12) Allah commands people not to deride (*gıybah*) each other:

“O ye who believe! Let not one people deride another people, who may be better than they, nor let women deride other women, who may be better than they. And defame not your own people, nor call one another by nicknames. Bad

¹⁹ Gürdoğan 2012, p. 96.

²⁰ Polatcan 1983, p. 25.

²¹ Altun 2010, p. 15.

indeed is evil reputation after the profession of belief; and those who repent not are the wrongdoers”²².

Elfâz-ı Küfr means denying or cursing some or all of the commandments and words that coming directly from Allah through the Prophets. Ottomans considered the cursing to Islam or Prophet Mohammed as a great crime and treated accordingly. Besides, they did not welcome the curses against all the prophets in the history of mankind. Ottoman governments treated differently to the swearers in the context of gender. In the daily life, Ottoman men had a habit on swearing as public actors when it is compared to the women. But sometimes the rule could be broken and a woman was punished because of her nasty words. On the other side, no matter who insulted Allah or the prophets, religious traditions and practices by mocking or directly swearing them was inevitably had the most severe kinds of punishments.

For example, when a man whose name was Papazoğlu Todoraki (*Todoraki, Son of the Priest*) in Darıca village of Gebze region had insulted the Muslim prayer (*müezzin*) while he was vociferating in order to declare the time of praying (*namaz*). Todoraki not just swore against the man but also beat him (*şetm ü darba kıyam*). Upon this disturbing incident, Todoraki was sentenced to penal servitude (*kürek*) in Tersane-i Âmiri until he derives a lesson of his acts.²³ In the same way, Osman of Aleppo was sentenced to death in return for swearing to Allah and his prophet. However, there is a detail in his situation. Osman might have been accused in vain by his enemies. Thus, the governor of Aleppo was warned to be cautious and dig the case up and be sure that if Osman had really commit the mentioned crime or not.²⁴

Swearing the holy merits of Islam by non-Muslims in the Ottoman Empire is another subject. When the archival documents are examined, it may be easily seen that the non-Muslims population in the Empire was not as responsible as the Muslims in the swearing and insulting cases. This approach probably took its source from the conception *kâfirlik* (infidelity). According to Islamic tradition, a non-Muslim is accepted under the label of *kâfir* (infidel). So, (s)he was not guilty as a Muslim when it comes to swearing to religious values in the society. Ottomans adopted this tradition of punishing in the swearing and insulting cases of Allah, the Holy Qur'an, the Prophet Mohammed, and so on. As it is seen, this perception implies to a tactful political point as well. On one side, non-Muslims were not taken as responsible as Muslim subjects when they

²² *The Holy Qur'an*, p. 612.

²³ *Başbakanlık Osmanlı Arşivi* (will be given as *B.O.A.* in the following references), C.ZB., 9/403, 10 Ramazan 1172 (7 Mayıs 1759).

²⁴ *B.O.A.*, A.}MKT.UM., 34/58, 4 Zilhicce 1266 (11 Ekim 1850).

used bad words against the religious moments because they were already out of the Muslim religion. Of course they were tried and put on punishments as well but these punitive implementations were milder when they were compared to the sanctions to which were applied the Muslim population. To all appearances, non-Muslims i.e. *kâfirîn* got away with being what they exactly were. On the other side, this application was coming in handy in order to separate who is Muslim and who is not which in some cases this means who was the real subjects of the Empire.

As the members of non-Muslims communities in the Ottoman Empire, Christians, Jews and other components were shaping a sphere which politically apart from the government, and hence, their crimes against Islamic elements did not cause any repercussions as Muslims did. The essential reason laying under this was the fact that they were already conquered and dominated by Muslims and thanks to this they were not deemed as insulted any parts of Islamic religion as Muslims could harm it. But it does not show that there was not any non-official means of punishing them. As we can see in the instance of Lodovik of France, local people could attempt to lynch the foreign criminals when they insulted Islam.²⁵

