



The Inviolability of Private Life during the Investigation and Evidence Gathering Stage in Procedural Islamic Legislation

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ABSTRACT

The protection of people's private life requires that it not be violated unless there is an absolute necessity to do so for the sake of the public good in preserving security and maintaining stability or its right to require punishment. If this absolute necessity requires the sanctity of people's private lives be violated then it should be in accordance with standards and guidelines to ensure that this sanctity is not completely wiped out. This is to create a balance between the interest of the individual to protect his private life from infringement and violation and the interest of the Ummah to protect its security and its right to require punishment. This is not possible unless it is within a special procedural framework that is considered effectively to be a fence to protect the sanctity of private life. If justice is achieved by it and the scales of justice are balanced, then the very pillars of human life have been established. But if those scales are defective, then that is the edge of a deep pit, and how easily the best moral values can slip and fall into it. The investigative and evidence gathering procedures are considered a key means of the state in catching those who have broken the law, and must be in accordance with a set of procedures that it follows when a crime is committed in order to establish what really happened and to establish the authority of the state to punish. There is no doubt that some of these procedures may involve violating some individual rights, which is contrary to the presumed innocence of an individual; this is a presumption which mankind has made and is similar to the concept of a Muslim's innocence. Despite that, there are important criteria and guidelines for these procedures to protect the sanctity of people's private lives from any action taken by the public authority without legal support.

Keywords: Inviolability, Private Life, Investigation, Evidence Gathering Stage, Procedural, Islamic Legislation.

1.0 Introduction

Islam is keen on confirming man's right to the protection of his blood from being spilt, his honour from being violated, his property from being usurped, his freedom from being taken, his home from intrusion, his conversations from being spied on and other rights protected by Islamic legislation. It put in place specific standards and foundations. All rights established by the Shari'ah

cannot be deleted, edited, or abrogated due to the divine nature of their origin; they cannot be taken away or restricted except by the authority of the Shari'ah and that which it brought from procedures and guidelines for that.¹ The Shari'ah has obligated the Muslim to defend his rights, such as defending one's honour, life and property, even if it means losing his life in the process. It was narrated that Sa'eed bin Zayd said: "I heard the Messenger of Allah, may the peace and blessings of Allah be upon him, say, 'Whoever is killed defending his religion is a martyr, and whoever is killed defending himself is a martyr. Whoever is killed defending his property is a martyr, and whoever is killed defending his family is a martyr'².

The right to the protection of an individual's life is considered one of the rights that are necessary for the life of individuals. That is because it is necessary for an individual in society to feel security, safety, and tranquillity. In order to achieve all of that the Shari'ah ensures human rights in general and his right to the sanctity of his life in particular[24]. The importance of protecting the right to the sanctity of private life is due to it being closely related to a more far-reaching issue in the life of an individual within society, which is his freedom and what it entails from respect for his humanity and maintenance of his dignity. Since the investigation and evidence gathering stage is one of the stages in which the sanctity of private life may be affected by the police and investigators for the sake of solving the crime and determining the perpetrators, whether it is his personal conversations, making his personal secrets public or searching his residence, that led Islamic legislation to place standards and restrictions to protect this right from any infringement or violation.

1.1 The Concept of Private Life

Jurists of the past did not specifically define the concept of private life, but were satisfied with the linguistic meanings³ implied by this right and all those that discussed its composition did so by discussing its components and elements⁴. However, this did not deter some of the jurists of our time (recently) from establishing a definition of the concept of private life; some defined it as, "maintenance of private and family life for a person away from exposure and the surprise of others without consent." Or, "it is the security of the individual with regards to his privacy, sanctity, him and his family, which is keen to be free of all forms and scenarios of intervention by third parties including both relatives and those who have no connection with him inside his house or outside..."⁵. Some jurists in their definition of private life adopted the boundaries drawn for an individual; Professor al-Humaym defined them as, "An individual's right to live enjoying respect for the personal things that he possesses that are not customary, and that is by the public authority restraining themselves, as well as individuals, from exposure or intervention into these things, except in cases required by the public good and that is with the permission of the Lawgiver⁶".

¹ Abu Dawood, (1952) *Sunan Abi Dawood*, Medina, al-Maktabah al-Salafiyyah, p 373

² Reported by al-Bukhari from Abdullah ibn 'Amr ibn al-'Aas with the wording, "Whoever is killed defending his wealth is a martyr", *Fath al-Bari the explanation of Sahih al-Bukhari*, Dar al-Hadith, 1 ed., vol. 5, p. 150.

³ Al-Bari, Z, "An Article on Human Rights in Islam", a Teaching seminar held on 14/09/1978 at Zaqaqiy University, p. 65.

⁴ Kharaabishi, Adel 'Abd al-'Ali, *ibid*, p. 297.

⁵ Al-Jundi, H, (1993) *Damaanat Hurmat al-Hayat al-Khaasah fi al-Islam*, Cairo, Dar al-Nahdah al-ArabiyyÉh, ed. 1, 1993, p. 46,

⁶ Al-Humaym, A, (2004) *Ihtiram al-Hayat al-Khasah fi al-Shari'ah al-Islamiyyah wa al-qanooh al-Muqaran*, Oman: Ammar Publishing and Distribution House, p. 95.

1.2 The Scope of the Protection of One's Private Life in Islamic Law

The investigation phase is the first of the stages where the policeman and the investigator perform their duties in order to search for and detect criminal acts and their perpetrators and gather evidence on them. For that reason Islamic legislation authorizes broad powers to the authority related to these procedures such as searching houses, detaining suspects along with the new authorities imposed by the growing phenomenon of crime and the evolution of the methods used which makes it imperative to find new methods of searching and investigating to keep pace with this development such as publishing photos, intercepting communications and voice recording. Such methods may have negative effects if personal standards are not taken into account due to what may occur from violating the sanctity of the private life of individuals. In pursuit of creating a balance between crime reduction and suppression on the one hand and the protection of individual rights on the other hand, Islamic procedural legislation has adopted a set of standards and guidelines in the framework of which the entity authorized to conduct investigations can exercise its duties. This is in order to protect people's private lives from any intrusion except to the extent required in the interest of society to combat crime and maintain public security. Therefore, we should address the scope of private life and indicate the standards set by Islamic law regarding it.

