

# Examination of the Status of Privacy in the Legal Systems of Iran and Iraq

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Privacy is one of the fundamental human rights issues and a concept integral to developed legal systems, closely linked to human dignity. Respect for individuals' privacy encompasses the sanctity of their residence and workplace, as well as the confidentiality of their communications and correspondences. The legislator has sought to establish specific rules and regulations regarding the search and inspection of homes and premises, particularly during the preliminary investigation stage, to ensure that the collection of evidence is lawful, legitimate, and its admissibility is contingent upon respecting individuals' privacy. Today, safeguarding citizens' privacy and addressing its violation by others is a serious human rights issue, where effective management ensures public peace and comfort. Furthermore, the protection of privacy creates the necessary conditions for the growth and development of individuals' personalities. With the advancement of technology and human progress, invasions of personal privacy have increased, prompting the legislator to enact new laws to protect individuals' privacy. The Islamic Penal Code, Criminal Procedure Code, Constitution, laws and regulations pertaining to postal communications, telephone, press law, and the Charter of Citizens' Rights are among the laws and regulations that, at times implicitly and at other times explicitly, have supported privacy. The aim of the present research is a comparative study of criminal protection of privacy in the legal systems of Iran and Iraq. Using a descriptive-analytical method, the researcher has concluded that when dealing with crimes in cyberspace, modern technology, or new forms of deviance, it is necessary to move beyond traditional and classical definitions, reassess or reinterpret the nature of these issues, and then define the criminal act and determine its punishment based on scientific criteria. These criteria include the extent of harm caused to the victim, the values protected, real benchmarks such as the scope and impact of the crime, and considering causality and proportionality, which are critical in criminal law.

**Keywords:** Privacy, Criminal Protection, Imamiyyah Jurisprudence, Iranian Law

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## 1. Introduction

Privacy is one of the fundamental rights of every individual, which is addressed in various legal frameworks, including the legal systems of Iran and Iraq.

Protecting individuals' privacy is of paramount importance in safeguarding their dignity and rights against unwanted and inappropriate intrusions into their personal lives. In Iranian law, the protection of privacy is emphasized as one of the fundamental rights



of individuals. The Constitution of the Islamic Republic of Iran, along with other laws related to civil rights and human rights, including the laws on publication, communication, and the law protecting privacy against state and individual infringements, safeguard citizens' rights against unwanted intrusions. Although numerous provisions concerning privacy have been enacted in various laws, the multiplicity and, at times, the overlap of these provisions yield little practical effect. This is because the Constitution, which forms the cornerstone of ordinary laws, does not explicitly address privacy, and only in a few articles can protection for privacy in communications, professional activities, and physical integrity be inferred. The only aspect of privacy explicitly protected is that of the home. In the Islamic Penal Code, only the privacy of the home, secrets, correspondences, and communications are protected. In the Code of Criminal Procedure, there are references solely during the preliminary investigation stage and concerning the protection of the rights of the accused. In the Computer Crimes Law and Electronic Commerce Law, there are criminal sanctions for offenses against privacy in cyberspace. Nevertheless, the protection of privacy is often subject to interpretations and, at times, personal judgments by law enforcement officials. The legislative philosophy, which aims to preserve and protect the fundamental rights of individuals in society, faces certain contradictions and challenges. For instance, the note to Article 5 of the Law on Promoting Virtue and Preventing Vice does not consider a vehicle to be part of one's private domain. In Iraqi law, the protection of privacy is also emphasized as a fundamental right. The Iraqi Constitution and other related laws, including the Law on the Protection of Citizens' Rights and the Law on Combating Privacy Violations, protect individuals against unwanted and inappropriate intrusions. However, challenges still exist in fully realizing these rights. Based on the aforementioned points, it can be concluded that although numerous laws concerning privacy have been enacted in both Iran and Iraq, neither country provides comprehensive and complete protection of privacy. In Iran, the laws are scattered and sometimes incomplete, and certain personal interpretations can weaken this right. In Iraq, despite the emphasis on privacy protection, the practical and full implementation of these laws requires further attention. Privacy, and its crucial role in human life, in its profound

impact on human dignity and freedoms, has become one of the most central topics in various countries and one of the most important objectives of human rights in the modern era. The right to privacy holds special significance among other rights for two reasons: on one hand, individuals depend on it due to personal needs, and on the other hand, they are obligated to recognize and respect this right for others due to the necessity of social life.

