

The Right to Privacy: Foundations and Protections in Islamic Jurisprudence

Waliuddin Nadwi¹, Muhannad Abdul Moneim Uday²

Abstract

Islam honors human beings by acknowledging a set of rights, including the right to privacy, as stated in numerous international legal articles which aim to protect it. This study aims to elucidate the foundations of the right to privacy in Islamic jurisprudence by examining religious texts and clarifying the protective methods provided by Islamic law. To achieve the desired results of this research, I have relied on an inductive analytical method. Among the conclusions reached is that Islamic law addresses the components and branches of the right to privacy, even though the term "privacy" itself is not explicitly mentioned. Islamic jurisprudence has established both preventive and punitive measures to protect this right from violators. I recommend that jurists and legal scholars conduct comparative studies between the right to privacy in Islamic jurisprudence and secular law and expand on how to protect this right from modern technological infringements.

Keywords: Right, Privacy, Protection, Islamic Jurisprudence

INTRODUCTION

There is no doubt that privacy has become a complex issue in the era of information eruption and technological revolution. In the prophetic era, information was gathered orally. With the advent of paper, people began writing it down. In the current era, individuals, companies, and institutions collect information via smart devices and modern applications, threatening a fundamental human right: the right to privacy. Islamic law must protect and solidify this right, as Allah Almighty said:

"O believers! Avoid many suspicions, 'for' indeed, some suspicions are sinful. And do not spy, nor backbite one another. Would any of you like to eat the flesh of their dead brother? You would despise that! And fear Allah. Surely Allah is 'the' Acceptor of Repentance, Most Merciful." [Al-Hujurat: 12].

This verse establishes an inherent human right that is inseparable from the individual: the "right to privacy." The wise legislator has prohibited spying and exposing people's Awrah, which includes not interfering in their private matters. Thus, it can be considered a fundamental right of the individual. Although humans are naturally social beings, they still desire to have personal secrets and private matters that are not exposed to others. These privacies vary from person to person depending on customs, traditions, cultures, and religions.

Importance of the Topic

1. The importance of the topic is evident in the fact that Islam has given great attention to rights, valuing human dignity while increasing their status and maintaining human rights and interests. It commands the preservation of rights and forbids actions that would squander or undermine them.
2. Islamic law places significant emphasis on human rights, considering them among its most essential sources. Allah Almighty has established various rights in His law to preserve human dignity and humanity in a manner that aligns with sound nature and wise legislation. Among these rights is the right to privacy, which is one of the most important human rights as it is tied to individual freedom, resulting in respect for human dignity and honor.

¹ Mohammed Bin Zayed University for Humanities E-mail: waliuddine.nadwi@mbzuh.ac.ae

² Mohammed Bin Zayed University for Humanities

Reasons for Choosing the Topic

1. The private lives of individuals require significant protection in the current era due to the technological and digital revolution, which has led to numerous violations of the right to privacy.
2. The scientific motive lies in the scarcity of specialized research and studies that address this topic in sufficient detail to dispel the ambiguity surrounding it. This study is an attempt to fill a gap and highlight the importance of protecting privacy rights and the means of protecting them in Islamic jurisprudence and contemporary legislation.

Research Problem

The right to privacy is crucial in human societies, and numerous violations of this right have been observed, particularly in the modern era. It is essential to regulate and protect this right from violators through technological and other means, as people are keen to keep their secrets and private matters undisclosed. Some may even grieve the exposure of their secrets more than the loss of their wealth.

The research problem can be summarized in the following points:

- What is the concept of the right to privacy?
- What is the stance of Islamic law on this right?
- How does Islamic law protect this right?

PREVIOUS STUDIES

After continuous research on this topic, it became apparent that there is a scarcity of dedicated works and theses in the field of Islamic jurisprudence that have thoroughly studied this topic. What I found were only partial subjects and scattered issues related to the right to privacy. Some addressed rights in general, while others discussed the right to privacy specifically without expanding on the means of protection. I did not find a comprehensive study dedicated to the topic of the right to privacy, its foundations, and means of protection in Islamic jurisprudence and contemporary legislation.