1.3 Spying:

Linguistically, the word "spying" is derived from the verb "to spy" and it has several meanings including, to look into information and search for internal matters, the first request for information about others or searching for something.⁷

As for the terminological definition, jurists differed in their definitions of spying in the Shari'ah. Ibn Hajar defined spying as searching for the faults of people[38]⁸. Shaykh Zaydaan defined spying as, "The attempt to see the privacy of the Muslims, their affairs and the conditions of the Islamic State." Allah, glorified and exalted is He, has forbidden the invading of people's privacy by spying and looking at their concealed matters and their secrets, and He considered the violation of this prohibition a heinous crime that is equivalent in heinousness to eating the flesh of a dead brother. This was stated in the verse, "...and spy not, neither backbite one another. would one of You like to eat the flesh of his dead brother? You would hate it (so hate backbiting)" (Qur'an, 49:12). In the interpretation of this verse, al-Tabari said, "...and do not monitor the private matters of one another and do not search for the secrets of one another desiring to expose the mistakes of another. Suffice with what is apparent from the affairs of others, and use that as the basis for praising or criticizing others, rather than what you know of their secrets".⁹

It is confirmed that the Prophet, may the peace and blessings of Allah be upon him, said, "Beware of assumptions, for indeed assumptions are the most untruthful form of speech. And do not look for faults nor spy. Do not compete, and do not be envious of one another. Do not hate one another, nor plot against one another. Be servants of Allah and brothers"¹⁰.

⁷ Ibn Mandhoor, A, (1990) *Lisaan al-'Arab*, Beirut, DÉR Sadir, p. 2.

⁸ Zaydan, Abdul Kareem, *Ahkaam al-dhimiyyeen wa al-Musta'mineen fi Dar al-Islam*, Beirut: Mu'ssasat al-Risalah, vol. 1, p. 230.

⁹ al-Tabari, M, (2000) *Jami' al-Bayaan fi Tafseer al-Qur'an*, Egypt, al-Matba' al-Amiriyyah, p. 26.

¹⁰ Al-Bukhari, *Fath al-Bari Sharh Sahih Al-Bukhari*, ibid, vol. 2, *hadith* no. 6724, *Kitab al-Faraa'id*, "Baab Ta'leem al-Faraa'id", p. 7.

Abu Bakr al-Siddeeq, may Allah be pleased with him, stated, "If I saw someone at a limit from the limits set by Allah the exalted [i.e., committing a crime] I would not judge him nor would I call anyone else [to witness] unless someone else was with me".¹¹ It was also narrated from Ibn Mas'ood, may Allah be pleased with him, that a man was brought to the Messenger of Allah, may the peace and blessings of Allah be upon him, and it was said to him this is so and so, his beard is dripping with wine. He said, "We have been forbidden to spy, but if something is apparent we judge by it".¹²

There are many noble *hadiths* and statements, all of which lead to one indication and that is the prohibition of spying and monitoring people's private matters. These actions are not considered part of noble moral conduct, and the love of knowing people's secrets is not considered one of the noble characteristics of a Muslim. These matters are considered to be despicable and nonsensical actions.¹³

The prohibition of spying in Islamic law came in a general form such that all types of spying are included, whether that spying is due to curiosity or the love of discovering secrets, or in the service of a particular entity. The prohibition also includes the ruler and the subjects; the discourse came in general and for all.¹⁴

1.3.1 Forms of Spying:

1.3.2 The Prohibition of Eavesdropping on Personal Conversations:

Each person has his own secrets, and it is his right to withhold them from others to achieve his personal interests. Therefore, Islamic law has obligated the keeping of secrets and not disclosing them, even if the secret is a personal one. This is due to the saying of the Prophet, may the peace and blessings of Allah be upon him, "All of my *Ummah* (nation) are forgiven except for *al-mujahiroon* (those that announce)"¹⁵. Imam al-Ghazali said, "*Al-mujaharah* (announcing) means that a man does wrong and then tells others about it"¹⁶. Peeping at others' privacy or their inviolable matters is another form of spying that is forbidden in Islamic law. Because a person's home covers their secrets and inviolable affairs, Islam forbade looking at what's inside it without the permission of its owner. It was stated in the noble *hadith*: "It is not permissible for one to do three things. A man cannot lead people [in prayer] and specify supplication for himself without including them; if he does so he has betrayed them. Nor should he look into a house before asking for permission, and he should not pray while he needs to relieve himself until he has answered the call of nature"¹⁷. He, may the peace and blessings of Allah be upon him, said in another *hadith*, "Whoever looks inside the house of people without their permission, it is permissible for them to pluck his eye".¹⁸ Islamic law is not limited to the protection of people's secrets and their private matters through the

¹¹ Al-Jundi, H, (1993) *Damanaat Hurmat al-Hayat al-Khaasah fi al-Islam*, Cairo, Dar al-Nahdah al-Arabiyyah, ed. 1, 1993, p. 46.

¹² Al-Humaym, A, (2004) *Ihtiram al-Hayat al-Khasah fi al-Shari'ah al-Islamiyyah wa al-qanooh al-Muqaran*, Oman: Ammar Publishing and Distribution House, p. 95, 117.

¹³ Hijazi, I. A, (2008) *AlhÉk fi AlkousisiÉ*, Elxanderia, DÉR AlfÉker AlarabÉ, p. 121.

¹⁴ Hijazi, I. A, (2008) *AlhÉk fi AlkousisiÉ*, Elxanderia, DÉR AlfÉker AlarabÉ, p. 121.

¹⁵ Al-Bukhari, *Fath al-Bari Sharh Sahih Al-Bukhari*, ibid, *Kitaab al-Adab*, "Baab Sitr al-Mu'min 'Ala Nafsih", vol. 1, no. 6066.

¹⁶ Al-Ghazali, Abu Hamid, (2001) *Ihya' Uloom al-Deen*, Beirut, DÉR Ibn Hazem, vol. 2, p.2-245.

¹⁷ Al-Bukhari, *al-Adab al-Mufrad*, ibid, Baab al-Nadhar Ilaa al-Daar, p. 287.

¹⁸ Muslim, I, (1995) *Sahih Muslim, Bi Sharh al-Nawawi, Kitaab al-Salaam*, Cairo, DÉR AltoÉrath, p.54.

prohibition of stealing a look, rather it also forbid eavesdropping on the conversations of others, also known as stealing a listen, to find out their secrets and to know their private matters. This is based on the verse: "and follow not that of which You have no knowledge. Verily! the hearing, the sight, and the heart, of each of those You will be questioned (by Allah)" (Qur'an, 17:36).