## 2. Privacy

The term "privacy" originates from the Arabic word "Harem", which is derived from the root Haram, meaning prohibition, and thus it has been interpreted and defined in various ways. Khalil, in defining privacy, refers to something that is prohibited from being touched and should not be approached. When the term privacy is associated with a person, it must be defended and even fought for. In this sense, privacy encompasses a person's life, dignity, and property. Despite the frequent use of the term "privacy" in conversations and philosophical, political, and legal discussions, a uniform definition has yet to be established (Ansari, 2017). In fact, the term has a broad concept and encompasses various meanings, which can be examined through its usage. Some of these meanings include freedom of thought, control over one's body, control over information about oneself, freedom from surveillance, solitude, protection of reputation, and more. The difficulty in defining privacy and establishing its substantive and formal boundaries has made it challenging for scholars to agree on a single definition. Thus, in today's society, there are two different views on the nature of this term:

1. **Reductionist Theory:** According to the reductionist theory, privacy is not a new concept and does not introduce anything unique because every right that is protected within the framework of privacy can also be protected under other benefits or rights. This theory argues that the concepts and rights encompassed by privacy are, in fact, components of other existing rights and benefits, and there is no need for a separate definition of privacy. In other words, the reductionist theory states that privacy is merely a collection of existing rights and benefits that are independently protected under various

rights, and it cannot be considered an independent and distinct right. This view holds that each of the rights related to privacy, such as property rights, the prohibition of defamation, slander, surveillance, and the spread of immorality, can be protected on their own and there is no need for a broader and more comprehensive definition under the term privacy (Fatemi, 2024).

2. **Contrasting View:** On the other hand, a group of scholars believes that privacy has its own distinct meaning and concept and can be examined independently.

### 3. Protection of Privacy in Iranian Law

An examination of the principles of the Constitution of the Islamic Republic of Iran reveals that the term "privacy" is not explicitly mentioned in any of the principles of the Constitution, and only certain instances of this important right are addressed.

The legislator in Article 22 of the Constitution of the Islamic Republic of Iran stipulates: "The dignity, life, property, rights, home, and occupation of individuals are inviolable, except in cases authorized by law." This article emphasizes the preservation and protection of individuals' fundamental rights, stating that no one should violate the dignity, life, property, rights, home, and occupation of others, except in cases explicitly permitted by law. This article is one of the most important principles of the Constitution that addresses the protection of privacy and the fundamental rights of citizens. This article explicitly protects the physical, residential, and occupational privacy of individuals, and from the term "dignity" in this article, it can be inferred that the law protects individuals' secrets.

#### 3.1. Physical Privacy

Violations of physical privacy generally occur through body searches, which involve examining the body or clothing of a person suspected of committing a crime to find hidden evidence related to the crime, weapons, or to identify the person. In the laws of our country, there are no specific regulations regarding body searches of individuals. However, the advisory opinions of the Legal Department of the Judiciary have attempted to address some of the issues related to such searches:

