

Privacy and Confidentiality in Islam: An Analysis of Islamic Jurisprudence Guideline in the Light of Maqasid Al-Shariah

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Abstract

Invasions into the private life of a person are unethical and punishable as infringement on human rights. In response to this issue, legislative laws have been established to safeguard the privacy of personal matters. Islamic law, as articulated in the Quran and Sunnah, asserts the significance of confidentiality in maintaining the sanctity of life, which aligns with Maqasid Shariah's objectives. This study examines Qur'anic verses and Hadiths that institute individual privacy. The study, through a descriptive and analytical methodology, explains and discusses these sources to further knowledge about Islamic attitudes towards privacy. The primary conclusions establish four fundamental pillars: First, the individual must conceal their nakedness, where there is strong emphasis on physical privacy. Second, the privacy of the house must be maintained, thereby forbidding illegitimate invasion. Third, the defendants must not be tortured to force them to give information, and they are thus shielded from coercion. Fourth, confidential communication and correspondence must be safeguarded from wiretapping or espionage. These dictates echo the significance of privacy in facilitating human dignity and social harmony and advancing the higher objectives of Shariah. The paper contends that privacy protection is essential to fulfilling the goals of Maqasid Shariah, which seeks to enhance social cohesion and promote moral virtues. By integrating principal Islamic viewpoints of privacy, the paper develops an integrated literature for comprehending proscriptions against privacy within Muslim society. Finally, it contends that Islamic doctrine perceives privacy as essential to the safeguarding of personal integrity and the fortification of relationships.

Keywords: Secret Protection, Human Rights, Private Life, Islamic Jurisprudence, Maqasid Shariah

Introduction

It is a fact that Islam respects and grants special rights to humans. The right of privacy and a private life are among them. The Quran and the Sunnah have bordered emphasis on it and the forbidding from its violation. Hence, the judgments that protect people's private lives, preventing infringement on them, stand in harmony with this fundamental right in Islam. The paper further elaborates on the Islamic jurisprudence rulings on keeping secrets related to private life within the light of Maqasid Shariah, derived from the Holy Quran and the traditions of the Prophet. In doing so, the data were sourced from authoritative references to verify the accuracy of the information on Islamic jurisprudence rulings regarding preserving the secret of private life in the light of Maqasid Shariah. Further, a descriptive approach is being used for this study in terms of the interpretation and analysis of data.

The paper highlights the lacuna in the existing literature. Most studies on preserving secrets of private life were from the conventional law perspective; few are based on the Islamic Jurisprudence perspective, more specifically, Maqasid Syariah. The Maqasid Syariah which aim to protect fundamental human needs (religion, life, intellect, progeny, and wealth) Faizin & Jafar (2024) offers an applicable solution regarding the preservation of the secret of human private life, which can be placed under the principle of protection of life.

General Principles on Special Jurisprudence in the Preservation of the Secrets of Human Private Life

The Islamic teachings have laid down principles to guard information and ensure its secrecy. They include the use of cover on one's body, guarding the privacy of one's home, avoiding prying into the private affairs and reputations of others, ensuring the secrecy of correspondence and conversations from being eavesdropped on, and forbidding the use of torture in extracting information or secrets from those suspected of crime. These practices are described in detail in the following sections.

Section 1: The Jurisprudence on the Need to Cover up the Body

According to the Islamic law, the parts of one's body should be covered, not only to save its privacy and dignity but to protect its virtues as well. The women have been ordered to hide their ornaments and put on the hijab as stated in the verse: "Settle in your homes, and do not display yourselves as women did in the days of pre-Islamic ignorance" (Surah al-Ahzab:verse 31).

Besides, it covers parts of the body; it is also viewed as a means of protection from harm, which preserves bodily integrity. This sentiment is expressed in the verse, "O Prophet! Ask your wives, daughters, and believing women to draw their cloaks over their bodies. In this way, it is more likely that they will be recognised as virtuous and not be harassed. And Allah is All-Forgiving, Most Merciful" (Surah al-Ahzab: verse 59). The verse therefore underlines the need for women to dress in such a way that their beauty is hidden. (al-Sabuni,2018). The verse articulately mentions that women need to protect themselves by fulfilling the responsibility of veiling their bodies in order to avert any slanders that come as a product of lack of performance in this responsibility (Hamidah, Saipudin & Rashid,2022).