The Prophet, may the peace and blessings of Allah be upon him, said warning those who eavesdrop on the conversations of others, "Whoever listens to the conversations of a people and they dislike him to do so or flee from him, Allah will cast *al-aanik* in his ears on the Day of Resurrection." The prohibition does not stop at eavesdropping on the conversations of others, but includes the intrusion of a person and his coming between two while they are conversing. In this regard, al-Hafidh Ibn Hajar said, "If two start speaking privately and there is a third person who is standing such that he cannot hear what they are saying even though they are speaking out loud, then he comes [closer] to listen to them; it is not allowed the same as if he was not present with them in the first place"¹⁹. Overhearing or eavesdropping on the conversations of others so that a person can keep what he heard to himself or communicate what he heard to others are equally impermissible. There is also no difference between one who listens by ear directly or through a device that transmits the conversation such as those used at the present time²⁰.

We can see from the jurists' statements that the prohibition of looking at the faults of others and their privacy do not apply in the event that the person is revealing their private matters in public places such as mosques, streets, parks, etc, because you cannot control where people look in such places. This is confirmed by Imam al-Nawawi's saying, "If he sat in the road with his privates exposed and someone looked at him, it is not permissible for him to accuse that person because he violated his own privacy. Ibn al-Mirzabaan said, 'If he entered a mosque and revealed his privates, and he had closed the door or he did not, and a person looked at him he does not have the right to accuse him, because the place is not his private property'"²¹.

As for listening in on the conversations of others, through the statements of *hadith* commentators it becomes clear to us that protection is linked to the nature of the topic being discussed in the conversation, regardless of the place itself. Therefore, if the conversation between two people is in a public place, but evidence shows that they do not want others listening to them it is not permissible for another person to eavesdrop on them so as to find out what is going on between them.²² In this regard, Ibn Hajar says, "I say, a person entering should not sit next to them without their permission; if it was not for the fact that he was far away from them and they were alone they would not have discussed secrets in their conversation. This indicates that their intention was to not have anyone know what they were saying"²³.

From the above it is clear that it is not permissible for either an ordinary individual or a person in authority, such as a police officer or an investigator for example, to violate the sanctity of personal conversations, either by eavesdropping or recording them without justification. That is because the prohibition is general in nature; there is no distinction between the authorities and the citizens.

¹⁹ Al-Bukhari, *Fath al-Bari Sharh Saheeh Bukhari*, vol. 12, p. 518.

²⁰ Hijazi, I. A, (2008) *AlhÉk fi AlkousisiÉ*, Elxanderia, DÉr AlfÉker AlarabÉ, p. 120.

²¹ Ibn Katheer, *Mukhtasar Tafseer Ibn Katheer*, Cairo, DÉr BoulÉq, p. 2-598.

²² *Fath al-Bari*, *ibid*, vol. 11, p. 99.

²³ *Ibid*, same page.

1.4 Criteria Used to Eavesdrop on Personal Conversations

If the principle is that looking and listening (i.e., eavesdropping on personal conversations) without permission is prohibited and forbidden, does it mean that this prohibition applies in all cases? Islamic jurisprudence shows that there is a minimum level of inalienable rights for individuals; it is not permissible to infringe upon them or compromise them unless there is a necessity that overrides the need to protect them. However, this principle is offset by another principle that allows the reducing of personal rights if deemed absolutely necessary. This is because it is agreed upon in Islamic jurisprudence that absolute necessity makes the unlawful lawful²⁴. Therefore, it is permissible to violate the sanctity of personal conversations to the extent that may be necessary to detect crimes and to catch the criminals that commit them. One of the conditions required to allow this right to be violated is the existence of evidence accusing the person of committing the criminal act. In addition, not eavesdropping and spying would lead to a violation of sanctity that is more difficult to rectify such as informing someone who trusts him about the existence of a gang in a particular house or a man alone with a woman to commit fornication with her; therefore, it is permissible for the authority specialized in investigative procedures and the detection of crime to use prohibited means within the limits of what will benefit them to prevent harm and protect that which is inviolable²⁵.

Evidence indicating that a person committed a crime is considered to be a discretionary matter that is granted to the police or investigator. The Holy Qur'an clarified this condition implicitly²⁶ when it limited sin to some suspicion, and did not include all, and distinguished those suspicions that must be avoided from others. An application of this is that it is not allowed to eavesdrop on the conversations of the accused just because it is believed that he has committed an act that requires punishment because mere assumption is a form of sinful suspicion²⁷ due to Allah saying, "Certainly, conjecture can be of no avail against the truth". From the perspective of a ruling, jurists have distinguished between two types of suspicion: forbidden suspicion and permissible suspicion. They placed two criteria: a subjective criterion and an objective criterion. A person witnesses the situation in which the suspect is in at the time of the suspicion, whether he is from the people of righteousness or from the people of suspicion and doubt. If he is from the people of righteousness and piety then it is forbidden to have doubt about him, but if he is from the people of depravity then it is permitted to be suspicious of him. Meaning that bad assumptions about individuals who are known for their piety and chastity is forbidden without evidence. As for the objective criterion, it depends on the circumstances of the sin committed by the suspect. Bad assumptions are permissible if they are backed by an apparent reason or a valid sign, i.e., suspicions not devoid of supporting evidence but supported by strong evidence.²⁸

It can be said that suspicion is of two types. A type that is known and is strengthened by some type of evidence; it is permissible to judge by it. The other type of suspicion is an internal feeling without any evidence; these are merely doubtful assumptions. It is not allowed to judge based on them, and it is obligatory to avoid them.²⁹

²⁴ Al-Suyuti, J. (1996) *al-Ashbah wa al-Nadhaa'ir*, Beirut, DÉR Alfikr, p. 93.

²⁵ Al-Mawardi, (1972) Abu al-Hasan Ali, *Adab al-Dunya wa al-Deen*, Cairo, Matba'ah al-Halabi, p. 288

²⁶ Al-Daghmi, M, *Himayat al-hayat fi Al-Sharia Al-islamiya*, Alexandria, DÉR Alsalam, p. 66,

²⁷ 'Awad, M, (2001) *Dirasaat fi al-Fiqh al-Islami*, Cairo, Matba'at OuedÉt, p. 133.

²⁸ Ibn Qayyim. J, (1999) *al-Turuq al-Hukmiyyah*, Beirut, DÉR AlkoutËb AlilmiyÉ, p. 138.

²⁹ Al-Qurtubi,(2003) *Jami' al-Bayaan fi Tafseer al-Qur'an*, Cairo, DÉR Ibn KathËr, vol. 11, p. 11.

From the above it is clear that Islamic law has forbidden looking at and listening to people's private matters without permission to protect their privacy and their private inviolable matters which they reveal to others. Islamic law's prohibition of spying makes no distinction between whether it is audio or visual, direct or indirect, such as the use of modern methods that have emerged as a result of scientific progress and all that has been produced by modern science and that which will be produced in the future as means of spying. That is because Islamic legislation is a way of life that is valid for every time and place and is not incompatible with science and reason. However, there are cases where it is permissible for the police to eavesdrop on personal conversations provided that the guidelines set by Islamic jurisprudence are met; these guidelines are the existence of evidence showing that the person committed a criminal act and that not spying on him would lead to a greater sanctity being violated.