Regarding the establishment of checkpoints and the inspection of individuals and their vehicles, Legal Opinion No. 7/2284-1979/11/11 of the Legal Department of the Ministry of Justice stated: "Considering the note under Article 6 of the Law on the Use of Weapons by Armed Forces Personnel, it seems necessary to establish checkpoints as needed and according to the prescribed regulations in specific locations, and the inspection of individuals and vehicles, and their detention, except in designated locations, is not legally justified, and in each case, with reference to the last part of Article 24 of the Code of Criminal Procedure 1999, the inspection must be authorized by judicial authorities" (Delkhoun Asl et al., 2020). Additionally, only those authorized to detect and prosecute crimes and criminals can detain and inspect suspects under legal circumstances. Therefore, they cannot carry out such actions for any accusation, and the general rule is that any detention and search must be authorized by the judiciary. Moreover, given that our country ratified the International Covenant on Civil and Political Rights in 1975, it is considered part of our laws, and in this regard, the Human Rights Committee, in its interpretation of Article 17, stated: "Concerning body searches, effective solutions must be implemented to ensure that these searches are conducted in a manner that does not violate the dignity of the individuals being searched. Individuals subjected to body searches by officers or medical personnel appointed by the state should only be searched by individuals of the same gender" (Nekounam, 2024). In Iranian laws, there are no specific regulations for body searches of individuals, but the advisory opinions of the Legal Department of the Judiciary have tried to address some issues related to such searches. Body searches must be conducted with judicial authorization, and if necessary, by individuals of the same gender as the person being searched, to preserve the dignity and respect of individuals. Violations of physical privacy typically occur through body searches aimed at finding hidden evidence related to a crime or weapons. While Iranian laws do not specify regulations for body searches, there are advisory opinions from the Judiciary in this regard. Body searches must be conducted with judicial authorization and by individuals of the same gender as the person being searched to preserve their dignity and respect. Additionally,

checkpoints and inspections must be conducted in specific locations and according to legal regulations.

### 3.2. *Privacy of Places and Objects*

Places and objects that fall under this category are those where it is generally believed that privacy should exist. Automobiles and residential homes are among the most apparent examples, with the least disagreement regarding their inclusion in this category (Sarikani, 2016).

### 3.3. *Privacy of Belief and Expression*

Article 23 of the Constitution states: "The investigation of beliefs is prohibited, and no one may be persecuted or reprimanded simply for holding a belief." Freedom of belief means that individuals have the right to engage in intellectual pursuits in any field of their choosing, without being subjected to pressure or fearing repercussions for expressing their beliefs. This engagement can be internal or manifest in public stances (Sarikani, 2016). While freedom of belief is understood as a natural right, it carries significant individual, social, political, ethical, and other consequences that necessitate both practical and legal considerations within political and legal systems.

According to Article 18 of the International Covenant on Civil and Political Rights:

1. Everyone shall have the right to freedom of thought, conscience, and religion. This right includes the freedom to have or to adopt a religion or belief of one's choice, and the freedom to manifest one's religion or beliefs, either individually or in community with others, in public or private, through worship, observance, practice, and teaching (Fatemi, 2024).
2. No one shall be subject to coercion which would impair their freedom to have or to adopt a religion or belief of their choice.
3. The freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals, or the fundamental rights and freedoms of others.

The Iranian government, based on the law passed on May 7, 1975, acceded to the International Covenant on Civil

and Political Rights, and the provisions of Article 18 of the covenant can be considered a domestic source for the protection of freedom of belief alongside the aforementioned constitutional principle. This article emphasizes the protection and support of freedom of belief and religion, underscoring that everyone has the right to adhere to their beliefs and that no one should be discriminated against because of their beliefs. This international commitment, along with the principles of the Constitution of the Islamic Republic of Iran, provides an important legal foundation for protecting freedom of belief in the country.

Article 39 of the Constitution further stipulates: "Insulting the dignity and honor of a person who has been arrested, detained, imprisoned, or exiled by law is prohibited and subject to punishment." Articles 23 and 39, each in their way, reflect the protection of sensitive personal information. Religious, philosophical, and political beliefs are considered among the most sensitive personal information. The illegal collection and processing of information related to personal beliefs can constitute the most significant and dangerous form of belief inspection. Article 23 can be regarded as the most fundamental article in the Constitution for the protection of data privacy (Khodai et al., 2024). Personal information related to criminal records and ongoing criminal cases is another category of essential information that can be associated with the general provisions of Article 39. This is because the misuse of information related to criminals and suspects can lead to the violation of their dignity and honor, and the prohibition of such actions is not limited to any specific means or method. Considering the principles of the Constitution, it becomes evident that the right to privacy is recognized, even though it is not explicitly stated. Therefore, the commission of crimes by others is also possible, and since the right to freedom of communication and correspondence is one of the fundamental rights of individuals, as stated in the Constitution, ordinary individuals should also be prosecuted if they engage in such actions. However, at present, if the act can be prosecuted under other criminal titles, it may be pursued and punished (Vara & Namvar, 2024).

