

## Investigating the Nature and Rulings in Iran`s Private Rights

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### Abstract

*Privacy is one of the fundamental subjects of human rights and one of the concepts of developed right systems, which has a close relationship with human dignity. Therefore, supporting and backing individuals` identity and citizenship rights require supporting privacy. In Iran`s rights system, privacy is not supported clearly and meaningfully, and indeed Iran`s stance facing privacy is explicit. Rights and freedoms as privacies are supported incompletely, implicitly among other right regulation. Constitution, Islamic punishment regulation, Penal hearing ethic regulations, information freedom regulation, regulations and rules related to postal, and phone communications, and press regulations are among the regulations that at times implicitly and at times explicitly have supported some instances of privacy, albeit in contrast to the regulations of the countries that support privacy clearly and in form of specific principles. In Iran`s constitution there is no specific context that supports privacy under this term. Therefore, in this research basics of right in privacy and its challenges in Iran`s rights were investigated.*

**Keywords:** Constitution, Citizenship rights regulations, Privacy, Islamic punishment regulations, Penal hearing ethic regulations.

## **Introduction and problem statement**

Privacy is a jurisprudential and juridical term, which means a given area around some immovable properties that for complete utilization of their owners, others seizures have been forbidden in that area. Colloquial meaning of privacy in jurisprudence and law is close to its lexical meaning and its aim is a specific area surrounding an immovable field (such as house, well, aqueduct) that to partially or fully use it is dependent on the seizure in it. For instance, privacy in law context in the 22, 23, and 25 principles of Islamic republic of Iran`s constitution and in 135 to 139 clauses of civil law is clearly stated, but the legislator have not clearly explained nor clarified its meaning and today in addition to the traditional instances of privacy such as well privacy, route privacy, aqueduct privacy, river privacy, we are observing new collocations of this word such as city privacy, privacy, information privacy, privacy in virtual space and privacy of legal entities, which each of them can be discussed and investigated separately.

## **Research purposes**

### **Main purpose:**

Determining rulings and effects of privacy in Iran`s private rights.

### **Minor purposes:**

- 1-Identifying the concept of Iran`s private rights and its major headings and investigating the aspects of privacy in them.
- 2-Determining privacy`s concept and related rulings and effects.

## **Research Hypotheses**

The requirement for recognizing aspects of privacy in Iran`s private rights is the recognition of Iran`s private rights` aspects.

There are various viewpoints in ownership or rightfulness of privacy.

We imagine some exceptions for privacy.

## **Research Methodology**

Research method here is descriptive-analytic and its purpose is practicality.

## **Privacy Effects and its limitations in jurisprudence**

Some Jurisconsults, according to a number of citation,s have stated that the privacy`s basis and the reason for its sanctity is preventing any loss for an owner that to use his property requires the surrounding fields. If such a right is not recognized for him, he cannot completely utilize his property. And if someone seizes someone`s property in a way that prevents the owners from using it, he is practically wasted the profits of his land. Profit unanimously among all juridical

religions, is treated as the real property, which only jurisconsults of Hanfiyeh have objected. This issue seemingly is collective among Imami jurisconsults and therefore includes “No loss” principles. Jurisconsults have utilized “no harm” principles in two ways: the first group explicitly consider the principle the basis of privacy and consider it applicable to all instances of privacy, the other have utilized the principle case based.

Hydro facilities privacy starts from the fields surrounding pipelines, private sewerage collecting lines from existing network to the beginning, Dams branching pipes, pipings, and their production and distribution devices, which is created by the government or deduction of finances between government and private sector, or private sector itself for public use. Such facilities that are related excavating underground water (such as facilities that are near aqueducts and wells and are owned by individuals) or urban and industrial water supply facilities are required for its optimum exploitation and safekeeping.

### **Strong points of regulations regarding privacy**

According to fiftieth principle of Islamic Republic of Iran`s constitution, “Protecting the environment within which the current and next generation should have a progressive social life is considered a public duty. Therefore, economic and non-economic activities that coincide with environment pollution or irrecoverable damage are forbidden.” Therefore, planning for removal of the pollution of underground water sources and to this end, specifying qualitative privacy to prevent pollution, is considered one of the related principles of fiftieth principle of constitution. The authorities that legislator has given in the case of property privacy goes so far as to consider privacy as a property of the owner and does not approve of seizing what is against privacy and is done without the owner`s permission. Therefore, no one can dig a well or aqueduct in another`s privacy. But the seizures that do not cause harm to the owners are approved. We conclude from the before mentioned statements that privacy is for completing exploitation, obtaining profit, and loss excretion, weather potential or hypothetical. Therefore, activities like underground water pollution around the well that can cause harm to privacy owners (well owners) can be accounted in this principle.

People`s lives privacy including corporeal, spiritual, and ideological are to be respected and according to the constitution no one is allow to invade them. Ideologies inspection and unnecessary delving regarding personal ideologies, is considered an obvious example of invading human rights. Due to this reason ideology inspection was forbidden centuries ago and governments have stated its prohibition in their regulations. Iran`s constitution too have absolutely supported ideology freedom and the prohibition of ideologies inspection and have not considered any exception, even with rule of law. Due to ideology freedom in religion is an inviolable concept, as god in his holy book Quran has continuously discouraged men from ideology inspection of his kind. And its reason can be surveyed in preventing violation of human dignity and creating an obstacle in diminishing human`s transcendental personality.