Among the sources I found are the following:

1. "Protection of Private Life in Criminal Law: A Comparative Study" by Mahmoud Khalil Bahr, Dar Al-Nahda Al-Masriya, Abdel Khaleq Tharwat, 2010.
2. "Protection of the Right to Private Life in Algerian Legislation" by Ben Haida Mohamed (PhD thesis submitted to Belkaid University - Tlemcen, Faculty of Law and Political Science), submitted in the academic year 2016/2017. The researcher primarily addressed the system of protecting the right in Algerian law and its manifestations, without referencing the stance of Islamic law on the right to privacy. I will add this to my research and clarify the means of protection provided by Islamic law for these rights.

RESEARCH METHODOLOGY

To achieve the desired results of this research, I relied on the inductive and analytical method in studying the concept of the right to privacy, grounding it in the Quran and Sunnah, and considering it a human right.

Research Plan

Introduction: In this section, I addressed the importance of the topic, reasons for choosing it, the research problem, previous studies, the methodology followed to accomplish it, and finally, the plan I followed in addressing this topic, which is as follows:

Chapter One: Definition of the Right to Privacy, in which I discussed two main points:

First Section: Definition of the Terms of the Right to Privacy

Section Two: Definition of the Right to Privacy Considering its Addition

Chapter Two: The Legal Foundation of the Right to Privacy in Islamic Jurisprudence.

Chapter Three: Preventive and Procedural Measures for Protecting the Right to Privacy in Islamic Jurisprudence.

Chapter One: Definition of the Right to Privacy

First Section: Definition of the Terms of the Right to Privacy.

Definition of "Right" in Terminology:

Imam Al-Qarafi divided rights into two types: the right of Allah and the right of the individual. He then differentiated them by stating: "The right of Allah is related to His commands and prohibitions... The right of the individual is divided into three categories: the first is the right upon Allah, which is to worship Him, that He may admit the individual to paradise and save him from hell. The second is the individual's right in general, which is the matter that ensures his well-being in this life and the hereafter. The third is his right over others, which includes what is owed to him by others in terms of obligations and injustices" (Al-Qarafi, n.d., 1/157). From the definitions and the various expressions of the term "right" used by jurists – which will be mentioned later – it is evident that the term was not foreign to them, as they frequently used it in their writings. However, none of the jurists provided a precise, comprehensive, and exclusive definition of the term "right" in terminology, despite its frequent use in their works.

Definition of "Privacy" in Terminology:

Defining privacy in terminology is challenging due to its broad scope and the flexibility of the concept, which varies with changing societies, times, places, customs, and traditions. It differs across eras, cultures, religious values, and countries. Privacy is a concern and an obsession for many human societies. Despite this, the concept of privacy has not been clearly defined in some areas, leading to ongoing debate and discussion among researchers (Salim Jallad, 2013, 20). Jurists used the term "privacy" to refer to what is unique to something, saying that a particular thing has its own privacy.

From this discussion, it can be summarized that "right" in language refers to what is correct and established, and what is the opposite of falsehood. In terminology, it refers to an individual's exclusive claim to a certain value, whether material or moral. Linguistically, privacy means being unique, while in terminology, it encompasses all that pertains to an individual's personal secrets, emotions, or family life.

Section Two: Definition of the Right to Privacy Considering its Addition

"Jurists historically used the term 'right' in various contexts. They used it to denote exclusive rights of Allah, such as His right to all forms of worship, as Allah says: I did not create jinn and humans except to worship Me' [Adh-Dhariyat: 56]. They also used it to denote human rights, such as the right to own property, or general rights like the community's rights over the ruler and vice versa" (Salim Jallad, 2013, 20). Additionally, they used it to refer to rights related to virtuous behavior, such as the right to bless someone who sneezes. Anas ibn Malik reported that two men sneezed in the presence of the Prophet Muhammad (peace be upon him). He blessed one of them but did not bless the other. The one who was not blessed said, "So-and-so sneezed, and you blessed him, but I sneezed, and you did not bless me." The Prophet replied, "He praised Allah, but you did not" (Muslim, n.d., 2/2292).

Moreover, they used the term for personal rights, such as the husband's rights over the wife and vice versa. However, jurists in the past did not use the term 'right to privacy' due to the evolving terminology over different eras (Salim Jallad, 2013, p. 20).