There is also a distinction in swearing cases in terms of gender. Ottomans believed that swearing in some cases is not harmful. For this reason, most of the Ottoman jokes, narratives and anecdotes contains highly slang and swears. It could be suggested that the Ottomans used a lot of slang in the daily life as a part of proving their relation with local communities. Set aside the Ottoman men, women belonged to the home as a private sphere and they were seen as not interested in swearing as men did. Sometimes an extraordinary occasion comes up with the women too, as in the Necibe's situation. Necibe binti Sâlih (*Necibe, Daughter of Sâlih*) had dared to insult the Islamic prophet Mohammed. In the face of her crime, Necibe was sentenced.²⁶

Cursing, insulting or the worse swearing to padişah or government was also a serious crime in the world of the Ottomans. As a political institution, swearing to the monarchy or the padişah himself had a great punishment coming. If someone says bad words or omens about the government, (s)he meant it for padişah at the first hand as well. Because of Islamic and Turcic administrative traditions accepted and unified the monarch and his government are the same parts of the state targeting any of these three elements stand for the other one. Therefore, when one swears, insults or says bad omens about one of these organs meant cursing the Islamic tradition in a parallel way. In the

²⁵ *B.O.A., A.}MKT.NZD., 61/87, 8 Muharrem 1269 (22 Ekim 1852).*

²⁶ *B.O.A., A.}DVN., 88/38, 15 Recep 1269 (24 Nisan 1853).*

Ottoman daily life, the person who cursed padişah, his government or Islamic political institutionalization was punished oftenly with exile or beating when (s)he was heard by people around him.

3. Gender and Swearing Cases in the Classical Documents of Ottoman Local Courts: Three Cases

Human body has been highly functional throughout human history to define the social identities. Whether they are man or woman, individuals are defined by their physical appearances and features. In a way, naked human body and skin is a natural costume by itself which covers the surface of the social identity and create personal indications. Therefore, swearing deeds host human's physical elements most of the time. Besides, woman body and its intimate parts are way more common in slang expressions. Particularly, woman's womb (*ferc*) and man's penis (*sik*) are the current components of personal swearing cases in Turkish language. When a person swears against his/her rival via sexual organs, s(he) means that s(he) is capable to rape the rival or his/her relatives and perhaps even the opponent himself. Because of the link between the language and bodily deeds, swear to the body of someone give also a way to criticizing his/her sexual capacity.

A man swearing to another man's wife or mother proves that he could use the victims's bodies as a sexual apparatus at the same time. It is obvious that, gender and sexuality are intrinsic in language. The most obvious proof of this is that there is two spesific verbs in referring heterosexual or homosexual copulation in Turkish language. One of these is *vermek* (to give) and the other ise *koymak* (to put). Giving side is always woman or passive homosexual when the putting person is a real man.²⁷ So, *vermek* and *koymak* are the essential determinants of swearing in terms of gender. These verbs are clearly demonstrating that in linguistic structures there are very different types of swearing and they also could be fabricated in the relationships in daily life. For, these words are the determinant of sexuality and gender in real life and thus, they point at who is being penetrated and penetrate. As it seems, language is teemed with the images concerning sexuality which help to construct social identities in daily life. In this context, we will examine three different swearing cases that occurred during the daily communications amongst the people in Ottoman Istanbul.

First example comes from Scutari (*Üsküdar*) local court registrations. According to the case, a man whose name was *Koca Ebri* (Ebri the Great) had a crime on swearing against *Yusuf bin Osman* (Yusuf, Son of Osman) and he

²⁷ Tapınç 2003, p. 41.

earned a *ta'zîr* punishment in exchange for his bad manner.* This example is not an ordinary one because of its content. Koca Ebri had insulted Yusuf bin Osman by saying him *sikli* (dick-ed).²⁸ It is very surprising to see a man swears to another by using his penis as a tool that constitutes a very essential moment of the swearing. As we know well, most of the time swearing act contains a lot of sexual elements in it. Thus, it is highly related to the gender relations and the social construction of the gender codes in that very peculiar society in a discursive level, at least. In the first example, we observe that a male insults his male opponent via the male sexual member. Swearing case between Koca Ebri and Yusuf Bin Osman is showing us that Ottoman social morality did not hut a blind eye on male-male incidents and punished them. At the first hand, the word *sikli* might seem very strange to us because the opponents of this swearing case are both males. However, it makes us think that Koca Ebri meant not “dick-ed”, in actual fact he probably tried to say *siksiz* (dick-less) to Yusuf bin Osman and mock his manhood. Perhaps he had just confused with the word what he wanted to use against his rival and spitted a casual word out of his mouth.