Article 641 of the Fifth Book of the Islamic Penal Code addresses telephone harassment and states: "If a person harasses others by telephone or other

telecommunication devices, in addition to applying the special regulations of the Telecommunication Company, they shall be sentenced to imprisonment for a period of one to six months." The special regulations of the Telecommunication Company refer to Note 2 of Article 14 of the Law on the Establishment of the Telecommunication Company of Iran, which states: "If a person uses their telecommunication device to harass others or intentionally and maliciously disrupts others' communications, for the first time, after discovery, their telephone connection will be disconnected for one week with a written warning, and resuming the connection will require the payment of the related costs. For the second time after discovery, the telephone connection will be disconnected for three months with a written warning, and resuming the connection will require the subscriber's request and payment of related costs. For the third time, the company will permanently disconnect their telephone connection and collect the telephone equipment, and the deposit will be refunded after settlement" (Fatemi, 2024).

Furthermore, Note 1 of Article 14 of the Law on the Establishment of the Telecommunication Company of Iran regarding the unauthorized use of telecommunication devices, especially for infringing on the privacy of others, states: "Anyone who uses public or private telecommunication devices in their possession without authorization shall be warned in writing the first time, and the second time, their connection will be cut off or their use prohibited for fifteen days. In case of repetition, their subscription or authorization to use will be revoked, and a request to renew the subscription or use will be accepted after six months, subject to technical capabilities. Cases of unauthorized use will be determined in a regulation prepared by the company and approved by the Minister of Post, Telegraph, and Telephone."

Clause 7 of Article 11 of the Law on the Use of Private Wireless Equipment, approved on February 14, 1967, states: "Anyone who intercepts and uses radio messages belonging to others shall be sentenced to imprisonment for one to six months or a fine of five thousand to twenty thousand rials." This article clearly states that eavesdropping on and using others' radio messages is illegal, and offenders will be punished with imprisonment or fines. This law was enacted to protect privacy and prevent the misuse of individuals' radio

communications. Its primary goal is to safeguard the security and privacy of radio communications and prevent violations of individuals' communication rights. Article 23 of the Iranian Constitution emphasizes the prohibition of investigating beliefs and the prohibition of persecution and reprimand due to beliefs. This principle, together with Article 18 of the International Covenant on Civil and Political Rights, emphasizes the right to freedom of belief and religion. These principles generally protect individuals' privacy, especially in the context of religious, philosophical, and political beliefs. Additionally, Article 39 of the Constitution emphasizes the prohibition of insulting the dignity of individuals who have been arrested, detained, imprisoned, or exiled. Iranian laws also include provisions to prevent telephone harassment and unauthorized use of telecommunication devices, which help protect individuals' privacy. These laws and legal principles reflect efforts to preserve privacy and protect freedom of belief in the country, although in practice, there may be challenges and limitations.

### 3.4. *Information and Its Implications*

Information such as names, addresses, or telephone numbers is no longer considered private information in the current era. The creation of information centers or directories that make this type of information readily available to the public has largely removed the private nature of such information. Personal information subject to protection can be divided into two types (Shahbazi & Shabani, 2024): public personal information and sensitive personal information. It should be noted that both categories of information are protected due to their personal nature and the reasonable expectation of individuals to maintain their confidentiality. However, the personal nature of sensitive personal information is more significant, requiring special protection. Therefore, it can be said that public personal information includes distinguishing characteristics of an individual from others and is only true for that individual. Information related to health status, family life, personal habits, bank account numbers, and the like are examples of personal information. More sensitive personal information, such as information related to sexual life, personal beliefs, race, ethnicity, and tribal affiliation, membership in political parties or trade unions, as well as information

related to an individual's criminal convictions, is considered sensitive personal information.