Professor Abdullah Hussein suggested that the right to privacy in Islamic jurisprudence was known as 'the right to shelter.' He argued that the right to shelter is essentially the repository of secrets and privacy (Salim Jallad, 2013, 20). I believe his perspective is correct but limited to the right to shelter, which is not comprehensive. Islam acknowledges specific rights beyond the right to shelter, such as bodily privacy, prohibiting the exposure of a man's or woman's chastity. Allah Almighty says: 'And tell the believing women to lower their gaze and guard their chastity, and not to reveal their adornments except what normally appears ' [An-Nur: 31].

Professor Hassan Jundi attempted to define the right to privacy based on what Islamic law establishes about individual privacy. He defined it as: "The protection of a person's private and family life from being exposed or startled by others without consent. It encompasses the security of the person concerning his and his family's chastity and sanctities, which he wishes to keep away from all forms of intrusion, whether from close relatives or others with no connection to him, inside or outside his home. It also ensures a period during which one can be alone and act freely and his family, to the extent that he can repel any infringement on this sanctity without any responsibility, and obligates others to respect this, or else they face legal consequences" (Al-Jundi, 1993, 46).

I find that Professor Hassan Jundi's definition comprehensively encompasses most aspects of the right to privacy, making it one of the most suitable definitions provided by some contemporary scholars.

In summary, Islamic law did not explicitly mention the right to privacy by name. However, it endorsed it through its various aspects and branches, protecting and safeguarding it against any harm. It recognized the inviolability of the home, the right of an individual to keep their secrets, Private body, and the prohibition of others from looking at one's private parts, among other personal rights.

Chapter Two: The Legal Foundation of the Right to Privacy

Section One: The Legal Foundation of the Right to Privacy in Light of the Quran

Allah Almighty has honored humans above other creations, giving them value and dignity and creating them in the best form and stature (Al-Qurtubi, 1964, 10/293). Among these rights is the right to enjoy private ownership as prescribed by Allah Almighty without using it for unlawful purposes. Allah Almighty has also honored individuals with the right to keep the secrets of their homes, secured their dwellings through the institution of seeking permission before entering, and protected their body by prohibiting the viewing of their private parts. Everyone has secrets that must be kept private and not disclosed to others, and thus spying, prying into others' private matters, and stalking are prohibited.

The Quran does not explicitly mention the right to privacy by name but addresses it through its components and branches. Examples of how the Quran advocates for the right to privacy include:

Prohibition of Spying

Spying is the act of prying into others' private matters and violating their privacy without justification. Because such behavior causes harm and discord among people, Islamic law prohibits it. Allah Almighty says:

"O believers! Avoid many suspicions, 'for' indeed, some suspicions are sinful. And do not spy, nor backbite one another. Would any of you like to eat the flesh of their dead brother? You would despise that! And fear Allah. Surely Allah is 'the' Acceptor of Repentance, Most Merciful" [Surah Al-Hujurat: 12].

This verse establishes key principles for safeguarding the right to privacy, explicitly prohibiting spying, prying into others' private matters, and uncovering their secrets and personal issues. This prohibition is based on the premise that everyone has personal matters and secrets that others are not permitted to access.

Suspicion here refers to suspecting your Muslim brother of evil, which is the type of suspicion a Muslim is sinful for harboring. However, suspicion of good is encouraged (Al-Tabari, n.d., 21/373), "as believers are allowed to assume good of each other, as stated: ' If only the believing men and women had thought well of one another, when you heard this 'rumor', and said, "This is clearly 'an outrageous' slander!" [Surah An-Nur: 12], permitting believers to think well of each other and to speak well of one another" (Al-Tabari, n.d., 21/375).

In the verse, "And do not spy," [Surah Al-Hujurat: 12], the term "spy" refers to the act of seeking out news and tracking people's faults, which is why a spy is called a 'jasoos' (Ibn al-Haytham, 2002, 1/298). One of the indicators that Allah means by " And do not spy" in [Surah Al-Hujurat: 12] is to avoid seeking out people's privacy (Al-Tabari, n.d., 21/374), as illustrated by the incident: "Zayd ibn Wahb reported: A man was brought to Ibn Mas'ud and it was said to him, 'This man's beard is dripping with wine.' Abdullah said, 'We have been forbidden from spying, but if something is revealed to us, we will act upon it.'" (Abu Dawood, n.d., 4/272).

If a person becomes aware of a fault in their Muslim brother, they should not speak ill of him, as backbiting is prohibited by Allah who said: "nor backbite one another." [Surah Al-Hujurat: 12].