1.5 The Prohibition of Monitoring Correspondence:

Correspondence is considered a vessel that contains people's secrets and is a store of his private matters; therefore, it must be protected to prevent others from knowing its contents without the owner's permission. This is the explicit view of Islamic legislation. The Prophet, may the peace and blessings of Allah be upon him, warned against checking out and looking at the correspondence of others without permission when he said, "Whoever looks at the *kitab* of his brother without his permission, he is looking in the Fire".³⁰

This *hadith* shows us that no one is allowed to look at the correspondence of others, especially if it contains secrets between the sender and the addressee, to protect this secret from being spread or announced.³¹

If the principle is the prohibition of accessing the correspondence of others without the permission of the owner because of the infringement on privacy, then is the prohibition absolute or are there cases where it is permissible to access personal correspondence without the owner's permission?

1.5.1 The Criteria Used to Access Personal Correspondence:

The basic principle in Islamic law is that accessing people's correspondence without their permission is not permitted because of the infringement on secrets and the invasion of the privacy of individuals that occurs, but this principle is not absolute. It is permissible to access the messages of others without the owner's permission if those messages contain that which is harmful to society, such as being related to acts of espionage for example, or concealing its contents and not accessing it would likely lead them to miss some benefit or cause some harm of any kind to occur to them. Accessing correspondence in this case is permissible and not forbidden to avoid possible harm from occurring to society. Evidence for that is what came in the story of Haatib ibn Abi Balta'ah, may Allah be pleased with him. It is narrated that 'Ali Ibn Abi Talib, may Allah be pleased with him, said, "The Messenger of Allah, may the peace and blessings of Allah be upon him, sent Zubayr, Miqdaad, and I and said, 'Set off until you reach the garden of Khaakh. Inside you will find Dha'inah who has a letter with her; take it from her.' So we set off with our horses until we reached the garden, and we were facing Dha'inah. We said to her, 'You will take out the letter or we will remove your clothes.' She said, 'I do not have any letter with me.' So we said, 'You will take out the letter or we will remove your clothes.' He said, 'So she took it out from her 'iqaas.' He

³⁰ Abu Dawood, (1952) *Sunan Abi Dawood*, Medina, al-Maktabah al-Salafiyyah, p 373.

³¹ Hijazi, I. A, (2008) *AlhÉk fi AlkousisiÉ*, Elxanderia, DÉr AlfÉker AlarabÉ, p. 121, 120.

said, 'Then we came to the Messenger of Allah, may the peace and blessings of Allah be upon him, and he found out that it was from Haatib ibn Abi Balta'ah to some of the polytheists in Mecca informing them about some of the affairs of the Prophet, may the peace and blessings of Allah be upon him. Then he said, 'What is this Haatib?' He said, 'Do not hasten against me O Messenger of Allah. I was a poor person amongst Quraysh, and I was not one of them. Those with you from amongst the *Muhajireen* (immigrants) have relatives to protect their families and property in Mecca, so since I have no kinship with them, I wanted to give them a hand so that they would protect my relatives. I did not do it out of disbelief nor apostasy from my religion nor out of satisfaction with disbelief after Islam.' The Prophet, may the peace and blessings of Allah be upon him, said, 'He is telling the truth.' Umar bin al-Khattab, may Allah be pleased with him, said, 'O Messenger of Allah, let me strike the neck of this hypocrite.' The Prophet, may the peace and blessings of Allah be upon him, said, 'He was present at Badr. What do you know? Perhaps Allah looked upon the people of Badr and said, 'Do whatever you like; I have forgiven you''³². From the *hadith*, it becomes clear to us that it is permissible for a police officer to access people's private correspondence during an investigation if the content of the message is harmful to the Muslims. The message sent by Haatib with Dha'inah to the polytheists in Mecca contained matters which if the polytheists were aware of them, they would have suffered a great risk. That is why the ruler (the judge) represented by the Messenger of Allah, may the peace and blessings of Allah be upon him, ordered the policemen to catch the woman and retrieve the letter. Then he, may the peace and blessings of Allah be upon him, reviewed it regardless of the prohibition of looking at it due to the secrets it contained and that could not be told to the enemy, taking into account the welfare of the Muslims. Imam al-Baghawi commented on this in *Sharh al-Sunnah* by saying, "The *hadith* has evidence that it is permissible to look at the correspondence of others without their permission even if it is secret, if there is suspicion about it and harm that will afflict others"³³

From the foregoing, it is clear that Islamic law has forbidden looking at people's correspondence and reviewing it without the permission of the owner or a warrant because this conduct contradicts the upright ethics that must be present in a policeman and investigator, but this ban or prohibition is not absolute. It is permissible to read the correspondence and letters of others in some exceptional cases, such as the case of it containing that which affects the security of society and its interests or harming them or that not accessing it would lead to a violation of privacy and prohibitions that cannot be rectified. We also see that Islamic law has precedence in establishing these cases before manmade law.

1.6 The Prohibition of Spying on People's Secrets and Disclosing Them:

Everyone has secrets in his private life; preserving them and keeping them from spreading is considered one of the most important etiquettes ordered by the Shari'ah. Every Muslim should possess this trait and maintain it, taking into account people's privacy to prevent harming them. Confidentiality is a public duty that everyone who knows the secrets of others must commit to, regardless of whether the secret was told to him directly or he came to know it by virtue of his job such as a policeman, an investigator, a judge or others. The evidence for that is what was narrated by Imam Muslim in his *Saheeh* that Thaabit narrated that Anas said, "'The Messenger of Allah, peace and blessings of Allah be upon him, came upon me while I was playing with the boys.' He

³² *Sahih al-Bukhari*, ibid, vol. 4, *Kitaab al-Jihad*, "Baab al-Tajassus", p. 73.

³³ Al-Baghawi, H. M, (1983) *Sharh al-Sunnah*, edited by Shu'ayb al-Arna'oot and Zuhayr al-Shawush, Damascus, al-Maktab al-Islami, p 72

said, 'he greeted us with salaam and then he sent me to run an errand for him. I was late going back to my mother, and when I came she said, 'What kept you?' I said, The Messenger of Allah, peace and blessings of Allah be upon him, sent me on an errand. She said, 'What did he need?' I said, 'It is a secret.' She said, 'Do not tell anyone the secrets of the Messenger of Allah, peace and blessings of Allah be upon him.' Anas said, 'By Allah, if I were to tell anyone I would have told you Thaabit'"³⁴. Al-Bukhaari also narrated from Anas said, "The Prophet, peace and blessings of Allah be upon him, told me a secret, and I did not inform anyone after him about it. Umm Saleem asked me about it but I did not inform her"³⁵.

