

## RIGHT TO IMAGE IN THE MIRROR OF INTERNATIONAL DOCUMENTS, ISLAMIC LAW AND LEGAL SYSTEM OF IRAN

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### ABSTRACT

*The right to dignity, integrity and image, as well as the right to privacy, seeks to preserve the peace and tranquility of personal and family life, arising from the notion of freedom and hence the challenge of deciding the circumstances to bring it into action. If we were to presume that the right to privacy absorbed the right to photo, the right to integrity could be claimed to include the right to honor and reputation. Each right should be regarded as an independent right but in the context of the protection of personal rights. Legal protection for image and privacy is a modern achievement in Iran as well as in different countries too. This article shows that privacy protection has historically been rooted in Islamic law. Hence, without resorting or invoking to human rights' conventions, the legislature of Iran could impose protection of privacy but unfortunately in both the regulations of Iran and other Islamic countries, privacy does not enjoy the protection it deserves. This essay gives an overview of the history of Iranian legislation on the preservation of individual's rights. Also This research focuses on laws that regulate the right to privacy and image at the international level.*

**Keywords:** *right to privacy, right to image, dignity, international documents, legal System of Iran*

## **INTRODUCTION**

Throughout modern society, the picture plays a key role. The photo of a person may reflect different signals and signs. It appears to be separate from its subject, reflecting and gaining an autonomous meaning that can be educational, economic, cultural, moralizing or propagandistic. The independence of the picture from the individual depicted was greatly encouraged and enhanced by the enormous and previously unknown possibilities that technology provides in terms of simple and quick creation and distribution of the picture (Eleni Synodinou, 2014: 181-207).

New cultures and patterns have arisen in this sense about the use of a person's picture in new digital areas. Through social media, the image of an individual, as well as being an element of personhood in the context of defensive rhetoric of protecting the integrity of a human being, becomes a distinctive feature of the social presence of the person and an element that strengthens the connection between people and social media networks. At the same time, in terms of social attitudes towards managing the image of a person, the classic extremities intensify the controversy surrounding the role-played by the image of a person. While some people in the past considered recording their image as their identity theft, nowadays, people are eager to take and publish photos of every moment of their lives, even the most private ones (*Ibid.*, 185).

New technologies have also facilitated and accelerated photography and the rapid growth of cyberspace has made it possible to send and distribute photos. In this way, one can easily photograph another and, more easily, distribute the photograph taken at the community level, and beyond that, in the realm of the world. These new facilities are worrying. If a person is photographed in an inappropriate position and then reproduced, that person's reputation may be harmed (Claire e. Gorman, 2004: 25). Also, individuals have the right to live in their privacy as they please, but if photos are taken without their permission, their privacy will be harmed. In addition, nowadays, businesses are seeking to use the image of celebrities to promote their products and services, thereby validating the quality of their product or service, sometimes without the consent of the individual (Peptan Rodica, 2014: 29).

All of these concerns have led to different legal systems seeking to identify a new right called image right. About the right of image, and more generally,

the right to privacy, many international documents can be cited. In addition, the legal system of Islam also provides good principles for protecting privacy. Although the legal system of Iran has not had any specific regulations in this regard until recently, there have been new developments in the area of privacy and image rights. The evolution of technology has contributed to the emergence of the rights of privacy and image in Iran, especially the use of photographic equipment, video cameras, and internal and external circuit television cameras (D.F. Nigri, S.R.D. Gandelman, 1997: 469).

The contributing factor to the emergence of the image right in Iran was the natural anxiety resulting from the evolution of technological development. Modern equipment used for photography, such as wide-angle and zoom lenses, video cameras, and internal and external circuit television cameras, increase the invasion of a person's private life.

Nevertheless, in recognition of the increasing need for such protection, the Iranian legal system has provided some forms of protection for individual privacy rights and the exclusive utilization of one's picture in the last few decades. Iranian law has attempted to provide a basis for protecting these personal elements by providing privacy and image rights in its constitution and Acts of Parliament.

This article provides an overview of the history of Iranian law on the preservation of persons' rights and discusses the existence and scope of the rights to privacy and image in the Iranian legal system. This article discusses the sources of laws that protect these rights, focusing on Constitution of the Islamic Republic of Iran, Computer Crimes Act, Penal Code, Civil Liability Act, Electronic Commerce act (ECA), etc. In this regard, this article describes the relevant regulations to messages and privacy in the ECA (Electronic Commerce Act 2004) and interprets its different meanings to decide whether they're in accordance with well-established principles contained in good data protection measures. This research also focuses on laws that regulate the right to privacy and image at the international level. This article shows that the protection of privacy has historically had deep origins and roots in Islamic law.

The main question of this article is whether the Iranian legal system recognizes the right to image? Also, if the answer to this question is affirmative, what is the effect of the violation of this right? Given these two questions, it is first necessary to Clarify the concept of personality rights, because the right of image belongs in the group of personality rights. Then the relevant international documents will be reviewed. The purpose is to show that there is a universal consensus to recognize this right. The approach to Islamic law is then examined. Naturally, there is nothing explicitly called the right of image

in this legal system, but given the general principles of this legal system, one can specify the approach of this legal system. It should be remembered that in Islamic law there is a right to privacy, so privacy rules can be used for image right. Finally, the Iranian legal system will be addressed. In this section, efforts will be made to describe and analyze the various relevant legal sources.