Prohibition of Disclosing Secrets

Islamic law prohibits disclosing secrets to others and considers it a betrayal of trust. Allah says: "O believers! Do not betray Allah and the Messenger, nor betray your trusts knowingly." [Surah Al-Anfal: 27]. This verse means: Do not betray your trusts while knowing that such betrayal is wrong. Muhammad ibn Ishaq explained: "Do not betray Allah and the Messenger by showing him what pleases him while secretly acting contrary, as this would lead to your destruction and betrayal of your trusts" (Al-Samarqandi, n.d., 2/17).

Trusts can be either material, such as entrusting someone with money or a car, or immaterial, such as entrusting someone with a secret. The emphasis in the verse is on maintaining the confidentiality of secrets, expressed here as a trust that must not be betrayed. This trust is heavy and can only be upheld by a true believer, as Allah states: "Indeed, We offered the trust to the heavens and the earth and the mountains, but they 'all' declined to bear it, being fearful of it. But humanity assumed it, 'for' they are truly wrongful 'to themselves' and ignorant 'of the consequences'" [Surah Al-Ahzab: 72]. Trust encompasses all duties of the religion according to the scholars, which is the opinion of the majority (Al-Qurtubi, 1964, 14/253). Maintaining confidentiality is one of the duties of the religion prescribed by Islamic law. Any secret a person carries is considered a trust and a private right of the confider, and only the trustworthy preserve it. Due to its weight, even the mountains refused to bear it, highlighting its significance in Islam, so how can man bear it?

The Right to Independence in Personal Affairs:

This means that every individual has freedom and independence in their actions and behavior regarding their personal matters. Among such matters is what Allah Almighty said: "When you divorce women and they have reached the end of their waiting period, do not 'let the guardians' prevent them from re-marrying their ex-husbands if they come to an honorable agreement. This is enjoined on whoever has faith in Allah and the Last Day. This is purer and more dignifying for you. Allah knows and you do not know" (Al-Baqarah: 232).

This verse means that if a man divorces his wife with a revocable divorce and her waiting period (iddah) has ended, she has the right to return to her husband if he proposes to her, and her guardians are not allowed to prevent her from remarrying. Al-Mawardi said: "Allah Almighty forbade the guardians of the woman from preventing or obstructing her from marrying the one she is pleased with among the suitors" (Al-Mawardi, n.d., 1/298).

And in His Almighty's words: "if they come to an honourable agreement" [Al-Baqarah: 232], there are two interpretations: one is if the couple agrees, and the second is if the woman is pleased with the competent man (Al-Mawardi, n.d., 1/298).

Scholars have differed on whom this verse was regarding, with three opinions:

The first opinion is that it was revealed about Mu'qal bin Yasar, who married his sister to a man, then her husband divorced her, and after the waiting period, they agreed to remarry, but Mu'qal prevented her. This is the view of Al-Hasan, Qatadah, and Mujahid.

The second opinion is that it was revealed about Jabir bin Abdullah with a cousin of his, whose husband divorced her, then proposed to her again, but Jabir refused to remarry her to him. This is the view of Al-Suddi.

The third opinion is that it was revealed generally to prohibit any guardian from harming his guardianship by preventing her from marrying. This is the view of Ibn Abbas, Al-Dahhak, and Al-Zuhri (Al-Mawardi, n.d., 1/299).

The reasoning behind this verse is that if a woman is divorced with a revocable divorce and her (iddah) has ended, and the husband wants to take her back, and she agrees to it, and there is an agreement between them, her guardians are not allowed to prevent her. This is considered a personal right, and she has the freedom to make decisions regarding her own private affairs.

Section two: The Sharia Foundation of the Right to Privacy in Light of the Prophetic Sunnah

The Prophetic Sunnah holds the second highest position among the sources of Islamic legislation, coming after the Holy Qur'an. It either clarifies, explains, or specifies the Qur'an, and thus it holds a high status after the Qur'an because the Prophet (peace be upon him) does not speak from desire. Allah Almighty says, "Nor does he speak of his own whims (3). It is only a revelation sent down 'to him'. (4)" (An-Najm: 3-4). When the verses of Allah's Book were revealed to our Prophet Muhammad (peace be upon him), they were sometimes general, and here where the role of the Prophet (peace be upon him) comes in, explaining and detailing the legal rulings and clarifying the intent of the Legislator from them.