Therefore, a duty that must be observed by police and investigators during the performance of their functions is to maintain the secrets of suspects even after conviction by virtue of the judiciary because some people may give the police secrets which they are concealing about specific people and disclose them due to necessity. Necessity must be estimated properly. The authorities must conceal them and protect them from disclosure in order to preserve the privacy of individuals who trust the authorities and put their confidence in them. Al-Mawardi said, "One of the most important duties of an investigator is to take an oath from doctors that they swear...to not look at that which is forbidden for them to look at and that they will not disclose nor violate any secrets"³⁶. In addition, to avoid any harm that could occur to the owner of the secret if the secret is disclosed, Imam al-Ghazali authorized those entrusted with a secret to deny it. He said, "The one keeping a secret can deny it even if he is lying. Honesty is not mandatory in all circumstances. Just as it is permissible for a man to hide his own faults and secrets, it is also permissible for him to do so for his brother. His brother is in the same situation as him..."³⁷.

1.7 The Criteria Used in the Disclosure of the Secrets of Others:

Even though the principle in Islamic law is to prevent the disclosure of secrets, there are some exceptions to this principle that make the disclosure of a secret permissible such as a lack of harm caused by disclosure which makes it not forbidden. Actually, in some cases it is obligatory and in some it is permissible and recommended (*mustahab*). Regarding this, al-Hafidh Ibn Hajar says, "This split becomes apparent after death. It may be *mustahab* (recommended) to mention it even if the owner of the secret would dislike that, such as if it would be a form of praise for him like a *karamah* (miraculous act), a meritorious act or the like.... It may be obligatory to mention it such as if it was an excuse for not doing an obligation but it is hoped that if it is mentioned to one who might do it on his behalf, that he will do it"³⁸.

It becomes clear to us from the words of al-Hafidh Ibn Hajar, that the disclosure of a secret may be obligatory if the result of confidentiality is more harmful to individuals or society than the benefit that ensues to the owner of the secret. This is founded on the juristic principle which provides that "warding off harm takes precedence over bringing about benefits"³⁹. Disclosure of a particular secret may prevent what may occur from harm in the case it is concealed, for example,

³⁴ *Saheeh Muslim, Kitaab Fadhaa'il al-Sahabah*, "Baab min Fadhaa'il Anas Bin Malik, may Allah be pleased with him", *hadith* no. 2472, p. 61.

³⁵ Al-Bukhari, *Fath al-Bari Sharh Saheeh al-Bukhari, Kitaab al-Isti'dhaan*, "Baab Hifdh al-Asraar", *hadith* no. 6289, vol. 11, p. 96.

³⁶ Al-Mawardi, (1972) Abu al-Hasan Ali, *Adab al-Dunya wa al-Deen*, Cairo, Matba'ah al-Halabi, p. 2-405.

³⁷ Al-Ghazali, Abu Hamid, (2001) *Ihya' 'Uloom al-Deen*, Beirut, D'Er Ibn Hazem, vol. 2, p.2-245

³⁸ Ibn Hajar, A, (2003), *Fath al-Bari*, Beirut, D'Er Al-M'Earif, vol. 11, p11.

³⁹ Hijazi, I. A, (2008) *AlhÉk fi AlkousisiÉ*, Elxanderia, D'Er AlfÉker AlarabÉ, p. 1, 134

a person informs another person about a secret that involves the committing of a crime. In this case, the legal obligation is that it is imperative upon those who know this secret to disclose it to the police because in disclosing it there is a public interest, which is the warding off of harm which is represented by the occurrence of a crime that may be detrimental to the people. If the crime occurs, disclosing it will help in identifying the offender and bringing him to justice and finding him guilty⁴⁰ Jurists declared that disclosure of a secret is obligatory in such a scenario; this ruling is evidenced by the *hadith* narrated by Ibn Majah in which the Prophet, may the peace and blessings of Allah be upon him, said, "Council is confidential except for three types of council, that in which blood was shed unlawfully, that in which chastity was violated unlawfully, or that in which property was taken unlawfully".⁴¹

From the aforementioned it is clear to us that Islamic law does not authorize the disclosure of secrets because that entails infringement upon people's privacy and their personal inviolable matters in order to prevent harm that may occur to the owner of the secret or others due to such disclosure. However, this prohibition should be determined by the effective cause and its presence or lack thereof; therefore, if the effective cause, which is the harm that may occur to the owner of the secret and all those related to this disclosure, the latter is not included in the prohibition. It may actually be permissible or desirable in some cases or a legal obligation in other cases.

1.7 The Human Right of the Inviolability of One's Home

Housing in Islamic law has been treated with special care and precise organization due to what a person's home represents in his life as a shield behind which he feels safe regarding his secrets about which by instinct he does not like for anyone to know about them. Islamic law guarantees the inviolability of a residence it closed all the doors to anyone wishing to trivialize people's privacy in their homes.⁴² This was accomplished by its protecting the inviolability of homes by preventing anyone from entering without permission, and by preventing spying on it in cases other than those clarified by the Shari'ah.⁴³ It also declared this inviolability in the permission to confront any stranger trying to enter a home, especially those with public authority as they may rely upon their authority to violate the sanctity of dwellings without legal justification.⁴⁴

2.1- The Concept of Housing:

Linguistically, *sakan* is a place of residence, and it is a house. It also means that which is inhabited and that which domesticates. *Maskan* comes from resided there, housing. It is a house and a home, i.e., a place of residence.⁴⁵

Terminologically, al-Raaghib al-Asfahani defined it as the place which shelters a person [14]. The concept of housing which is protected by Islamic law is broad and not limited to buildings, but rather includes all that plays the role of sheltering human beings. This is why jurists referred to as shelter and it is the same whether the house is permanent or temporary. Islamic law does not require the housing to be made a certain way, each home with a single roof is the same whether made of stone, mud, wool, or anything else. All that protects human beings from the rain in the winter and

⁴⁰ Ibid, 213

⁴¹ Ibn Hajar, A, (2003), *Fath al-Bari*, Beirut, D'Er Al-M'Éarif, vol. 11, p55,

⁴² Qutub, Sayyid, (1999), *Fi Dhilal Alqoran*, vol. , p. 1-251,

⁴³ Hashiyah 'A. H, (2003), *Kifaayat al-Taalib al-Rabbaani*, Egypt, al-Matba'ah al-Hussayniyah, vol. 2, p.2-312,

⁴⁴ Kharaabishi, Adel 'Abd al-'Ali, *ibid*, p. 312, 313.