In the context of the Qur'an, the term hijab may well be understood to represent a partition or a curtain in the literal or in the symbolic sense. The word is used literally in one

verse and in the commonly received interpretation it refers to the curtain that divides those who approach Muhammad's house from his wives. This makes Muslim women understand that hijab is compulsory and the rule to wear hijab is enforced on every Muslim woman as many Quran verses elucidate on this. Muslim woman should cover her all body with curtain when she goes out of the house and her face to an unknown person while it is acceptable for her to uncover her face, hands and legs to her relatives (Waqar, Ulhaq & Naeem, 2022).

As for the body, it has to be hidden by covering the internal organs as is required by Islamic law to protect the body from being exposed and violation of its—private—imperfection. The scripture advises women to cover up and wear the hijab, saying, "Settle in your homes, and do not display yourselves as women did in the days of pre-Islamic ignorance." (Surah al-Ahzab: versi 31).

Moreover, it is believed to be safeguarding oneself's privacies for the genital area and ensure that the body would remain as it is with no alterations or flaws. A part of their outer garments should be taken down over themselves, as the prophet told his wives, daughters, and all the believing women.

The women, who wear jewellery, are rebuked in the prophetic tradition because they are neither veiled nor protect their privy parts. These ladies risk being punished and being cursed to be barred from entering what is referred to as 'paradise'. This is made clear by the hadith that Abu Hurairah narrated: In it, he reported God's Messenger as saying, "There are two classes of those who will go to hell whom I have not seen: a whiplike people [ox-tails] with which they flog people; women astoundingly dressed, almost nude, who stir men and lust for men, men with drooping humps [Bactrian camel humps] on their heads. As for such women, they will not seek to enter Paradise or taste its perfume; however its perfume can be smelled at 'this and this distance'" (Muslim, 2020).

The Second Section: Jurisprudential Rulings on on Respect for the Sanctity of the Secrets of the Home

Islamic law has established rules and etiquettes for entering a home to preserve the sanctity of an individual's private life. This is clearly demonstrated by the rules of seeking permission, as stated in the verse: "O believers! Do not enter any house other than your own until you have asked for permission and greeted its occupants. This is best for you, so perhaps you will be mindful" (Surah al-Nur: verse 27).

Additionally, Islamic law permits the homeowner to repel those who spy on their secrets, even if it leads to injuring the intruder, without any liability. As narrated by Abu Hurairah, having heard Allah's Messenger (PBUH) say, He who peeped into the house of people without their consent, it is permissible for them to put out his eyes." (Muslim, 2020).

From the above passage it thus emerges that Islamic law honors the privacy of the house. Homes according to Allah to be a place of stability, security, a haven, and asylum from OR a place to clear ones burdens. This lets a person and his spouse and children keep secrets to themselves and hide their imperfections and personal affairs, and be secure in their home, according to Islamic law.

The Third Section: Case Law Prohibiting the Use of Torture to Obtain Secrets

In Islamic law it is one of the horrible offences against humanity to torture a human being, whom Allah has honoured. This is so Because it contravenes the principles of human dignity that Islamic law espouses in its legal those systems. The Islamic law provides that the use of any form of torture to a detainee, including the psychological type of torture as well as the physical type of torture, is strictly prohibited especially during a war.

Even during times of conflict, Islamic law upholds the sanctity of people and their secrets and forbids torturing them to obtain information. . An example of this is of course the story from Anas bin Malik, may Allah be pleased with him, in which some of the Companions, may Allah be pleased with them, caught a black kid from the Banu Hajjaj clan. "I have no knowledge of Abu Sufyan, but this is Abu Jahl, `Utbah, Shaybah, and Umayyah bin Khalaf," he replied when they questioned him about Abu Sufyan and his friends. They hit him when he stated it. Then he answered, "This is Abu Sufyan; yes, I will let you know." "I have no knowledge of Abu Sufyan, but this is Abu Jahl, `Utbah, and Umayyah bin Khalaf among the people," he responded when they left and questioned him once more. They hit him again when he said this. Standing in prayer was the Messenger of Allah; peace and blessings be upon him. This caused him to turn, and he spoke, saying, "By Him whose hand is my soul, you strike him when he tells the truth and leave him when he lies" (Muslim,2020).

The possibility of the prophetic tradition suggests that even in the uneasy period of the war the Messenger of Allah, peace and blessings be upon him, prohibited to torture the youngster. This is a clear indication that it is unlawful to subject a suspect to torture so as to extract information or secrets they may possess, from them.