The right to privacy in Islamic jurisprudence is based on the Prophetic Sunnah. The Sunnah established these rights and clarified the personal rights of individuals and the rights of the community. Jurists relied on it to explain the intent of Allah Almighty from the verses related to privacy rights, such as the obligation to seek permission before entering a house, the sanctity of keeping secrets, the individual's freedom to make personal decisions, and the protection of that privacy to safeguard honor and property from intruders. All of this indicates the respect of Islamic Sharia for individual privacy.

Given that the Sunnah clarifies the Qur'an, it addresses the branches of this right in more detail. The Prophetic Sunnah established many rights related to privacy, which can be outlined as follows:

The Right to the Privacy of the Home:

The home is a repository and center for secrets and privacy, and a place for isolation from society and distance from it. This is confirmed by the Prophet (peace be upon him) regarding homes during a plague. Aisha (may Allah be pleased with her), the wife of the Prophet (peace be upon him), said: "I asked the Messenger of Allah (peace be upon him) about the plague, and he told me: 'He told me that it was a Punishment sent by Allah on whom he wished, and Allah made it a source of mercy for the believers, for if one in the time of an epidemic plague stays in his country patiently hoping for Allah's Reward and believing that nothing will befall him except what Allah has written for him, he will get the reward of a martyr.'" (Bukhari, 2001, 4/175). The Prophet (peace be upon him) urged people to stay in their homes and isolate themselves from society when an epidemic appears to protect them from it and to prevent its spread among people.

The house or residence is a fortress for the family; it covers them, preserves their privacy, and protects them from heat, cold, and rain. Abdullah ibn Abbas reported that he said to the Mu'adhhdhin on a rainy day: When you have announced "I testify that there is no god but Allah; I testify that Muhammad is the Messenger of Allah," do not say: "Come to the prayer," but make this announcement: "Say prayer in your houses." He (the narrator) said that the people disapproved of it. Ibn 'Abbas said: Are you astonished at it? He (the Holy Prophet), who is better than I, did it. Jumu'a prayer is no doubt obligatory, but I do not like that I should (force you) to come out and walk in mud and slippery ground. (Muslim, n.d., 2/2292).

The Messenger of Allah (peace be upon him) also called for leaving public affairs and focusing on private matters. Amr ibn al-As said that while they were around the Messenger of Allah (peace be upon him), he mentioned discord (fitnah), and said, "When you see people's covenants being corrupted and their trustworthiness reduced, and they become like this" — and he intertwined his fingers — "I stood up and said, 'What should I do at that time, may Allah make me your sacrifice?' He said, 'Stick to your house, control your tongue, take what you recognize, and leave what you disapprove of. Take care of your own affairs and leave the affairs of the general public'" (Abu Dawood, n.d., 4/124).

Many hadiths stipulated the sanctity of the home and the prohibition of entering it without permission. These hadiths serve as a principle that must be adhered to, which is that the home has a sanctity that must not be violated or intruded upon. Among these hadiths are:

The Right to Keep Secrets and Their Sanctity

The Prophetic Sunnah protected secrets and affirmed its protection and respect by preventing others from accessing them, which includes prohibiting spying (to be elaborated later) and preventing others from disclosing these secrets. Among the hadiths that prohibit revealing secrets is the hadith narrated by Anas ibn Malik: "The Prophet (peace be upon him) confided to me a secret, and I did not inform anyone about it after him. And indeed, Umm Sulaym asked me, but I did not tell her" (Bukhari, 2001, 8/65).

This hadith guides to a great moral of Islam, which is keeping secrets. The Messenger of Allah (peace be upon him) told his servant, the noble companion Anas ibn Malik, a secret, and he did not inform anyone, not even his family or the other companions. This was the character of the companions; may Allah be pleased with them. Islam was their character, and they embodied the lofty morals that it encouraged. What confirms that keeping secrets was a characteristic of the companions; may Allah be pleased with them, is the advice of Umar ibn Abdul Aziz, may Allah be pleased with him, regarding the preservation of secrets: "Hearts are the containers of secrets, lips are their locks, and tongues are their keys. Each person should guard the key to his secret" (Al-Mawardi, n.d., 1/308).