Our second example is derived from Eyub local court registrations.²⁹ As the case indicates, a man named *Veli Beşe bin Hüseyin* (Veli Beşe, Son of Hüseyin) insulted his wife *Âişe bint-i Hüseyin* (Âişe, Daughter of Hüseyin) by swearing his mother-in-law and the religion of his wife. But the husband had not contended with this and told his wife that she was a whore and prostitute, too. Upon this, Âişe sued her husband and applied to the local court. After the testimony of four men those of whose name were Ahmed Çelebi b. Ali, Mustafa b. Musa el-Müezzîn and the other Mustafa b. Süleyman and the other Mustafa [b.] Şaban, court decided to make them divorced.** This instance is very striking

* “Sebeb-i tahrîr-i hurûf budur ki Yusuf b. Osman meclis-i şer‘a gelip bilesine Koca Ebri’[yi] ihzâr edip bana sikli deyu şetm etti deyu da‘vâ ettikde mezkûr Koca Ebri dahi ikrâr edip ta‘zîr hükm olundu. Tahrîren fî gurre-i Rebi‘ulevvel sene işrîn ve tis‘a mi‘e. Şuhûdü’l-hâl Şaban b. Ramazan, Emin Ayas Bey, Şah Bâli ve diğêr Ayas”.

²⁸ *Scutari Local Court Registry Book*. İstanbul: Turkish Religious Foundation Centre for Islamic Studies, vol. 1, sentence no: 71, original no: [14a-1], pp. 130.

²⁹ *Eyüb Local Court Registry Book*. İstanbul: Turkish Religious Foundation Centre for Islamic Studies, vol. 27, sentence no: 69, original no: [13a-1], pp. 93.

** *Medîne-i Hazret-i Ebâ Eyyüb el-Ensârî -dâme fî rıdvânî'l-Bârî-'de Takyecibaşı mahallesi sâkinelerinden Âişe bt. Hüseyin meclis-i şer‘-i şerîf-i lâzımü't-tevkîrde zevci Veli Beşe b. Hüseyin nâm râcil mahzarında üzerine da‘vâ ve takrîr-i kelâm edip zevcim mezbûr Veli Beşe târih-i kitâb günü bi gayr-ı vech-i şer‘î benim vâlideme ve dîn-i imânıma cimâ‘ lafzı ile şetm eylediğinden mâ‘adâ bre kahbe bre rospu deyu şetm eylemişdir, hâlen suâl olunup müceb-i şer‘îsi icrâ olunmak matlûbundur dedikde, gibbe[’s-]suâl ve akîbe’l-inkâr müdde‘î-i merkûme Âişe Hâtun’dan da‘vâsını mübeyyine beyyine taleb olundukda udûl-i ricâlden olup yine mahalle-i mezbûre sâkinlerinden Ahmed Çelebi b. Ali ve Mustafa b. Musa el-Müezzîn ve diğêr Mustafa b. Süleyman ve diğêr Mustafa [b.] Şaban nâm kimesneli ecli’ş-şehâde meclis-i*

because of the special content. First of all, case proves us that Ottoman women could quite easily resort to the local courts even with regard to their most intimate family situations. From this point, there is no harm in our way to claim that in the classical age Ottoman gender system was more egalitarian in comparison with the age of modernization. Needless to say that there were also a deal of cases between Ottoman men and women in modernization period. Yet, the law system in the classical age apparently more operational and flexible than the latter because of the changes in the moral codes of society in time.