⁴⁵ Ibn Mandhoor, A, (1990) *Lisaan al-'Arab*, Beirut, D'Er Sadir, p. 13-414,

the heat of the summer and the eyes of passers-by is considered housing that has an inviolability which cannot be violated.⁴⁶

2.2 The Prohibition of Infringing on the Sanctity of a House:

The Shari'ah honoured human beings. It made protecting their absolute necessities (*al-daruraat*) and preserving their inviolabilities a necessary part of honouring them. The attention given to the sanctity of the home, which is the hub for privacy, by the legislative texts is evidence of the full protection afforded by Islam for the private life of mankind. Protection for inviolability of residences came very clear and definitive in the Holy Quran. Allah the exalted said, "27. O You who believe! enter not houses other than Your own, until You have asked permission and greeted those In them, that is better for you, In order that You may remember. 28. and if You find no one therein, still, enter not until permission has been given. and if You are asked to Go back, Go back, for it is purer for you, and Allâh is All-Knower of what You do. 29. there is no sin on You that You enter (without taking permission) houses uninhabited (i.e., not possessed by anybody), (when) You have any interest In them. and Allâh has knowledge of what You reveal and what You conceal" (Qur'an, 24:27-29)

Imam Muhammad Abu Zahra stated, "Firstly, this noble passage states that houses a sanctity which no one is allowed to violate, and that the residents have the right to prevent anyone from entering using any form of prevention necessary.... Secondly, that it is not permitted to enter even if no one is in it, because entering is an offense against the right of ownership besides what it exposes from privacy. Thirdly, the house which is uninhabited cannot be entered unless he has goods in it. If there are no goods in it, it is not permissible for him to enter out of respect for property ownership..."⁴⁷

There are many *hadiths* narrated in the *Sunnah* that indicate the inviolability of the home. For example, they include but are not limited to what was reported from Anas Ibn Malik, "A Bedouin came to the house of the Messenger of Allah, may the peace and blessings of Allah be upon him, and looked inside the door, so he took an arrow or a sharpened stick and sought after the Bedouin to pluck his eye. He went and then said, "If you had remained I would have plucked your eye".⁴⁸ A *hadith* narrated by Abu Hurayrah, may Allah be pleased with him, from the Prophet, may the peace and blessings of Allah be upon him, mentions that he said, "If a man looks in your house and you threw a pebble at him and you hit his eye you would not have done something wrong".⁴⁹

It becomes clear to us through the aforementioned verses and *hadiths* that Islamic law protects homes by preventing snooping around them and entering them without permission; no distinction is made between the ruler and the governed, as the prohibition is directed at all people.⁵⁰ If the principle is that it is not permissible to enter houses without the consent of the owners, this extends to homes that are unoccupied.⁵¹ Islamic jurisprudence declares that a person being present in the

⁴⁶ Ibn Hazm, M, *al-Mahallaa*, (2001) Damascus, AlmatbÉ AlminbariyÉ, p. 6-56,

⁴⁷ Abu Zahrah, M, (1974) *al-Jarimah wa al-'Uqubah fi al-Fiqh al-Islami*, Egypt, DÉR Alfiker, p. 337.

⁴⁸ Al-Bukhari, *al-Adab al-Mufrad, Baab al-Nadhar fi al-Daar*, no. 1097, p. 387.

⁴⁹ *Ibid*, p 387.

⁵⁰ Hamdi, 'Imad, *ibid*, pp. 98.

⁵¹ Abu Zahrah, M, (1974) *al-Jarimah wa al-'Uqubah fi al-Fiqh al-Islami*, Egypt, DÉR Alfiker, p. 40.

house of others without a clear purpose and without the consent of the owner of the house is a crime deserving of a discretionary punishment⁵²

In addition to the aforementioned verses and Prophetic *hadiths* that forbid violating the sanctity of homes, the sanctity of homes was declared in numerous actions taken by some of the Caliphs, may Allah be pleased with them. Some incidents were reported about the second Caliph 'Umar Ibn al-Khattab, may Allah be pleased with him. It was narrated that Abdul Rahman Bin 'Auf, may Allah be pleased with him, said, "I went out with 'Umar, may Allah be pleased with him, one night in Medina and as we were walking we came upon a light so we went towards it. When we approached it we found a closed door with people inside making noise and shouting. 'Umar took my hand and said, 'Do you know whose house this is?' I said, 'No.' He said, 'This is the house of Umayyah Bin Khalaf and they are drinking. What do you think?' I said, 'I think that we have done what Allah has forbidden us from doing. Allah the exalted said, '...and do not spy'. Then 'Umar, may Allah be pleased with him, went back and left them"⁵³.

The truth is that the prohibition in the previously mentioned *hadiths* did not come to forbid spying on homes only, but also to organize the defense against the assailant or the private legal defence as well. That was accomplished by establishing a general rule that prohibits a stranger from looking into the houses of others without their permission, and if it happens it is considered an assault that is equated to a sin that is punishable. It becomes the right of the homeowner in this case to defend against this trespass without bearing any liability.⁵⁴ This is the opinion followed by the majority of the scholars of Islamic law. It is the opinion of the Hanbalis that, "Whoever looks into the house of a person through a hole or a crack in the door or a door that is not open and the homeowner threw a stone at him or stabbed him with a stick and took his eye out he is not liable for that"⁵⁵. The majority of the Shafi'i scholars are of the opinion that, "If a stranger looks into a house at its residents, they may poke his eye"⁵⁶ As for the Hanafis, their opinion is that, "A man is not liable for his injuring the eye of one who looked in his house without his permission".⁵⁷ Ibn al-Qayyim al-Jawziyyah explains this ruling by saying, "The stabber is not being unjust and the one who looks is an unjust betrayer. The Shari'ah is more perfect than to allow the one who has been violated and to limit his restitution to a discretionary punishment after the establishment of evidence".⁵⁸ Additionally, in the words of the Messenger of Allah, may the peace and blessings of Allah be upon him, to Mu'awiyah, "If you follow the sins of people you have corrupted them or you will almost corrupt them"[1]⁵⁹, there is evidence that prohibits the ruler and the associated agencies from resorting to this method to detect crimes and to capture the offenders because this method is contrary to the ruling of Islamic law, which prohibits the violation or infringement of the sanctity of the home. Therefore, the police officer or investigator should adhere to this standard, and if he does not adhere to the latter his conviction would be considered void, and we have the best of

⁵² Al-Husseini, A,(1996) *al-Fatawa al-As'adiyyah fi Fiqh al-Hanafiyah*, Cairo, al-Matba'ah al-Khayriyyah, p.170.