There is no uniform approach to the sensitivity or lack thereof of individuals' personal information, and it seems that each country's legislator determines the type of personal information based on the culture and customs of its society (Asadi, 2019). Article 58 of the Electronic Commerce Law addresses sensitive personal information related to ethnic or racial origins, beliefs, religion, moral characteristics, and information related to the physical, mental, or sexual state of individuals, but it does not address other personal information. This is a significant shortcoming in this law that needs to be rectified. Additionally, the language of Article 71 of this law further limits its scope of protection for personal data. This article considers violations of the conditions set forth in Articles 58 and 59 of this law to be a crime in the context of electronic exchanges, whereas Article 58 generally prohibits the storage, processing, or distribution of sensitive personal information, whether in the context of electronic exchanges or in the virtual space in general. This means that data protection is generally not recognized in the virtual space, and personal information is only supported if it is stored in the course of electronic exchanges (Doustizadeh et al., 2024).

An example of protecting individuals' financial personal information can be found in Article 232 of the Direct Taxation Law. This article states: "Assessment officers and other tax authorities must consider the information obtained in the course of their tax-related work to be confidential and must prevent its disclosure, except in matters related to determining income and tax before the relevant authorities as necessary, and if disclosed, they will be dealt with according to the Islamic Penal Code." However, in certain cases, the legislator has deemed it necessary to obtain financial information from certain individuals, such as in the Law on Reviewing the Assets of Ministers and Government Employees, including civil and military personnel, municipal employees, and affiliated institutions, approved on March 9, 1959. This law obligates ministers, deputies, and other government employees, whether civil or military, or municipal employees, or employees of affiliated organizations, as well as city council members and employees of public service institutions, in addition to all employees of any organization, agency, company,

or bank or any other institution where most of the capital or benefits belong to the government or other mentioned institutions, or where the supervision, management, or administration of those institutions lies with the government. In addition, all those who receive a reward from the state treasury or from the aforementioned institutions, except retirees or those receiving legal pensions, are required to submit an inventory of their assets and income, as well as the assets and income of their spouses and children under their legal guardianship, to the authorities designated by the Council of Ministers' resolution and to obtain a receipt (Ansari, 2014).

Article 2 of this law includes a detailed list of all immovable properties and related rights, claims and debts, usufruct rights, cash, securities, jewelry, and valuable objects with their specifications. This intrusion into the informational privacy of the aforementioned individuals is mandated by law, likely with the philosophy of preventing the illicit acquisition of income by individuals who serve the state and most of whom have access to its financial resources.

Certain laws also impose obligations on professionals to protect individuals' information, and some of these laws are as follows:

1. Article 30 of the Iranian Law on Advocacy (approved in 1936) stipulates: "An attorney must preserve the secrets obtained through representation, as well as secrets related to the dignity, honor, and reputation of the client" (Doustizadeh et al., 2024).
2. Article 26 of the Inheritance Tax Law (approved in 1956) obligates employees of the Ministry of Finance, members of the Assessment Commission, and others charged with enforcing that law to keep confidential any information they obtain regarding individuals' assets as a result of their administrative work (Doustizadeh et al., 2024).
3. Article 31 (amended on April 19, 2000) of the Press Law reiterates: "The publication of material that includes threats to dignity, honor, or the disclosure of personal secrets is prohibited, and the responsible director will be referred to the judiciary and dealt with according to the law of punishments" (Doustizadeh et al., 2024).

The Iranian Constitution and various laws strive to preserve and protect individuals' privacy and personal information. However, challenges remain in fully implementing these protections. In today's world, information such as names, addresses, and telephone numbers, due to public and easy access, are no longer considered private information. On the other hand, sensitive personal information, such as health status, family life, personal habits, and financial information, still requires special protection.

Iranian laws have also established regulations in various areas, including electronic commerce and taxation, to protect personal information. However, some of these laws require updates and amendments for better and more comprehensive coverage, especially in the virtual space.

Additionally, specific laws have been enacted to protect individuals' professional and personal secrets in various fields, such as legal practice and the media. Nevertheless, there is a need to improve the monitoring and enforcement of these laws to ensure that individuals' privacy is fully preserved and violations are prevented. In conclusion, although the existing laws and regulations provide some degree of protection for privacy and personal information, there is still a need for more reforms and updates to fully support individuals' rights in this area.

#### 4. Privacy Law in Iraqi Law

The Iraqi Constitution, in Article 36, guarantees the right to respect for individuals' privacy. This article states, "No one has the right to infringe upon the private life, correspondence, telephone conversations, or other forms of communication of an individual, except in cases permitted by law." Additionally, there are other laws in Iraq that protect individuals' privacy, including:

**Civil Code:** Article 772 of this law states, "Anyone who unlawfully accesses or discloses another person's private information or documents shall be punished" (Ansari, 2014).