## **PERSONALITY RIGHTS**

Personal rights are a person's rights over his or her own body. In the Merriam-Webster Dictionary, Person Rights is defined as "rights (as of personal security, personal liberty, and private property) appertaining to the person" (Abbas Mirshekari et al., 2020: 153). Personal rights include rights to defend and protect the body, most clearly covered by torts of assault and battery. In addition, elements of personality, such as the credibility and honor of a person, are protected by the tort of defamation, and legislation protecting the privacy of individuals, and freedom of movement. Continental equivalents of the Common Law Right to Privacy and the Right to Publicity were Personality Rights. They safeguard the material, mental and moral identity of every person as well as the visible expression of such features (Vansw Wassomt, D. Brian, 2013: 228).

Personality rights are generally included in the context of people's law. Personality rights are rights granted to a well-known personality or star to protect them from unlawful use of their identity, photo, sign or person without consent or penalty (Olander, Erika, 2002: 880). These rights are usually considered comprising of two forms of rights: the right of publicity, or to maintain one's identity, picture and photo, or other explicit elements of one's identity from being used commercially without authorization or contractual payment, comparable to the use of a trademark; And the right to privacy, or the right to be left alone. Publicity rights fall into the domain of passing off in common law jurisdictions. The jurisprudence of the United States has greatly expanded this right.

According to Clóris Bevilacqua and Carvalho Santos, for example, the right of personality is the ability to fully exercise an individual's rights and obligations (D.F. Nigri, S.R.D. Gandelman, 1997: 469). Orlando Gomes, on the other hand, separated personality rights into two distinctive categories: physical integrity and moral integrity (*Ibid.*, 469). He included in the latter category the right to private life and several other rights, such as the right to honor, liberty, image, name, and the author's moral right (*Ibid.*).

As a result of the relatively recent focus on privacy and image rights, there has never been a consensus among legal scholars regarding the precise terminology to be adopted. Some prefer the terms “extra patrimonial rights,” “fundamental rights,” “innate rights,” and “personal rights” (*Ibid.*). However, the majority of authors and scholars have termed the rights to privacy and image as “personality rights”. Regardless of the nomenclature, nearly all commentators agree that the rights to privacy and image constitute personal rights innate to the human being.

All the rights to personality are acknowledged to each person, without distinction, they are opposable erga omnes, imprescriptible by acquisitive and extensive prescription (Nicolae, M., 2004: 45) and they are extra-patrimonial rights (Maurie, P. et al., 1999: 12). Personality rights can’t alter their bearer; they are also not transmissible, which means that they can’t be passed on to the successors. On the other hand, they are one of the non-patrimonial rights as they apply to moral aspects and are therefore not subject to monetary interest. Such rights are, in essence, non-assignable because they can’t be the object of a transition (L.A. Sava, N.-I. Busoiu, 2015: 196).

Broadly speaking, we may claim that the right to honor, reputation and identity, together with the right to confidentiality, are rights that preserve the moral integrity of an individual and privacy. Dignity, integrity, a person’s credibility and picture are immaterial and moral goods, and they are inherent to the human being. Regardless of an individual’s understanding or conscience of his or her own identity and integrity, the honor, integrity, good reputation and picture of a person are not inherent qualities, but ethical characteristics that are acquired during his or her life and they determine the manner in which the other members of society regard a person. Restrictively speaking, all of these above-mentioned rights are included in the concept of “reputation,” a notion that refers to how an individual is perceived in society and can be modified during life (*Ibid.*).

There are cases in which the right to dignity, the right to integrity and the right to identity can be jeopardized in the news and other audiovisual media. In these situations, the judges have the difficult task of finding the necessary balance between, on the one hand, preserving the rights of the individual to identity, private life and, on the other, freedom of expression and the right to knowledge. The effort to maintain a balance between the right to respect for private life enshrined in Article 8 of the European Convention on Human Rights and the freedom of expression stipulated in Article 10, required a continuous readapting to the evolution of morals and manners, the social realities and the

juridical requirements, a fact illustrated by the jurisprudence of the European Commission and European Court for human rights (C. Birsan, 2003: 11).

There is a lack of precise definitions of these rights and a well-established legal background, particularly in the field of mass media. The criteria under which the right to honor, the right to reputation and the right to identity are infringed will be discussed by the courts, not as common rule, but only concerning a particular case. Any violation of these rights exposes the individual in circumstances to the risk of exclusion, to a greater or lesser degree, from the sphere of family, professional social and legal relationships, and therefore must be protected by law not only as moral goods but also as social and legal values (L.A. Sava, N.-I. Busoiu, 2015: 196).

On the other hand, the right to privacy is the right to be left alone and not have one's personality represented publicly without permission. It is a common practice for businesses to use the image, name and signature or the overall personality of a celebrity or a well-known person (used synonymously) concerning a product or services. Their goal is to gain the reputation of a celebrity to get attention or confirm the quality of their product. In this assumption, there is a special right in the American legal system called the publicity right. This right is defined as the ability of a celebrity to control the commercial value of his or her reputation. Naturally, given the difference between this right and the right to privacy, the discussion of it is outside the scope of this article (Abbas Mirshekari, 2019: 523-543).

## **INTERNATIONAL LAW FRAMEWORK**

Privacy is one of the worthwhile concepts of civilized legal systems. The right to privacy is regarded as a corner-stone of human rights and correlates strongly with human dignity. Privacy is a basic human right and is essential to the survival of democratic societies. It is important to human dignity and enhances other freedoms, such as freedom of speech and information and freedom of association, and is acknowledged by International Human Rights Documents.<sup>1</sup>

Privacy aims to maintain and enhance respect for human's physical and mental integrity. There is also a significant connection between the protection of privacy and human being's autonomy, self-determination and freedom. Privacy restrains human beings from being as instrument for other's ends.