Secondly, there is accuracy in the court's decision to be seen here. Ottoman law codes of the classical age were not only levelled the opposite sexes in front of the court but also gave them full authorization and capacity so as to fulfill what they really desired. This picture shows us that the Ottoman local courts of the classical age had been well-equipped so that they had the right to offer an equal process of judgement no matter what the sexes were in the cases.

And the last case had happened in Hasköy.³⁰ This case of swearing has a great importance in seeing the equality of Muslims and non-Muslims in the eye of the Ottoman judiciary system. Case says that one of the residents of Turşucuzâde Hüseyin Çelebi neighbourhood, Kazer veled-i Hanes (Kazer, Son of Hanes) complained about one of the officers of local security (*subaşı*) in the aforementioned neighbourhood, el-Hâc Mehmed bin Mehmed (el-Hâc Mehmed, Son of Mehmed).^{***} According to the claim of Kazer, Mehmed swore him by

şer'a hâzırın olup istîşhâd olunduklarında fi'l-hakîka mezbûr Veli Beşe târih-i kitâb günü zevcesi müdde'îye-i merkûmenin vâlidesine ve dîn-i imânına minvâl-i muharrer [üzre] cimâ' lafzı ile şetm eylediğinden mâ'adâ bre kahbe bre rospu deyû bizim huzûrumuzda şetm eyledi biz bu husûsa minvâl-i muharrer üzre [vech-i] mübeyyen üzre şâhidleriz şehâdet dahi ederiz deyû her biri edâ-i şehâdet-i şer'iyye eylediklerinde ba'de't-ta'dîl ve't-tezkiye şehâdetleri makbûle ve mesmû'a olduktan sonra mücebiyle müdde'îye-i mezbûrenin merkûmdan fırkatî[n]e hükm olunup mâ vaka'a gıbbe't-ta[l]leb ketb olundu. Fi'l-yevmi't-tâsi' min şehri Ramazânî'l-mübârek li sene hamsin ve sittîn ve elf. Şuhûdû'l-hâl: Selman b. Hamza el-Mübâşir, Hasan Beşe b. Abdullah, Sefer b. Mehmed, Fazlullah b. Ma'den.

³⁰ *Hasköy Local Court Registry Book*. İstanbul: Turkish Religious Foundation Centre for Islamic Studies, vol. 30, sentence no: 189, original no: [109-2], pp. 156.

^{***} Havâss-ı Aliyye kazâsı müzâfâtından kasaba-i Hasköy mahallâtından Turşucuzâde Hüseyin Çelebi Mahallesi sükkânından Kazer v. Hanes nâm Ermeni meclis-i şer'-i hatîr-i lâzîmü't-tevkîrde kasaba-i mezbûrede bi'l-fi'l subaşı olan el-Hâc Mehmed b. Mehmed mahzarında üzerine da'vâ ve takrîr-i kelâm edip mezbûr el-Hâc Mehmed târih-i kitâb günü bi gayrı hakkın benim anama ve avratıma cimâ' lafzıyla şetm edip behey gidi godoş başın avratın fercine ve dilini avratının fercine sok deyip bana hilâf-ı şer'-i şerîf şetm eylemişdir suâl olunup ihkâk-ı hak olunmak matlûbundur dedikte gıbbe's-suâl mezbûr el-Hâc Mehmed cevâbında fi'l-hakîka târih-i kitâb günü müdde'î-i mezbûr Kazer'in anasına ve avratına bi gayrı hakkın cimâ' lafzıyla şetm edip behey gidi godoş başın avratının fercine ve dilini avratının fercine sok deyip hilâf-ı şer'-i şerîf şetm eylediğini bi tav'ihî ikrâr ve i'tirâf etmeğın mücebiyle ba'de'l-hükm mâ vaka'a bi't-taleb ketb olundu. Fi'l-yevmi'r-râbi' aşer min şehri Ramazânî'l-mübârek li sene tis'in ve

saying his mother and wife were fornicators. Besides, he insulted his opponent as: “you pimp! Plunge your head and your tounge into your wife’s vulva”. Here, we run into a discursive insulting act. Actually, when Mehmed meant the vulva of Kazer’s wife, he definitely wanted to say that Kazer’s wife is whore and everyone copulates with her.