⁵³ Al-Ghazali, Abu Hamid,(2001) *Ihyaa 'Uloom al-Deen*, Beirut, DÉR Ibn Hazem, vol. 2-344, 2-306.

⁵⁴ Al-Ghazali, Abu Hamid,(2001) *Ihyaa 'Uloom al-Deen*, Beirut, DÉR Ibn Hazem, vol. 2, p.2-245,

⁵⁵ Kharaabishi, Adel 'Abd al-'Ali, *ibid*, p. 312, 313,

⁵⁶ Al-Shirazi, I.A,(1977) *al-Madhhab fi Fiqh al-Imam al-Shafi'i*, Cairo, Matba'at 'Issa al-Halabi. p.2-43,

⁵⁷ Ibn 'Abideen, M, (1900), *Hashiyat Ibn Abideen*, Cairo, BoulÉq Llibrary, vol. 4, pp. 4-385, 5-415,

⁵⁸ Ibn Qayyim, J, (1999) *al-Turuq al-Hukmiyyah*, Beirut, DÉR AlkoutÉb AlilmiyÉ, p. 138.

⁵⁹ *Sunan Abu Dawood*, *ibid*, vol. 4, *hadith* no. 4888, p. 272.

proof for that in the aforementioned story of 'Umar Bin al-Khattab, may Allah be pleased with him.

A person's right to the privacy of his home requires this right not be challenged because of the sanctity of this right which is solely the owner's; no one should share this right with him, because the mere sharing of this right with others defies the meaning of privacy. Therefore, no one should infringe upon the protection of the sanctity of this right without the permission of the owner. What is intended by permission here is that which communicates the general and absolute consent of the owner for another to enter and not just permission.⁶⁰ This was confirmed by the *hadith* narrated by Muslim from Ibn Mas'ood, may Allah be pleased with him, that he said, "The Messenger of Allah, may the peace and blessings of Allah be upon him, said, 'Your permission [to enter] is that the curtain is lifted even if you hear sounds from me even if I did not prevent you [from entering]'"⁶¹.

2.3. The Conditions under which it is Permissible to Enter a House and the Criteria Used in Doing So:

The inviolability of the home and not compromising it is one of the things that the authorities in charge of investigative procedures and evidence gathering must comply with and cannot violate, but this inviolability is not absolute as there are a few exceptions that allow for others to violate it without the owner's permission whenever public interest so requires. This is due to the fact that even though Islamic law recognises the rights and freedoms of individuals it did not make them absolute because the interests it protects are relative and because they are ends that are not bound to the interests protected by the Shari'ah. Rather, the protection of the Shari'ah for the purposes and objectives is consistent with the interests of society; therefore, the inviolability of the home is linked to the extent of the protection of the owner of this privacy. If he violates it, he loses the immunity given to him legally.⁶²

2.3.1. The Case of Absolute Necessity:

The case of absolute necessity is one of the main reasons that allows the authorities responsible for investigations, as well as individuals, to enter the houses of others without the permission of the owners. Jurists gave examples of absolute necessity such as rescuing a person in danger, extinguishing a fire, or fighting an enemy if he invades the Muslim lands and the dwelling may fall into the hands of the enemy. In addition, the case of a perpetrator threatening to commit a crime in a particular dwelling.⁶³ These cases fall under the category of absolute necessity requiring others to enter homes without the owner's permission; this is based on the maxim in *Usool al-Fiqh* that "absolute necessities make the unlawful permissible" since the requirement for permission in the abovementioned cases may lead to great difficulty and harm. Thus, entering a house without the permission of the owner denies the appropriate inviolability of the home; therefore, a police officer, investigator or individual entering the dwelling without the permission of the owner is not considered a violation. An enemy occupying the lands of Islam is considered the more harmful than enter the houses of others without the permission of the owners, rather it is even more harmful

⁶⁰ Al-Najjar, A. M, (2007), *al-Durar al-Adabi wa Mada Damanuh fi al-Fiqh al-Islami wa al-Qanoon*, Cairo, Dar al-Nahdah al-'Arabiyyah, vol. 1, p.1-304.

⁶¹ *Sahih Muslim Bi Sharh al-Nawawi, Kitaab al-Salaam*, "Baab Jawaaz Ja'al al-Idhin Raf' al-Hijaab aw Nahwih min al-Mu'aamalaat", vol. 14, *hadith* no. 3169, p. 134.

⁶² Abu Zahrah, M, (1974) *al-Jarimah wa al-'Uqubah fi al-Fiqh al-Islami*, Egypt, D'Er Alfiker, p. 40,

⁶³ Ibn Qudaamah,(1980) *al-Mughni*, Riad, Library of Riad, p. 9- 208.

than the taking of a life⁶⁴ Therefore, it is not considered a violation of the sanctity of the home, because warding off harm that may occur to society is more important than the achievement of some benefit that may only affect the individual.

2.3.2. The Case of Arresting the Accused:

The jurists of Islamic law have two opinions regarding others entering a home during the arrest of an accused person hiding in his home. The Shafi'is take the opinion that it is permissible. The ruler should send women and children and with them men of good character who attack the house in which the accused is hiding. Regarding that Shams al-Din al-Khateeb says, "If his position is known, women should be sent to him, then children, and then eunuchs to attack the house and search for him, and two people of good character should look with them, as Ibn al-Qaas and others said. If they enter the house, the men stand in the courtyard and others search"⁶⁵

The Hanafis and Hanbalis took the opinion that it is impermissible to attack the house in which the accused is hiding directly, rather he should be blockaded severely until he is forced to come out. This is because surrounding the offender gives him two options; the first is that the requirements for daily life are no longer at his disposal, forcing him to come out and defend himself or remain trapped until he dies earning the wrath of Allah for killing himself unlawfully.⁶⁶ In fact, entering a house without the permission of its owner in the case of arresting an accused person is not infringing on the sanctity of homes, and the view adopted by the Shafi'is that a house can be invaded to arrest the accused is the opinion that is the most correct and the closest to obtaining evidence and establishing the proof to determine the circumstances of the crime and its perpetrators. The scenario of blockading the accused adopted by the Hanafis and Hanbalis may lead to the death of the offender which makes the search for the facts about the crime more complicated, especially with the advances in technology in our contemporary time which may be used as a tool in the committing of crimes. The list of crimes committed may could expand to include a number of countries and criminals with different nationalities. Therefore, losing the accused as a result of a blockade may lead to a deterioration of the evidence of the crime committed, making it difficult to catch the perpetrators.