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<sup>1</sup> International Principles on the Application of Human Rights to Communications Surveillance (2013), <https://unwantedwitness.or.ug/?p=723>., accessed on 1 February 2020.

It not only facilitates discharging the internal feelings and having intimate relations with desirable persons but constitutes one of the important elements of the civil society and its organizing principles. Realization of freedom of associations, expression and communications depends on the protection of privacy (B. Ansari, 2005: 54).

As a result of the above mentioned functions, respect to privacy is stipulated in international and regional conventions and instruments regarding human rights. There are also many dispositions and requirements in national legislation that have prescribed respect to privacy (*Ibid.*).

Privacy is a basic human right as defined in Article 12 of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), the United Nations Convention on Migrant Workers, the United Nations Convention on the Rights of the Child, Article 8 of the European Convention on the Protection of Human Rights and Fundamental Freedoms of 1950 and other regional and international conventions (K.H. Hassan, P. Bagheri, 2016: 1).

Here is a list of international accords related to privacy that serve as the foundation for national laws, policy frameworks, and international agreements throughout the world. Image rights fall within the category of personality rights. This protection should be viewed as a basic human right, as it relates to a privacy dimension- considered as one of the most important personal values today.

Image rights shall be interpreted as an individual's right to ensure that his or her image is not distributed, revealed or published in any manner without permission, unless provided in one of the cases set out in the act.<sup>2</sup> The Universal Declaration of Human Rights of 1948 is at the core of international human rights instruments. The basic rules on privacy are laid down in Article 12, which states: "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks" (L.A. Bygrave, 1998: 247-284). Although the Declaration is not legally binding, many of its principles have been incorporated into international treaties, regional human rights instruments, and national constitutions.<sup>3</sup>

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<sup>2</sup> S. Grazioli (2017). "Italy: Italy's Robust Image Rights Regime," <https://www.lexology.com/library/detail.aspx?g=681c1868-9118-44aa-b9f9-ffed65a98c02>, accessed on 1 February 2020.

<sup>3</sup> International and Foreign Cyberspace Law Research Guide. "Treaties and International Agreements on Privacy & Data Protection," <http://guides.ll.georgetown.edu/c.php?g=363530&p=4795565>, accessed on 1 February 2020.



Article 17 of the 1966 United Nations International Covenant on Civil and Political Rights also protects privacy: “No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks” (D. Wright, 2008: 12).

This international constitution is resulted from U.S. common law and usually plays an important role in managing privacy all around the world (T. Hasani, A. Dehghantanha, 2011: 12). Article 17 of the Covenant guarantees the right of privacy, the defining protection of which, the report explained, is “that individuals have the right to share information and ideas with one another without interference by the State, secure in the knowledge that their communication will reach and be read by the intended recipients alone.”<sup>4</sup>

One of the fundamental principles of EU law is the protection of fundamental human rights.<sup>5</sup> Data privacy laws are converging on the EU, helped by the national data protection authorities, the Data Protection Directive adopted in 1995 and the proposed E-Privacy Regulation (D. Wright, 2008: 12). The General Data Protection Regulation replaces the 1995 Directive on data protection (officially Directive 95/46/EC) when it enters into force on 25 May 2018 (*Ibid.*).

Article 8 of the European Convention on Human Rights, drafted and ratified by the Council of Europe in 1950 and now covering the entire European continent, except for Belarus and Kosovo, guarantees the right to privacy: “Everyone has the right to respect for his private and family life, his home and his correspondence.”(Article 8(1)) Article 8 is considered as one of the main and controversial articles of the Convention (B. Rainey et al., 2014: 34).

Article 8 of the European Court of Human Rights has been interpreted as referring to “personal identity” as meaning “private life.” Article 8 safeguards against unreasonable interference and guarantees protection for the private area of an individual. Professor Marshall states that it is vital to be uninterrupted and to “think reflectively without interference is to be in control

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<sup>4</sup> B. Emmerson, Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism: Framework Principles for Securing the Accountability of Public Officials for Gross or Systematic Human Rights Violations Committed in the Context of State Counter-terrorism Initiatives. 2013: Human Rights Council.

<sup>5</sup> European Parliament (2020). “Respect for Fundamental Rights in the Union,” [http://www.europarl.europa.eu/aboutparliament/en/displayFtu.html?ftuId=FTU\\_2.1.2.html](http://www.europarl.europa.eu/aboutparliament/en/displayFtu.html?ftuId=FTU_2.1.2.html), accessed on 1 February 2020.



of one's own faculties,"<sup>6</sup> as Macklem puts it: "independence of mind".<sup>7</sup> This privacy protection allows individuals to develop their personal identity and cultivate it. "Private life" to protect the development of relationships has also been interpreted. The ECHR emphasized on the importance of relationships regarding the "emotional area" and "creation of one's own identity" in the case of *Bruggemann and Scheuten v Germany* Yearbook.<sup>8</sup>

Respect for personal autonomy comes about privacy, which Article 8 was also understood to preserve.<sup>9</sup> The ECHR Online notes that the purpose of Article 8 is to "embrace personal autonomy" and the freedom to make choices and build one's personal life without the intervention of the State. As explained by the Stanford Encyclopedia of Philosophy, the identity of an individual is also secured by preserving the independence of a person, as both are fundamental to each other.