It has been pronounced by jurisconsults that a confession wrung out of a suspected person through torture, threats, or any other means of compulsion cannot be received as evidence in any court of law (Ibn.Qudamah,1985). Al-Shawkani stated that it is prohibited to torture with fire. (al-Shawkani,2019) According to Abu Yusuf, Umar bin Al-Khattab, may Allah be pleased with him, gave his governors the order not to beat or torture individuals, respecting their right to life (Abu Yusuf, 2015).

According to Islamic law, a confession must be free of any wilful flaws and any physical coercion that could endanger one's physical health,as mentioned by `Awdah (2020) and Banhasi (1989). It is, therefore, illegal to torture a suspect with the intention of eliciting any information or secrets from that particular human being because human beings are fragile and cannot withhold threats or beating. This poses the risk of changing the witness of Premiership, destroying their moral character and losing the human element. Wrong information may be provided; Frustration, illness, or even death through torture and other inhuman and cruel treatment may be the end result. This is contrary to the spirit of Islamic law, which holds private life as sacrosanct, pursues happiness, and respects human dignity.

Islamic law also requires that captured fighters be treated kindly, regardless of whether they are Muslims, as the verse "and give food—despite their desire for it—to the poor, the orphan, and the captive" states (surah al-Insan: verse 8). It was the Prophet's (peace and blessings upon him) instruction to "treat the captives well" (al-Tabrani,2017). Moreover,

it is against Islamic law to kill or torture civilians to obtain information or secrets from them (al-Siba'i, 1998).

The Fourth Section: Jurisprudential Rulings Prohibiting Spying on Correspondence and Conversation

Islamic law definitely supports the privacy of correspondence, for it involves the secrets of people and their personal information. It seeks to protect those secrets from violation, including making the correspondence confidential, and none is allowed to view or intercept it without permission.

It is narrated from Abd Allah bin Abbas, may Allah be pleased with them, that the Prophet, peace and blessings be upon him, said: "Whoever peeps into his brother's letter without his permission, it is as if he has peeped into the fire" (al-Suyuti, 1949). This comparison suggests that looking into confidential matters between the writer and the recipient is like looking into something that could lead to damnation. This prohibition applies particularly to letters containing secrets and trust, where the author does not wish for others to know their contents (al-Baghawi, 2015).

In brief, Islamic law is built upon respect for the privacy of life, especially in correspondence secrecy, as it might include sensitive, personal, or family-related information whose spreading without permission may cause harm, embarrassment, or violation of dignity and human sanctities. Based on this, Islamic law makes everyone have the right to keep his correspondence secret and feel secure, happy in protecting his private matters.

Moreover, the Islamic law also protects the privacy of individual communications because it values the concern that in most cases, there is personal and confidential information. Whether these conversations are made directly or through modern communication devices such as landlines, mobile phones, or even social media like Facebook, WhatsApp, Viber, WeChat, Twitter, and Telegram.

Regarding this matter, Islamic law prohibits eavesdropping on these private communications. This is an infringement on a person's right to private life and the preservation of their secrets, as indicated in the Quran: "Do not follow what you have no sure knowledge of. Indeed, all will be called to account for their hearing, sight, and intellect" (Surah al-Isra':verse 36). The verse implies that one should not listen to or observe what is impermissible to hear or see. Ibn Abbas explains, "Do not pursue what you do not know and what does not concern you," while Qatadah comments, "Do not say 'I saw' when you did not see, or 'I heard' when you did not hear." Thus, a person is not permitted to listen to what is forbidden or speak falsehood (Ibn.al-`Arabi, 1999).

Moreover, Islamic law also attempts to protect the sanctity of the private life of a person, more especially in keeping the secrecy of private discussions, which quite often comprise information related to a person's life. The exposure of this kind of information to the public may seriously affect the dignity, feelings, and social standing of a person. Consequently, Islamic law allows everybody to keep his or her conversation private, providing the feeling of security and joy that his or her privacy is guarded.

The prophetic tradition also prohibits spying on people's secrets by eavesdropping or listening in on their conversations. This is illustrated in a narration from Ibn Abbas, where the Prophet, peace and blessings be upon him, said: "Whoever listens to the conversation of people who dislike him listening, or they flee from him, molten lead will be poured into his ears on the Day of Resurrection" (al-Bukhari, 2020). This hadith underscores the prohibition of listening to conversations that others wish to keep private. Thus, it is forbidden for someone to spy by listening to conversations that the parties involved do not want to be overheard.