Albeit Islamic Republic of Iran`s constitution has stated some generalities in 23<sup>rd</sup> principle and has considered individual`s privacy inviolable from invasion. And this is the duty of general and specific laws to address its details and restrict violating factor of privacy. For instance, we know that each person`s political ideology is pertinent to himself and is considered an instance of privacy and any interference from governments or parties must be prevented. However, we that it is no so in practice and parties easily access information banks and delve individuals` ideologies, which are violating individuals` privacy. In order to protect citizens political and ideological orientation from parties` access and rapine, every country`s regulations must support citizens` political privacy. Most countries have officially recognized inviolability of individuals` political thoughts against any individuals or public entities intervention. However, Iran`s constitution has not specifically and in a proprietary principle addressed the concept and has supported privacy and inviolability in general.

Additionally, Iran`s constitution emphasizes inviolability of respect and reputation of individuals that are arrested or jailed and points out that: desecration of the people who are arrested, jailed, or exiled with the rule of law in any manner is prohibited and due for punishment. Indeed people`s respect and reputation is inviolable. Even if those individuals are convicted, jailed, or exiled with the rule of law. Correspondences and communications of these people with their lawyer, family and other individuals are considered instances of their legal rights and privacy and inviolable to intervention and are controlled under certain circumstances. In principle regulations and principles must on the path that protects society`s respect and reputation even in most critical situations such as arresting, due to committing a crime.

### **Discussion and conclusion**

All the discussions related to privacy that we enter we see that Islamic Republic of Iran`s constitution has regulations regarding protecting people`s lives and properties, but how serious these regulations in maintaining this privacy and how effortful governmental and national factors are in preserving them are, we should look for instances inside society. Cases occur in humans` everyday lives.

Today privacy is on the pivot of rights discussions and individual support in special fields and creating restriction and prohibition of people`s entrance in other peoples` lives. The existence of such distance brings about peace in individuals` lives.

We stated that what is of significant importance in this respect is determining standards that can accurately draw the borderlines of this right, so in addition to defending this right, it can prevent violation of other rights and rights of other citizens. At any rate it must be noted that privacy, weather in terms of property or individuals` right, must be accepted, it must be respected. In the following we concluded that any change in the territory of this concept can occur according to crimes generative nature of contrary behaviors and theoretical basics of this right. The existence of such an image can create the administrative basis for other rights.

We stated that Islamic Republic of Iran's constitution which was established in 1358 has considered privacy and individuals personal lives inviolable by individuals public entities intervention in various principles such as 22,23,25, and 39 principles and supports and protects it. Albeit it can be said that other principles such as principle 24 which is about press freedom has a close relationship with individual's privacy.

In the following we saw that 22<sup>nd</sup> principle of constitution is the clearest principle of the constitution in supporting individuals personal security and privacy and considers them inviolable by stating: reputation, life, property, right, housing, and people's jobs are inviolable, except when law prescribes, and brings them under protection. According to this principle, any activity that distorts individuals' reputation and violates their life, property, rights, housing, and jobs is prohibited and is deserving of legal strike. Indeed it can be said that, these principles of constitution, supports individuals' physical and bodily privacy.

This branch of privacy is related to every emotion and thought of individuals and includes all the behavioral aspects of individuals, especially religious ideologies, political activities and all the activities that are concerned with individuals thoughts and ideologies. Just as individuals need to maintain physical and bodily privacy, to protect their security and reputation, they require guarantee spiritual and intellectual privacy right, since humans' highest emotions and thoughts crystallizes in their spiritual solitude and certainly these emotions and thoughts require law's protection and support against violation.

Islamic Republic of Iran's constitution has states some generalities in 23<sup>rd</sup> principle and considers individuals' privacy inviolable, and it's the normal and special regulations duty to address the details and restrict violating factors of privacy. We see that it is not so in practice and parties easily access information banks and delve into individuals' identity, which is violation of privacy. In order to safe keep ideologies and political orientation of the citizens from access and rapine, countries regulations must address and support citizens' political privacy rights. Most of the countries have officially recognized inviolability of individuals' political thoughts regarding any intervention from individuals or public entities in their constitution or other regulations. However, Iran's constitution has not addressed this concept specifically and in a specific major frame. And supports ideology freedom and considers it inviolable in general.

Communicational privacy, is individuals' orientation to establish communication through various devices, which these relations and communications must not be controlled by other individuals or organizations. In other words, individuals usually establish communications with other their surrounding environment and other individuals through various devices, which their field and territory is private and they do not like to be controlled by other individuals or the government. One of the new subjects and a challenging case in individuals' privacy field is contrast between privacy and principles such as freedom of speech, press freedom, society's right to know. 24<sup>th</sup> principle of constitution states that: press and publications are free to to express. unless they disturb Islam's basics or public rights. Law states its explanation. In truth press freedom, information freedom, in freedom of speech in general requires boundaries and limits, which is

addressed in all national and international regulations and wherever freedom of speech and similar concepts are talked about. There is a second clause for its exceptions. An obvious example is European Convention of Human Rights, which in its article 10 from freedom of speech principle exceptions such as territorial integrity, and public security are emphasized.

Albeit the important issue in these exceptions is the clarity of its domain which does not make the principle invalid. One of the exceptions that can be considered for freedom of speech and press freedom is individuals' privacy right, Privacy right and freedom of speech are two sides of the same coin and both are fundamental human rights. In the conflict and contrast of these rights European court of human rights established a balance between these two concepts by separating ordinary people's privacy from politicians and ordinary peoples' privacy is in question the vote is for privacy, and wherever politicians and government officials privacy (as individuals that their behavior must be judged by public) is in question the vote is for freedom of speech and press freedom. Albeit this narrow interpretation of exceptions must be officially recognized in Iran as well, so that neither individuals privacy are not violated through freedom of speech, nor freedom of speech and press freedom are restricted through privacy.

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