Another major regional compilation of human rights - the 1981 African Charter on Human and People's Rights - specifically omits privacy and private life protection. There is no comprehensive protection of privacy in the African Charter on Human and Peoples' Rights (ACHR). The relevant provisions of the ACHR state the following: "... No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation. Everyone has the right to the protection of the law against such interference or attacks" (U. Umzurike, 1997: 45).

Express protection for "private life" can also be seen in Art V of the 1948 American Declaration of the Rights and Duties of Man and Art 11 of the 1969 American Convention on Human Rights (ACHR). Article V of the Declaration states: "Every person has the right to the protection of the law against abusive attacks upon his honor, his reputation, and his private and family life."

The key Asia-Pacific Economic Cooperation (APEC) regulations on privacy can be seen in the APEC Privacy Framework, which addresses the need to retain consumer trust to promote economic benefits from e-commerce. It also recognizes the need to provide flexibility in implementation to countries.

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<sup>6</sup> *R v Brown* [1993] 2 All ER 75.

<sup>7</sup> *Rotaru v. Romania* [2000] ECHR, <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-148906%22%5D%7D>, accessed on 1 February 2020.

<sup>8</sup> *Gillan and Quinton v The United Kingdom* [2010] ECHR, <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-96585%22%5D%7D>, accessed on 1 February 2020.

<sup>9</sup> *Goodwin v the United Kingdom* [1996] 22 EHRR 123.

The main principles in the framework resemble the United Nations Guidelines, OECD (Organization for Economic Cooperation and Development) and European standards. However, as opposed to the European standards, the Framework contains a particular degree of flexibility (T. Mendel et al., 2012: 56).

The Cairo Declaration on Human Rights in Islam (CDHRI) is a declaration adopted in Cairo, Egypt, on 5 August 1990 by the member states of the Islamic Conference Organization (Conference of Foreign Ministers, 9–14 Muharram 1411 H in the Islamic Calendar) which presents a description of the Islamic perspective on human rights (E. Brems, 2001: 12) and affirms Islamic sharia as its only source.<sup>10</sup> CDHRI declares its purpose to be “general guidance for Member States [of the OIC] in the field of human rights.”

This declaration is generally recognized as an Islamic answer to the Universal Declaration of Human Rights (UDHR) of the United Nations, adopted in 1948. It guarantees most of the same rights as the UDHR and serves as a living document of human rights guidelines to be followed by all OIC members (Organization of Islamic Cooperation), but expressly limits them to the restrictions set by the sharia. It significantly limits freedoms with regard to the Universal Declaration, because, for instance, women or members of other religions do not have the same rights as men under Sharia law, and freedom of expression can be severely restricted from a religious point of view, such that even now blasphemy can be punishable by death, in direct contradiction to the Universal Declaration of Human Rights.

Article 18 of the Islamic Declaration of Human Rights states that:

- a) Everyone has the right to live in security for himself, his faith, family, honor and belongings.
- b) Everyone has the right to be independent regarding his private affairs in his house, family, wealth and communications. It is not allowed to spy upon him, have an eye on him or offend his reputation. He is to be protected against all arbitrary meddling.
- c) Privacy of residences is to be respected in all cases, and they should not be trespassed unlawfully and without the owner’s permission. They should not be pulled down, requisitioned, nor should their dwellers be driven out (*Ibid.*).

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<sup>10</sup> Cairo Declaration on Human Rights in Islam, in U.N. GAOR, World Conf. on Hum. Rts., 4th Sess., Agenda Item 5, U.N. Doc. A/CONF.157/PC/62/Add.18 (1993) [English translation], 5 August 1990.

## PRIVACY IN ISLAMIC LAW

Islam accords a special place to the private life of the individuals and gives sanctity-like importance to privacy. Though an equivalent term of privacy is not found in Islamic texts, examining these texts leads one to the conclusion that Islam strongly protects various dimensions of privacy (M.H. Mojandeh, 2007).

Islam considers the protection of the privacy of individuals not only as an individual obligation of all citizens, but also as an obligation of the Islamic State and Government, and considers any unlawful intrusion or infringement of the privacy of individuals (either from the part of other individuals or public authorities) to be immoral and unlawful. Islam encourages everyone to observe this protection and avoid its violation and transgression and for those violating others' privacy in addition to heavenly punishments considers worldly penalties (A.K. Piri, 2012: 54).

Islamic texts with covering several prohibitions, constitute a firm foundation for the protection of individual's privacy. These prohibitions include: 1. Prohibition of suspicion about people; 2. Prohibition of spying; 3. Prohibition of backbiting; 4. prohibition of entering other people's houses without permission (M.H. Mojandeh, 2007: 12).

Protection of privacy by inhibiting from interfering with private affairs, trespassing, eavesdropping in one hand and prescribing "presumption of correctness" and "presumption of innocence" in the other hand, is one of the important doctrines in Islamic law which is cited, many times in verses of the Holy Quran, Tradition (Sonnat) and Practice (Sireh). Of course, the term "privacy" hasn't been used in that resources But in Islam privacy is protected through protection of other freedoms and rights, such as freedom from arbitrary intrusions and searches, respect for property rights and interests, presumptions of correctness and innocence (B. Ansari, 2005: 24).

The fundamental human right to privacy is of great importance to Islam. This is clear from some of the Holy Quran's verses (M.A. Hayat, 2007: 137-148): "Do not spy on each other" (49: 12); "Do not enter houses except your own homes unless you are sure of the consent of their occupants" (24: 27).