As an otherative discourse, swearing in this example is the main moment in the construction of otherization. Still, there is one point that matters more in this case which is Mehmed had insulted Kazer through his wife and mother. It is crucial to see that this swearing act was actually a gender-based. Why had Mehmed not sworn to Kazer via his body and his sexuality? No matter how hard we attempt to understand the nature of the swearing, it is somehow reamining in shade in terms of gender issues. Thus, we should note that swearing eachother by using the names of female family members of the opponent is demonstrating that femaleness, as a social identity, might be owned by maleness most of the time or it seems so. Purity, dignity and honor belong to the man who owns the woman, but not woman herself. For this evident reason, swearing is a basic element in creating gender identities in language.

Conclusion

As it has been said before, we do not know why people use swearwords in their daily lives. We may need a great deal of psychoanalytic works in order to explain this type of human behaviour in its details. On the other hand, we do know that when a person is not capable of demonstrating his anger by his bodily acts, he attempts to realize that aim by his tounge. This constitutes a criminal case in today as it did in the past. We should stress that swearing cases are and were not the only way of getting even. Most of the time slugging match between people turns into some kind of duel of words and have an end in the venue for that time being. Afterwards, the words that insulted eachother give a way to grudge and revenge physically or in another ways. Therefore, swearing cases have a beginning point but not a finish due to the fact that they make an enemy of the opponents.

Along with this, swearing generally functions in the creation of social reality as a human behaviour. It also fulfils a parameter that indicating and defining the verge between the *other* and the *self*. Hence, once a person swears to another, (s)he means a state of belonging and uses it as a discourse of otherization. For example, when a man or woman swears to God in his/her opponents personality it does not mean s(he) is actually swearing God himself

elf. Şuhûdü'l-hâl: Süleyman Çelebi b. Ramazan, Ali Çelebi b. Abdurrahman, Hasan Çelebi b. Mustafa, Dilâver Bey b. Abdullah, Abdülbâkî b. Ömer”

but, indeed, this is a unique way to claim that “my God is different than yours and so, yours can be insulted because you and your God are in the category of others in my opinion”. Or whenever a man swears to another man’s female relatives as mother, sister, daughter or wife, either deliberative or not, he attempts to claim that his opponent’s female beloveds are not his own and thus, there is no inconvenience for the one who swears.

To sum up, swearing could be analyzed under some certain circumstances like the mental condition of the person, reason of swearing, main elements of swearing act and so on. However, there is a vital point to indicate in almost all of the swearing cases which is swearing constructs social identities in a discursive level but mostly helps in creating a heterosexual masculine identity. So, it may be put forward that swearing has a masculine identity itself in a basic level, and it stresses the virility of whose swearing to the female relatives of his opponent. Furthermore, claiming that an act of swearing which contains sexual allusions is a mockery with the manhood of the opponent at the same time. Yet, when he swears to another man’s wife, mother, daughter or sister may be sexually harassed even if it is in words and this proves to the opponent that he is not a real man.