Inference this Hadith was to show that Anas ibn Malik safeguarded the secret of the Prophet (peace be upon him). In Islam, a secret must be preserved and not disclosed to others as it pertains to the private right of the secret's owner.

The Right Not to Have Others Know Personal Affairs

The Prophetic Sunnah affirmed the preservation of secrets and protected them from the intrusion of others. It prohibited all means of interfering with others' privacy, such as the prohibition of spying, because spying involves following people's private matters and accessing their secrets, which no individual would want revealed to the public. Many hadiths prohibit spying, forming a fundamental principle indicating its prohibition. Some of these hadiths include:

1. Prohibition of Spying

The Prophetic Sunnah confirms what is stated in the Holy Qur'an. Just as Allah Almighty prohibited spying in His Book, the Messenger of Allah (peace be upon him) also prohibited it in his Sunnah.

Abu Hurairah narrated that the Messenger of Allah (peace be upon him) said: " Beware of suspicion, for suspicion is the worst of false tales. and do not look for the others' faults, and do not do spying on one another, and do not practice Najsh, and do not be jealous of one another and do not hate one another, and do not desert (stop talking to) one another. And O, Allah's worshippers! Be brothers! " (Bukhari, 2001, 8/19).

The meaning of the hadith is the Prophet's (peace be upon him) prohibition of spying. This prohibition implies that spying is forbidden. Spying violates privacy by following people's hidden faults.

2. The Reason for Prohibiting Spying

Rulings in Islamic Sharia are often based on reasoning with a specific purpose behind permitting or prohibiting an action. Spying is prohibited in the Prophetic Sunnah due to the corruption and strife it causes, as well as the destruction of trust among people. Muawiyah narrated: "I heard the Messenger of Allah (peace be upon him) say: 'If you follow people's hidden faults, you corrupt them, or get close to corrupting them'" (Abu Dawood, n.d., 4/272).

Spying is the act of searching for people's faults and shortcomings. The hadith implies that following people's hidden faults corrupts them because it creates suspicion, leading to a loss of trust among people, making everyone in society doubt each other. This hadith is general and applies to those in authority over people and to all members of the community.

The meaning of the hadith is that the Prophet (peace be upon him) prohibited spying and following people's faults and shortcomings because this leads to people committing sins openly. Spying and following people's faults is a violation of privacy.

The Right to Make Personal Decisions

The decisions related to an individual's personal matters are significant in Islamic law. The Prophetic Sunnah acknowledged this right, granting freedom of choice in decision-making within the boundaries of Sharia. For instance, a Muslim is not permitted to marry a fifth wife. Many hadiths address this subject, including:

1. A Woman's Right to Accept or Refuse Marriage

The Sunnah honored women and accorded them a high status in Islam. Regarding marriage, a guardian cannot marry off a woman without her consent. Abu Salama narrated that Abu Hurairah reported that the Prophet (peace be upon him) said: "A widow should not be given in marriage until she is consulted, and a virgin should not be given in marriage until her permission is granted." The people said, "How will she express her permission?" The Prophet said, "By keeping silent (when asked her consent)." (Bukhari, 2001, 7/17).

The meaning of the hadith is that the Messenger of Allah (peace be upon him) made a woman's marriage contingent upon her consent. It is not lawful for a guardian to marry off his ward without her approval, which indicates the woman's freedom in making decisions related to her personal affairs.

2. Freedom to Dispose of Personal Property

Personal property includes what an individual owns, whether material or immaterial. In Islamic law, an individual has the right to dispose of their property in a manner pleasing to Allah. This includes selling, donating, or dedicating it to a cause. Abdullah ibn Umar narrated that Umar ibn al-Khattab acquired land in Khaybar and went to the Prophet (peace be upon him) to seek his counsel. He said, "O Messenger of Allah, I have acquired land in Khaybar; I have never acquired property more precious to me than this. What do you advise me to do with it?" The Prophet (peace be upon him) said: "If you wish, you can hold the property as waqf and give its fruits in charity." So, Umar gave it to charity, stipulating that the property itself would not be sold, inherited, or given away. He gave its produce to the poor, relatives, slaves, and for Allah's cause, travelers, and guests. There is no sin for the one who administers it to eat from it reasonably or to feed a friend without gaining wealth from it. Ibn Sirin reported it, saying: "Without accumulating it as wealth" (Bukhari, 2001, 3/198).