H. Aslani (2006: 12) in "Information Technology Law" stresses that Allah has prohibited trespassing against truth and reason, which is closely related to the violation of privacy. He states that each individual has the right to privacy and may not want others to have access to certain information about their life. He discusses the privacy of the information society and the protection of personal data, particularly with regard to the definition and standards of data

privacy. He then states that the right to privacy, including data privacy, prevails over considerable rights such as land interests. He notes that the right to privacy is one of the basic components discussed by divine authorities to ensure a safe and harmonious life for all in the community, including e-consumers (K.H. Hassan, P. Bagheri, 2016: 2).

Under Islamic Law, the sanctity of one's physical privacy is well accepted. The Quran (24:58) points out certain times in a day that is an individual's privacy and suggests the need for prior permission before one can access another's private sphere. These times are before the prayer at dawn, during the afternoon where one rests, and after the night prayer. This verse also calls upon kids who have not yet reached the age of adolescence to get accustomed to asking for permission before entering rooms apart from their own.<sup>11</sup>

## **1. Communication and Informational Privacy**

Privacy is inextricably linked in many respects to the notions of personal autonomy and inviolable personality. Privacy in matters other than those dealing with proprietary rights was only established around the ninth century as a legal concept, although it was frequently referred to it by the Quran. While the Quran does not explicitly refer to the word "privacy," it includes verses that emphasize the importance of protecting personal autonomy. The Quran (49:12) reproaches those who try to pry on matters that do not concern them or accuse others, accepting that certain suspicions may even be considered crimes. This implies an inquiry injunction; which reinforces the ban on the dissemination of information related to the private sphere of a person (24:19). A reasonable conclusion from these passages is that the Quran commands respect for the private domain, ensuring that it is not breached by a faithful believer. An extension of the data privacy concept is the confidentiality of one's thought, which is believed to be beyond reproach regardless of its contents. Deeds in the public sphere can be subject to worldly punishment, but thoughts and opinions everywhere, are not subject to it (*Ibid.*).

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<sup>11</sup> V. Marda, B. Acharya (2014). "Identifying Aspects of Privacy in Islamic Law," <https://webcache.googleusercontent.com/search?q=cache:UBN1i9T6hngJ:https://cis-india.org/internet-governance/blog/identifying-aspects-of-privacy-in-islamic-law+&cd=1&hl=en&ct=clnk&gl=ir&client=firefox-b.>, accessed on 1 February 2020.

## 2. Territorial Privacy

Domestic privacy is regarded as an important aspect of Islamic life, and this notion pervades various aspects of Shariah. In fact, Privacy in regard to proprietary interests is the first legal conception of privacy accepted by Muslim jurists. The Quran (24:27-8) forbids entering another room without permission. The goal is to keep people safe in their privacy. In addition, the Quran (2:189) envisages visits to the houses of others only through the front gate, showing respect and transparency when entering another place of residence. Muslim scholars believe that such rules have been developed to protect one's private sphere; To encourage people to change their behavior in order to accommodate a visitor in a private domain.

The rationale behind the recognition of privacy in the domestic sphere is not only an illegal intrusion into one's physical space; it is also an intrusion into sensitivity issues that widen the scope of Islamic law for privacy (*Ibid.*).

### PRIVACY IN IRANIAN LEGAL SYSTEM

Legal protection granted to an individual's image and privacy is a fairly recent development in the Iranian judicial system. Image and privacy in Iran are personal rights protected under uncontested laws protecting all citizens' lives, bodies, titles, freedoms and privacy.

There are rules and regulations in Iran's statutes, such as the Iranian Constitution's Islamic Republic (IR), the Computer Crimes Act, the Criminal Code, and the Civil Liability Act which relate to privacy in general. The Electronic Commerce Act (ECA2004) is Iran's main statute that includes certain provisions on the privacy of personal data (K.H. Hassan, P. Bagheri, 2016: 133).

There are three specific acts relating to data protection and privacy: The Act on Electronic Commerce (LEA), approved in 2004; the Computer Crimes Act (CCA), approved in 2009; and the Law on Publicizing and Access to Data (LPAD), which entered into force in February 2010. Other laws and regulations also require the protection of data within a specific context.<sup>12</sup> A brief overview of the different legal approaches to privacy and image rights in Iran will be presented in the following paragraphs.

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<sup>12</sup> A Norton Rose Fulbright Directory (2014). "Global Data Privacy Directory," <http://nigtowldiscovery.com/norton-rose-fulbright-publishes-global-privacy-directory/>, accessed on 1 February 2020.

The Islamic Republic of Iran's Constitution was adopted in 1980 with an overwhelming majority of votes. It has 14 chapters and 177 articles. Under the name of "The Rights of the People," Chapter 3 of the Constitution includes 24 articles on human rights and fundamental freedoms.<sup>13</sup> Iran's Constitution refers to privacy in general. This does not mean that the basic elements of what is conceived of as privacy are not protected in the Constitution and Iranian law. It respects citizens' personal dignity and communications privacy but does not specifically address the protection of personal information (M.H. Mojandeh, 2007: 14).

Article 2 of the Constitution of Iran addresses six principles and infrastructures as fundamental to the governing system referred to in Article 1 as the Islamic Republic of Iran. The sixth principle of this Article concerns human dignity and stipulates that "the Islamic Republic of Iran is a system founded on faith in ...6) Human dignity and high value and his/her freedom as well as his responsibility before God". Besides, in the prelude to the Constitution, human dignity is referred to concerning the mass media (H.R. Salehi, 2013: 135-136).