Islamic law forbids spying on people's secrets, sanctities, and reputations to protect the sanctity of private life. It categorically prohibits pursuing others' faults, considering it a major sin, as stated in the Quran: "O believers! Avoid many suspicions, for indeed, some suspicions are sinful. And do not spy or 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: verse 12)

Al-Qurtubi (2006) states, "Take what is apparent and do not pursue the faults of Muslims (al-Qurtubi, 2006)," meaning, do not search for your brother's defects that Allah has concealed. Al-Tabari (2001) comments, "Do not follow each other's faults, nor seek out their secrets with the intention of uncovering their flaws; instead, be content with what is apparent to you and judge accordingly."

Furthermore, the prophetic tradition criminalises and warns against pursuing others' faults and spying on them, promising punishment from Allah for those who violate people's sanctities. This is illustrated in a narration from Abu Barzah al-Aslami, may Allah be pleased with him, where the Messenger of Allah, peace and blessings be upon him, said: "O you who have believed with their tongues but faith has not entered their hearts, do not backbite Muslims and do not follow their faults, for whoever follows their faults, Allah will follow his faults, and whoever's faults Allah follows, He will expose him even if he is in the midst of his house." (Abu Dawud, 1975).

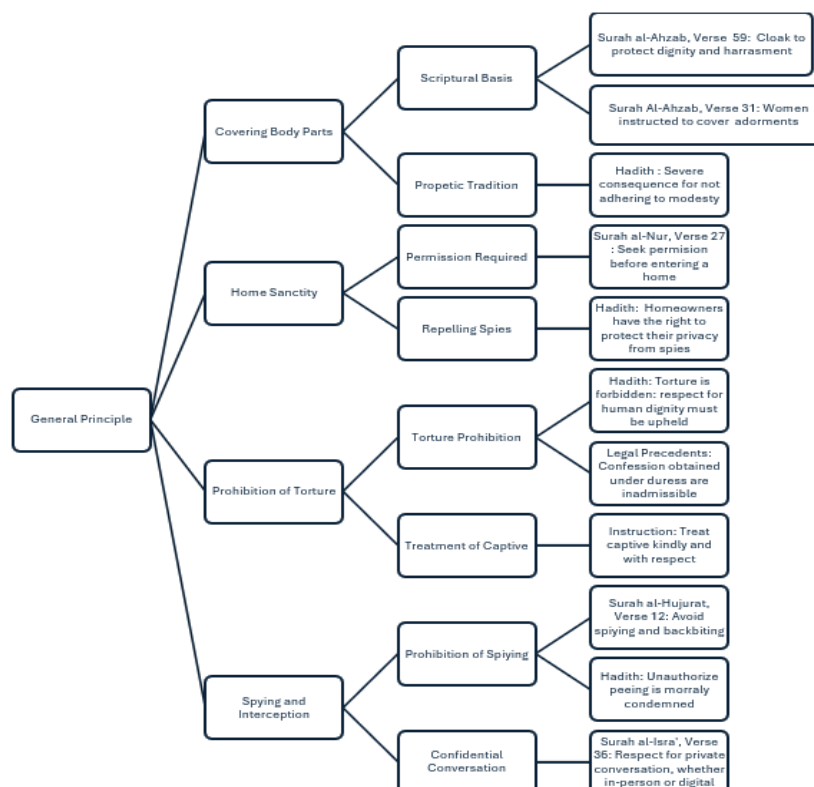


Figure 1: General Principle On Preseving The Secrets Of Private Life From The Perspective Of Source : Authors' Interpretation

Conclusion

The text highlights the importance of safeguarding secrets as emphasised in Islamic teachings found in the Quran and Sunnah. These teachings stress the sanctity of private life and the obligation to protect one's secrets, considering it a noble moral duty. Violating someone's privacy or spying on their secrets is regarded as a sin that leads to committing a crime, warranting punishment.

It is noted that the Quran and Sunnah have established specific jurisprudential rules to protect an individual's right to privacy and the safeguarding of secrets. These rules include the prohibition of spying, respecting the sanctity of secrets within one's home, enacting laws regarding modesty and body privacy, as well as protecting communications from being monitored or intercepted. Additionally, Islamic law forbids torturing the accused to extract information or secrets.

This emphasis on maintaining the privacy of personal secrets underscores Islam's concern for social stability and the protection of human dignity. The study observes that these texts highlight the essential role that secrets play in achieving social stability and preserving the desired human dignity.

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