2.3.3. The Case of Wickedness (*munkar*) Becoming Apparent:

Wickedness is every sin forbidden by Islamic law, and it is that which is prohibited from occurring by the Shari'ah and it applies equally whether the one doing the evil deed is *mukallaf* or *mukallif*.⁶⁷ It is well established in Islamic legislation that it is permissible to enter the homes of others without the permission of the owner to reveal the sins they committed to protect the public interest. Jurists of Islamic law are of the opinion that entering a house due to a claim that sins are being committed must be in accordance with a set of conditions:

- That the evil exists presently: that is, sin is currently occurring and the person is committing it at the time the house is being entered such as drinking alcohol or being alone with a non-*mahram* woman, for example. If the person is no longer committing the sin it is not allowed to enter the house, rather there is punishment for committing a sin or wickedness.⁶⁸

⁶⁴ Ibn Taymiyyah, (2000) *Majmu'at al-Fatawaa*, Cairo, D'Er BoulÉq, p. 4-38,

⁶⁵ Al-Sharbini,(1958) *Mughni al-Muhtaaj Ilaa Ma'rifat al-Faadh al-Minhaaj*, Beirut, D'Er Al-IhyÉ, vol. 4, p, 65

⁶⁶ Ibn 'Abideen, M, (1900), *Hashiyat Ibn Abideen*, Cairo, BoulÉq Llibrary, vol. 4, pp. 4-385, 5-415,

⁶⁷ Al-Ghazali, Abu Hamid,(2001) *Ihyaa 'Uloom al-Deen*, Beirut, D'Er Ibn Hazem, vol. 2, p.2-451.

⁶⁸ Al-Ghazali, Abu Hamid,(2001) *Ihyaa 'Uloom al-Deen*, Beirut, D'Er Ibn Hazem, vol. 2, p 2-451

Regarding this, Ibn Najm says, "They said every Muslim can establish it while he is committing the sin, but after he stops, no one has the right to do so except for the ruler"⁶⁹.

- That the wickedness be apparent: If it is veiled, it is not permitted to spy on him due to the verse, "...and do not spy" (Qur'an, 49:12). Also, it was said to Ibn Mas'ood, may Allah be pleased with him, that the beard of so and so is dripping with wine. He said, "We have forbidden from spying, but if something becomes apparent to us we judge him by it"⁷⁰. The basic principle is that whoever closes door of his home and conceals himself within its walls, it is not permissible to enter upon him unless that becomes visible from outside of the house, like the smell of wine and the voices of people intoxicated, or he was told in advance without gathering intelligence from the people that someone is committing a sin it is permissible to enter the house without permission.⁷¹

From the above it is clear that these two conditions should be met and adhered to by the police and investigators to enter a house without the permission of the owner, and that if one of these conditions is not met the obligation is nullified but the ruling remains. Between the benefit in the removal of wickedness and confronting the perpetrators and the interest of the individual in protecting the sanctity of his home from trespass if those responsible for investigating and gathering evidence do not comply with the standards and restrictions mentioned above⁷²

We conclude from the above that Islamic law is keen to protect the inviolability of the home whereby it prohibits police officers and investigators from violating the sanctity of the homes, either by entering them without permission or by spying on them, in solving the crime during the investigation and evidence gathering stage, regardless of whether the one conducting the investigation is a police officer or the Caliph; in the story of 'Umar, may Allah be pleased with him, we have the best evidence. This can only occur if the necessary means and evidence exist. However, this is not absolute, rather there are some exceptions to protect the public interest and security. Some of these exceptions are the subject of agreement between the Shari'ah and the law, such as the case of absolute necessity, searching, and some of which are disputed, such as the case of the appearance of sin, whereby Islamic jurisprudence authorized the police and investigator to remove the evil and confront the perpetrator and arrest him in accordance with specific standards and conditions.

Conclusion

If the last word in every research reflects what is running through the mind of the writer, then writing this about the subject of the inviolability of private life during the stage of investigation and evidence gathering is not an easy matter. Just like it is not final as well and this is due to the absence of a procedural system for these guidelines and standards at this stage in our contemporary time. In addition, the procedures for investigation and evidence gathering have not been specified in totality. All of that led to the fact that the portion of the subject matter that is hidden and unclear is greater than that which is clear and apparent.

This researcher does not want the conclusion of the research to be a summary of the study carried out, therefore, the most important results that bear fruit for all aspects of the study will be listed.

⁶⁹ Ibn Najm, *ibid*, vol. 5, p. 48.

⁷⁰ Abu Dawood, *ibid*, vol. 5, p. 48.

⁷¹ Al-Ghazali, Abu Hamid, (2001) *Ihya' 'Uloom al-Deen*, Beirut, D'Er Ibn Hazem, vol. 2, p. 2-344,

⁷² Hammoud, Mohammed, p.127,

- 1- The stage of investigation and evidence gathering is considered the first stage in which the judiciary authority (police, investigators) carry out their functions in order to solve crimes, determine the perpetrators and gather evidence regarding them. In order to accomplish that Islamic procedural legislation gave the public authorities broad powers that may have negative effects on the inviolability of private life, if standards and guidelines set are not taken into account.
- 2- The study proved that the prohibition of visual spying does not apply in public places such as mosques, streets, etc, due to the inability to control eyesight in these places.
- 3- The study showed that the criteria established for protection from eavesdropping on the conversations of others is naturally related to the subject which is being discussed, regardless of the place.
- 4- Islamic legislation does not permit looking at or listening to people's private matters to protect their privacy and their inviolable matters that they do not allow for others, but there are special cases in which it permitted the authority responsible for investigative procedures to eavesdrop on personal conversations on the condition that specific criteria and regulations for that are met.
- 5- The study showed us that Islamic law forbids access the correspondence of others without their permission or a warrant, but this ban or prohibition is not absolute. It is permissible in certain cases to read the writings and messages of others, as in the case that it contains information that threatens the security and stability of society.
- 6- The study proved that Islamic procedural legislation does not permit the divulging of secrets, because of the violation of individuals' privacy. However, this prohibition should be dependent upon its effective cause and develop in accordance with the presence or absence of it. Therefore, if the effective cause is not present, which is the harm that occurs to the owner of the secret and all those related to the disclosure, then this type does not fall under the prohibited category.
- 7- Islamic law is keen to maintain the sanctity of the home by prohibiting violating it without justification during the stage of investigation and evidence gathering. This sanctity, however, is not absolute, rather there are some exceptions to protect the interests and security of society. Some of these restrictions were agreed upon by jurists while others were the subject of dispute.

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