According to principle 20 of the constitutional law:

*"All people including men and women are protected by the law and all have human, political, economic, social and cultural rights based on the Islamic criteria."*<sup>14</sup>

The Iranian Constitution recognizes the enjoyment of all human, political, economic, social and cultural rights by all citizens of the country. The enjoyment is, however, made subject to the observation of Islamic criteria. The term "Islamic criteria" is used on several occasions in the Constitution and has given rise to some debate as to its proper meaning. Anyway, as we saw, both Islam and international human rights instruments recognize the right to privacy. Therefore, it is a right which is protected in the Iranian Constitution for all individuals (M.H. Mojandeh, 2007: 14). The Constitution does not expressly protect privacy, although it includes the principles applicable to this purpose as the supreme law of the land (B. Ansari, 2005: 44).

Reputation, life, property, home, and occupation of the individuals are inviolate according to Article 22 (M.H. Mojandeh, 2007: 13). In other words, both the right to privacy and the right to a person's image are regulated by

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<sup>13</sup> Human Rights Committee (2010). Consideration of reports submitted by States parties under article 40 of the Covenant-Third periodic reports of States parties: Iran (CCPR/C/IRN/3). 31 May 2010, United Nations.

<sup>14</sup> The Constitution of the Islamic Republic of Iran (1979).

Article 22 of the Constitution. Article 22 of the constitution states that, “The dignity, life, property, rights, residence, and occupation of the individual shall not be violated, except in cases sanctioned by law”.<sup>15</sup> This Article refers to property and home but it may cover privacy in the workplace by an expanded definition of occupation.

While the first two qualities (values) mentioned in the text - integrity, life - apply to a person’s behavior, the personal image can be regarded in a wider acceptance, being related to the way in which a person’s behavior is reflected and is perceived by the people in society, not only in the manner it is illustrated by a material object, such as a photograph, a printed image, a drawing, etc.

The main provision of the Constitution with respect to privacy is Article 25 which protects what can be said to constitute the core of privacy, that is “communicational privacy” (M.H. Mojandeh, 2007: 14).

The right to privacy is guaranteed by Article 25, which prohibits various covert forms of investigation such as the opening of letters, interception of communications or eavesdropping except as provided by law (Abbas Mirshekari, 2020: 219). Article 25 states that: The inspection of letters and the failure to deliver them, the recording and disclosure of telephone conversations, the disclosure of telegraphic and telex communications, censorship, or the willful failure to transmit them, eavesdropping, and all forms of covert investigation are forbidden, except as provided by law.<sup>16</sup>

It is clear that the means of communication which is mentioned here is not exclusive and it covers new communication devices like email, SMS, and even online chats. The problem with this provision is that it excludes interference with privacy where it is authorized by law. It does not mention the qualifications and the requirements of the laws that may bear on privacy (M.H. Mojandeh, 2007: 14). Private contracts for data non-disclosure are generally recognized based on the standards of contract freedom recognized under the Iranian Civil Code.

In the meantime, the Iran Civil Code’s general principles do not include privacy as a specific civil right (K.H. Hassan, P. Bagheri, 2016: 133).

Article 1 of the 1960 Iranian Code of Civil Liability says that, “Anyone who injures intentionally or due to his negligence, the life or health or property or freedom or prestige or commercial fame or any other right established for the individuals by virtue of law, as a result of which another one sustains

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<sup>15</sup> The Constitution of the Islamic Republic of Iran (1979).

<sup>16</sup> The Constitution of the Islamic Republic of Iran (1979).



materially or spiritually losses, shall be liable to compensate the damages arising out of his action” (*Ibid.*).

We cannot, without doubt, exclude the right to name, title, honor, prestige, physical and psychological integrity, dignity, personal image, observance of private life, and we can’t do this with quite a few freedoms acknowledged directly or indirectly by civil law, These include: freedom of thought and conscience (including religious freedom), freedom of speech, freedom of movement and settlement, freedom of work and occupation, freedom of association, freedom of marriage or remaining unmarried, The freedom to live in isolation or in a group or in a free union; the freedom to have a big family or to have no children; the freedom to adopt children; the freedom to choose friends; the freedom to choose the way to dress and eat; the freedom to make funeral arrangements (L.A. Sava, N.-I. Busoiu, 2015: 196).

Encompassed in the title of the rights to personality, other authors also include the right to anonymity, the fundamental guarantees for the hospitalization of people with mental disorders, the inviolability of the domicile, the right to the personal image, the right to the personal voice, the right to confidentiality (G., Cornu, 2007: 14; É. Deleury, D. Goubau, 2002: 345).

All these rights and freedoms, even if they are not reflected in a legal provision have a lot in common with the rights to personality, from which they cannot be separated, because they also represent “inherent qualities of the human being”. All these rights and freedoms are collected in what can be named, in a wider respect than that of “the rights to personality”, “the freedom to display the personality” (Johann Neethling, 2005: 210-245).

The 1982 Iranian Penal Code sets out various crimes, penalties and measures to be taken to ensure the privacy of persons. Article 640 provides criminal penalties for those who invade public ethics and dignity stating that “The following people should be imprisoned from three months to one year and pay a fine of 1,500,000 to 6,000,000 *Rials* and also be flogged up to 74 lashes, or any or both of these punishments (K.H. Hassan, P. Bagheri, 2016: 133):

- a) Anyone who with the purpose of trading, public showing, or distributing publicizes any picture, text, photo, drawing, article, newsletter, newspaper, movie, or any other thing that violates public morals;
- b) Anyone who is included in the circulation of the above items.