The meaning of the hadith is that the Messenger of Allah (peace be upon him) gave Umar ibn al-Khattab the right to decide regarding his personal property (the land). The Prophet left the decision to Umar's discretion, and Umar chose to dedicate it and give its produce in charity.

Chapter Three: Preventive and Procedural Measures to Protect the Right to Privacy in Islamic Jurisprudence

Sharia is distinguished by its flexibility, encompassing all legal rulings that govern the relationship between the servant and his Lord, as well as the relationship between individuals. Among the aspects that regulate interpersonal relationships is the protection of privacy rights from intrusions and violations by others. Sharia has adopted various preventive and procedural measures to safeguard this right, including:

Section One: Preaching and Deterring Transgressions

Islamic law excels beyond other religious and secular laws by its early emphasis on protecting this right as follows:

Islamic Division of Rights: "Islam divides rights into three categories: the rights of Allah, the rights of individuals, and shared rights between Allah and the individual. The right to privacy falls within the rights of individuals" (Habibi, 2005, p. 13).

Protection of Individual Integrity: Islam protects individuals from having their bloodshed, honor violated, or property usurped, as indicated by the Prophet's saying: "Every Muslim is inviolable to another Muslim: his blood, his wealth, and his honor" (Muslim, n.d., 4/1986).

Right to Live Safely: This encompasses the sanctity of private life, including protection against spying, exposing private matters, and the inviolability of one's home (Al-Jundi, 1993, p. 46).

Islam distinguishes itself by employing the method of preaching and guidance in life matters. Allah says:

" I warn you so you do not fall into ignorance." [Hud: 46], and: " 'Only' Allah knows what is in their hearts. So turn away from them, caution them, and give them advice that will shake their very souls" [An-Nisa: 63].

The preaching used in the Qur'an regarding the right to privacy includes:

" And Allah knows what you reveal and what you conceal" [An-Nur: 29].

Similarly, regarding backbiting, Allah says:

" Would any of you like to eat the flesh of their dead brother? You would despise that! And fear Allah. Surely Allah is 'the' Acceptor of Repentance, Most Merciful" [Al-Hujurat: 12].

Sharia employs preaching to counter transgressions in two stages:

1. **Pre-Offense Stage:** Focused on reminding individuals of the punishment in the hereafter.

2. **Post-Offense Stage:** Where preaching occurs, and in this case, the punishment is discretionary, as determined by a judge. For instance, Al-Ma'rur ibn Suwayd said: "We passed by Abu Dharr in Al-Rabadhah and he was wearing a cloak, and so was his slave. We said: 'O Abu Dharr, if you took the cloak from your slave and wore it, you would have a fine suit and give him another.' He said: 'There was a quarrel between me and another man whose mother was a non-Arab, and I insulted him about his mother. He complained to the Prophet (peace be upon him) and I met the Prophet who said: 'O Abu Dharr, you are a man who still has Jahiliyyah (pre-Islamic) traits.'" (Muslim, n.d., 3/1282).

Sharia combined preaching and deterrence together. Ibn Umar reported: "The Messenger of Allah (peace be upon him) ascended the pulpit and called out in a loud voice, saying: 'O you who have embraced Islam with their tongues but whose faith has not yet entered their hearts, do not harm Muslims, do not humiliate them, do not pursue their faults. For whoever pursues the faults of his brother, Allah will pursue his faults, and if Allah pursues his faults, He will expose him even if he were in the midst of his house'" (Tirmidhi, 1975, 4/378).

Section Two: Preventing Violations

This refers to the guarantees that prevent interference with privacy, such as appointing a Muhtasib (public morals inspector) to prevent such transgressions. "Hisbah (public accountability) is commanding what is right when it is neglected and forbidding what is wrong when it is openly committed" (Al-Mawardi, n.d., 1/249). Allah says: " Let there be a group among you who call 'others' to goodness, encourage what is good, and forbid what is evil—it is they who will be successful." [Aal-E-Imran: 104].

Islamic jurisprudence relies on this principle, not granting volunteers the right to prevent apparent wrongdoings, but reserving that authority for the Muhtasib or the ruler, as a means of thwarting potential abuse (Al-Mawardi, n.d., 1/249).