BIBLIOGRAPHY

- Allan ve Burridge 2006 Keith Allan ve Kate Burridge, *Forbidden Words Taboo and the Censoring of Language*. New York: Cambridge University Press.
- Altun (Öçkoymaz) 2010 Gülerdem Altun (Öçkoymaz), *Hakaret Suçu* (unprinted master thesis). Ankara: Ankara University, Institute of Social Sciences, Department of Criminal and Criminal Law of Method.
- Berger ve Luckmann 1991 Peter L. Berger ve Thomas Luckmann, *The Social Construction of Reality a Treatise in the Sociology of Knowledge*. London: Penguin Books.
- Cebe 2011 Abdurrahman Cebe, *Türk Ceza Kanununda Hakaret Suçu 5237 Sayılı Tür Ceza Kanunu Madde 125, 130* (unprinted master thesis). İstanbul: Bahçeşehir University, Institute of Social Sciences, Department of Public Law.
- Dewaele, 2004 Jean-Marc Dewaele, “The Emotional Force of Swearwords and Taboo Words in the Speech of Multilinguals”, *Journal of Multilingual and Multicultural Development*, vol: 25, no: 2&3, pp. 204-222.
- Erkek 2009 Mehmet Salih Erkek, “17. Yüzyılda Mardin Kadı Mahkemesine Yansıyan Küfür Davaları”, *Acta Turcica*, year: 1, no: 2/1, pp. 52-60.
- Eyüb Local Court Registry Book*. İstanbul: Turkish Religious Foundation Centre for Islamic Studies, vol. 27, sentence no: 69, original no: [13a-1], p. 93.
- Furniss 2004 Graham Furniss, *Orality the Power of the Spoken Word*. London: Palgrave Macmillan.
- Güçlü 1993 Faruk Güçlü, *Toplumsal Yaşamda Küfür*, Ankara: Kerem Publishing.
- Gürdoğan 2012 Özkan Gürdoğan, *Hakaret Suçu* (unprinted doctoral thesis). Ankara: Ankara University, Institute of Social Sciences, Department of Criminal and Criminal Law of Method.
- Harran trs. Thomas James Harran, “The Role of Swearing in Language” 平成 23 年 2 月. 大分大学工学部研究報告第 58 号.
- Hasköy Local Court Registry Book*. İstanbul: Turkish Religious Foundation Centre for Islamic Studies, vol. 30, sentence no: 189, original no: [109-2], pp. 156.
- Hughes 1998 Geoffrey Hughes, *Swearing: A Social History of Foul Language, Oaths and Profanity in English*. London: Penguin Books.

- Hughes 2006 Geoffrey Hughes, *An Encyclopedia of Swearing the Social History of Oaths, Profanity, Foul Language, and Ethnic Slurs in the English-Speaking World*. New York: M. E. Sharpe.
- Jay 1999 Timothy Jay, *Why We Curse? A Neuro-Psycho-Social Theory of Speech*. Philadelphia: John Benjamins Publishing Company.
- Jay ve Janschewitz 2008 Timothy Jay ve Kristin Janschewitz, “The Pragmatics of Swearing”, *Journal of Politeness Research*, vol:4, pp. 267-288.
- Ljung 2011 Magnus Ljung, *Swearing a Cross-Cultural Linguistic Study*. New York: Palgrave Macmillan.
- Montagu 2001 Ashley Montagu, *The Anatomy of Swearing*. Pennsylvania: University of Pennsylvania Press.
- Napoli ve Hoeksema 2009 Donna Jo Napoli ve Jack Hoeksema, “The Grammatial Versatility of Taboo Terms”, *Studies in Language*, vol: 33, issue: 3, pp. 612-643.
- Polatcan 1983 İsmet Polatcan, *Memur ve Resmî Heyetlere Karşı Hakaret ve Sövmeye Cürümleri*. İstanbul: Tasvir Publishing.
- Scutari Local Court Registry Book*. İstanbul: Turkish Religious Foundation Centre for Islamic Studies, vol. 1, sentence no: 71, original no: [14a-1], pp. 130.
- Tapınç 2003 Hüseyin Tapınç, “Masculinity, Femininity, and Turkish Male Homosexuality”, *Modern Homosexualities: Fragments of Lesbian and Gay Experience* (ed: Ken Plummer). Londra ve New York: Routledge Press, pp. 39-49.
- The Holy Qur’ân* (çev: Maulawi Sher’ Ali). Islamabad: Islam International Publication Limited, 2004.
- Vingerhoets etc. 2013 J.J.M.Vingerhoets, Lauren M. Bylsma ve Cornelis De Vlam, “Swearing: A Biopsychological Perspective”, *Psychological Topics*, vol. 2, issue. 22, p. 287-304.
- Whipple 1885 Edwin P. Whipple, “The Swearing Habit”, *The North American Review*, vol. 140, no. 343, pp. 536-550.