Article 641 of the Penal Code refers to the act of a person who interferes with or disturbs others through the use of a telephone or other telecommunications’ device, and the offender shall be imprisoned for 1 to 6 months.

All these laws only relate to general rules on privacy and protection of individuals' private lives. Uncertainties remain as to when comprehensive legislation will be enacted in Iran that will provide greater protection for personal information (*Ibid.*).

The Iranian Criminal Procedure Code 2000, like the constitution, also does not specify privacy protection and only applies to some specific aspects such as home and communication privacy.

Article 150 of the Code of Criminal Procedure: "Surveilling people's telecommunications is prohibited unless it is a matter of domestic or external security of the state or for discovering a crime." This can be done only with the approval of the province's chief justice and for a certain duration and certain number of times. If the suspect is a judicial or executive figure, tapping must be approved by the Chief Justice of Iran.

Islamic Penal Code (Book Five, Article 582) states that if any officials or government representatives unlawfully taps into someone's telephone conversations, or opens their letters or discloses the content without consent, this is punishable by one to three years in prison, or a fine of 6 to 18 Million Rials.<sup>17</sup>

In his book entitled "E-Commerce Crimes: Computer Crimes in the E-Commerce Domain," Javidnia describes the history of e-commerce and legal meanings of the articles of the Iranian Penal Code with the ECA 2004 (J. Javidnia, 2009: 12).

Shortly, from a criminal perspective the writer deals with the infringement or breach of consumer rights and advertising laws. The investigation and collection of information, except for public offenses, is forbidden under the provisions of the code. In circumstances where an offense is of an individual or private nature and has not been publicly committed, its disclosure (with the intention of causing the penalization of the offender) is forbidden and is considered to be equivalent to the spreading of vile acts and thus a sin. He seeks to explain the criminal guarantees of the Iranian Penal Code on data privacy as stated in the Penal Code Articles 570, 572, 573, 574, 580 and especially 691, 692 and 694.

Nonetheless, the E-Commerce Law provides some basic personal data protection in the context of commercial transactions. The ECA provides room

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<sup>17</sup> Internet Legislation Atlas (2020). "Surveillance and data protection: Iran," <https://internetlegislationatlas.org/#/countries/Iran/frameworks/surveillance>, accessed on 1 February 2020.

for e-consumers in purchasing and using commodities and receiving services to demand respect for their human dignity.

In order to qualify as “personal data,” the data must be directly or indirectly linked to a data subject that can be identified from the data. It must also be recordable and subject to automatic or manual processing. The ECA is the only legislation that addresses the issue of privacy and the protection of private communications. Article 2(a) of the ECA defines “data message” as: “any representation of facts, information, and concepts generated, sent, received, stored, or processed by use of electronic, optical or other information technology means”. In electronic transactions, this definition is broad enough to cover data messages. Iran provided legal provisions for the collection, processing and storing of data by goods and services providers and placed penalties for violation of those rights. Violation of the above provisions is punishable by one to three years’ imprisonment (*Ibid.*).

Article 58 provides that, without their explicit consent, the storage, processing or distribution of private data which may reveal racial or ethnic origin, moral and religious beliefs, ethical features and data concerning the physical, psychological or sexual situation of persons is illegal. Article 59 further provides for some data processing principles, including that the purpose of data processing must be clearly defined and the data collected not excessive by reference to that purpose. It also provides for the rights of the data subject, including the right of access to those computer files containing their personal data; the right to have any such data corrected where it is inaccurate or out-of-date; as well as the right to ask for the deletion of computer files containing their personal data subject.<sup>18</sup>

As a guarantee of the data privacy in the virtual environment Article 67 of ECA states that “Anyone who deceives others or misleads auto- processing systems and the like, during an electronic transaction, by misuse or unlawful use of “data messages”, programs, computer systems, and means of distance transaction, and committing such acts as penetration, removal, and termination of a “data message”, interfering with the application of a computer system or program, etc. and by means of this method obtains property or financial concessions for himself or others, is deemed an offender and in addition to the return of property to its owner is given a one to three year sentences in prison and pecuniary punishment equal to appropriated property”. While the term “deceiving” others or “misleading” self-processing systems can indirectly

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<sup>18</sup> Internet Legislation Atlas (2020). “Surveillance and data protection: Iran,” <https://internetlegislationatlas.org/#/countries/Iran/frameworks/surveillance>, accessed on 1 February 2020.

include the data subject's transfer, the ECA has no provision for the e-consumer data transfer. It does not address such an important issue in the cyber arena and leaves little protection for customers in this respect (K.H. Hassan, P. Bagheri, 2016: 133).

The Computer Crimes Law 2010 replicates many of the content-based speech offenses already contained in the Islamic Penal Code 1991 and the Press Law 1986. Therefore, it confirms that these offenses are equally applicable to Internet-based communications. In particular, Chapter 4 of the Computer Crimes Law lays down many crimes against public morality and chastity, whilst Chapter 5 deals with crimes against honor and the dissemination of lies using computer or telecommunication systems. The following provisions are especially worth highlighting:

Computer Laws Article 2 states that “whoever unlawfully taps into the stream of non-public communications in computer systems, telecommunications, electromagnetic waves, will be sentenced to six to two years in prison or fined by ten to forty million Rials or both punishments”.