Examples include:

- Holding accountable those who usurp or steal others' property, which is the responsibility of the Muhtasib alone.

- Only the ruler or a judge can lawfully enter someone's home.

Jurists mentioned that it is not permissible to play with pigeons over people's heads or to build pigeon towers, as these could be means to spy on people's private matters.

Section Three: Afterlife Punishments Deterring Violations

Islam has adopted the approach of warning about afterlife punishments to deter people from committing prohibitions. This has a significant impact on preventing transgressions due to the fear it instills. An example is the verse:

" There is no blame on you if you enter public places where there is something of benefit for you. And Allah knows what you reveal and what you conceal" [An-Nur: 29].

This verse contains a warning for those who enter places to cause corruption or to pry into people's private matters (Al-Alusi, 1994, 9/339).

Regarding the punishment for violating others' privacy, Abu Sa'id Al-Khudri reported that the Prophet Muhammad (peace be upon him) said:

"Indeed, among the worst of people before Allah on Judgment Day is a man who opens up with his wife, and she does the same, and then spreads her secrets" (Muslim, n.d., 2/1060).

This hadith warns those who disclose marital secrets that they will be among the worst people in status before Allah on Judgment Day.

Conversely, there is also an emphasis on the great reward for protecting a fellow Muslim's secret and not disclosing it. Abu Huraira reported that the Prophet Muhammad (peace be upon him) said:

"Whoever conceals [the faults of] a Muslim, Allah will conceal [his faults] in this world and the Hereafter. And Allah is in the aid of a servant so long as the servant is in the aid of his brother" (Muslim, n.d., 4/2074).

Section Four: Ruling to Cease the Violation

Based on the principle of "No harm and no reciprocating harm," ceasing the violation of privacy is obligatory whenever possible. It must be removed and nullified upon discovery or before it occurs. An example mentioned by Ibn Farhun in "Al-Tabṣīrah" states: "If someone causes harm by looking into a neighbor's house or by opening a door or a window that overlooks their house, or if they build something that allows them to look into their neighbor's house, they should be prevented" (Ibn Farhun, 1986, 2/349).

"In the juristic school of thought, if it is established that harm is being caused by an opening, it is ruled that it should be blocked" (Ibn Farhun, 1986, 2/249).

If someone's house is visible from a neighbor's house, it is obligatory to cover the view by making a screen for the window or erecting a high barrier to block the neighbor's view of their home.

An example of ceasing the violation of privacy is the hadith narrated by Aisha: "A girl came to her and said, 'My father married me to his nephew to elevate his status, and I am unwilling.' She said, 'Sit until the Prophet (peace be upon him) comes.' The Messenger of Allah (peace be upon him) came, and she told him. He then sent for her father and called him, giving the girl the choice. She said, 'O Messenger of Allah, I have accepted what my father did, but I wanted women to know what they say in the matter'" (Al-Nasai, 1986, 6/86).

CONCLUSION

In conclusion, I thank and praise Allah Almighty for granting me the ability to complete this research. I ask Him, the Almighty, to make it purely for His sake, to benefit the Ummah and society, and to forgive any mistakes or shortcomings we may have made. He is All-Hearing, All-Seeing.

Some of the most prominent findings and conclusions reached are as follows:

Defining the right to privacy comprehensively is challenging due to its vastness, flexibility, various forms, and changes over time, place, customs, and traditions. Some researchers have attempted to define it, such as Professor Hassan, whose definition was mentioned in the first chapter.

Islamic law specifies the right to privacy in its details and branches, although not by name. The term "right to privacy" is not explicitly mentioned in the Holy Qur'an or Sunnah, but it has been acknowledged jurisprudentially by early scholars even if not explicitly stated.

Islamic law pays great attention to human rights, imposing corresponding duties and responsibilities on individuals and society. The obligations are the basis of rights, showing that Islamic law prioritizes the fulfillment of duties before granting rights.

One aspect of Islamic law's attention to the right to privacy is that it establishes its foundation and details, providing preventive measures before a violation occurs and penal measures after it happens.

The sources of Islamic legislation are rich with evidence and examples mandating respect for private life and non-interference. The Qur'an and Sunnah both emphasize the sanctity of the home, the prohibition of spying, and the confidentiality of secrets, among other proofs that indicate the necessity of preserving the right to privacy in Islamic jurisprudence.

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