Articles 12, 13, 14 and 16 of the Iranian Computer Crimes Act (CCA) 2009 refer to the privacy rights of individuals, including users, and enforce criminal penalties on those who violate the privacy of persons by using electronic systems (A.B. Munir, Y.S.H. Mohd, 2010: 23).

Article 14 criminalizes “producing, sending, publishing, distributing, saving or financially engaging in obscene content by using a computer or telecommunications system or portable data storage devices.” This offense is punishable by a minimum of 91 days up to two years imprisonment and/or a fine between 5 and 40 million Rials.

Every breach of privacy is regarded as defamation based on those rules. Cases involving oral or printed publication of personal information, manufacture of facts to publicly vilify the dignity of persons, or damage to credibility by insults and defamation, and casting aspersions on persons are considered a violation of reputational rights (J. Javidnia, 2009: 12). Although the CCA 2009 primarily covers criminal acts, persons committing e-commerce offenses can also be charged under it.

The LCC (Act on Computer Crimes (LCC), enacted in 2009, covers personal or family secrets. The LEC and LCC provisions apply only to data processed in an automated manner, whereas the Islamic Punishment Act contains data processed in an automated manner, hard copies and any other means. As

mentioned in the previous section, the LPAD protects the data. Restrictions on the transfer of data offshore:<sup>19</sup>

Under the LPAD (Law on Publication and Access to Data, which entered into force in February 2010), data is defined as “any data incorporated in a document, or saved in the form of a software or recorded through any other medium.” LPAD classifies data into “private information” (including personal information such as name and family name, home and work addresses, personal activities, bank accounts, etc.) and “public information” (such as rules and regulations, national and official data and figures, etc.). According to LPAD, while private information can only be obtained by the person to whom the data belongs or by the designated proxy, public information can be freely obtained (except in cases banned by relevant laws).

LPAD acknowledges the right of individuals to claim damages (based on the Civil Liability Act) in the event of any loss or damage arising from the disclosure of false information or truthful data in violation of the law. A breach of LPAD is considered a criminal offense resulting in a financial penalty amounting to between RLS 300,000 and RLS 100,000,000. Where other legislation imposes higher penalties for the same offense, the higher penalty applies (*Ibid.*).

## **CONCLUSION**

The exponential growth of information and communication in the technological revolution threatens the individual’s privacy. It will be difficult to prevent the unauthorized use of personal information and images. The introduction of the computer, CD-ROM, and the Internet facilitates and increases the reproduction and dissemination of vast quantities of information throughout the world. The main concern now is to keep information private, especially when information is easily transformable into images, and the misuse of sensitive data can infringe privacy. Protective measures are essential to preserve and protect an individual’s privacy, personal life, and image. However, the protection cannot hinder the natural process of the dissemination of information (D.F. Nigri, S.R.D. Gandelman, 1997: 469).

Advances in technology have reacted to existing opportunities and created new opportunities, expanding human capacity by increasing the volume of

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<sup>19</sup> A Norton Rose Fulbright Directory (2014). “Global Data Privacy Directory,” <http://nightowldiscovery.com/norton-rose-fulbright-publishes-global-privacy-directory/>, accessed on 1 February 2020.

data, information, interaction and knowledge, and increasing the rate of data transfer, leading to human progress and enormous benefits. We should not lose sight of these opportunities and benefits by highlighting the difficulties and threats posed by the same changes. Therefore, the rational approach to the risk posed by the new technologies would require careful consideration of both sides of the coin. Such a strategy will aim at preventing, reducing, minimizing or shifting risks and increasing or extending the range of benefits, thereby addressing existing issues, creating deliberate trade-offs and shaping the whole for humanity's gain. This article assesses the issues in this context as they affect privacy, freedom of expression and transparency (J.A. Cannataci, et al., 2013: 12).

A balance must be established between the rights of the individual to prohibit the dissemination of personal information and images and the public interest in free expression and access to knowledge of society at large (D.F. Nigri, S.R.D. Gandelman, 1997: 469).

Under the Iranian legal regime, data protection is a new area and is not today subject to extensive regulation. In Iran, there is no specific Act on data privacy and other laws and regulations have dealt with the issue sporadically. Much of the legislation is relatively recent and it is predicted that these laws will grow further.<sup>20</sup> In general, the following fundamental rights are subject to specifications in the Iranian Legal system:

The human personality, including all its natural rights, is protected. Everyone is obliged to respect the free decision of man to live on their own. Life and dignity, health and the right to life in a comfortable environment, esteem, honor, privacy and expressions of a personal nature are the main items protected. Everybody is entitled to the protection of his or her human dignity, personal integrity, good reputation, and his or her name. Everybody is entitled to protection against unauthorized interference in his or her personal and family life and is entitled to protection against unauthorized gathering, publication or other misuse of his or her personal data. Nobody may violate the secrecy of letters and other papers and records, whether privately kept or sent by post or in another manner, except in cases and in a manner specified by law.

Although, the ECA is the best legislation in providing protection on matters relating to data privacy in Iran, it falls short in meeting the good principles of

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<sup>20</sup> A Norton Rose Fulbright Directory (2014). "Global Data Privacy Directory," <http://nightowldiscovery.com/norton-rose-fulbright-publishes-global-privacy-directory/>, accessed on 1 February 2020.

data privacy protection. The ECA is inadequate in protecting e-consumers. So, Iran needs specific legislation on personal data protection.

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