**Personal Data Protection Law:** Currently, Iraq does not have a comprehensive law for the protection of personal data. However, in 2019, a draft law was submitted to the Iraqi Parliament and is currently under review. Despite these laws, there are several challenges to maintaining privacy in Iraq, including:

**Security Restrictions:** The government may impose certain restrictions on individuals' privacy rights for security reasons.

**Crime and Criminal Prosecution:** The government may also impose some restrictions on privacy rights in order to investigate and prosecute crimes.

**Information Technology:** The collection of data, online surveillance, and data breaches pose new risks to individuals' privacy.

Despite legal efforts to protect privacy in Iraq, significant challenges remain. These challenges include security restrictions, legal necessities in crime prosecution, and new threats arising from advances in information technology. To address these challenges and improve the protection of individuals' privacy, there is a clear need for the development and implementation of more comprehensive and up-to-date laws.

##### 4.1. Legal Foundations for Privacy Protection

The legal foundations for privacy protection in Iraq are generally divided into two types: human rights law and criminal law. In Iraq, privacy protection is primarily ensured through legal provisions related to human rights, which include regulations on maintaining individuals' privacy and prohibiting unauthorized intrusion. Additionally, in some cases, criminal laws are also applied to define and punish various forms of privacy violations.

**General Legal Principles:** General legal principles, such as the principle of respect for human dignity, the rule of law, and the principle of non-abuse of rights, can be invoked to protect individuals' privacy in situations where no specific legal provisions exist.

**Judicial Precedents:** Judicial decisions and precedents can also be an important source for interpreting and developing laws related to privacy (Khodai et al., 2024).

**International Treaties:** Iraq is a member of several international treaties that contain provisions for protecting individuals' privacy, such as the International Covenant on Civil and Political Rights.

**Iraqi Human Rights Commission:** This commission is responsible for monitoring the state of human rights in Iraq, including individuals' privacy.

**Supreme Court of Iraq:** The Supreme Court is the highest judicial authority in Iraq and has the jurisdiction to interpret and enforce laws related to privacy.

Despite the existence of multiple legal foundations for privacy protection in Iraq, numerous challenges remain in preserving these rights in the country.

#### 4.2. Key Government Institutions in the Field of Privacy

**Iraqi Human Rights Commission:** The Iraqi Human Rights Commission (IHCHR) is an independent body responsible for monitoring the state of human rights in the country and promoting and protecting these rights. In the field of privacy, the Iraqi Human Rights Commission performs several functions, including:

- **Monitoring and Reporting Privacy Violations:** The Commission can receive complaints from individuals regarding privacy violations, investigate them, and, if violations are confirmed, publish reports on these matters (Salarzaei, 2011).
- **Conducting Investigations:** The Commission can investigate specific cases of privacy violations and present its findings to the relevant authorities.
- **Advising the Government:** The Commission can advise the government on the drafting and implementation of privacy-related laws and policies.
- **Raising Public Awareness:** The Commission can increase public awareness of privacy rights and associated risks through educational and informational campaigns (Rahmdel, 2015).

**Supreme Court of Iraq:** The Supreme Court is the highest judicial authority in the country and has the jurisdiction to interpret and enforce laws, including those related to privacy. In the area of privacy, the Supreme Court performs several functions, including:

- **Adjudicating Privacy Violation Cases:** Individuals or groups who believe their privacy has been violated can file complaints with the Supreme Court of Iraq. The Court reviews these complaints and, if a violation is confirmed, issues rulings (Salarzaei, 2011).
- **Interpreting Privacy Laws:** The Supreme Court has the authority to interpret privacy laws and can issue rulings on how these laws should be applied.
- **Developing Jurisprudence in Privacy Law:** The Court's rulings on privacy-related cases

contribute to the development of jurisprudence in this area and serve as a reference for other courts and government authorities.

- **Oversight of Government Agencies:** The Supreme Court can oversee the performance of government agencies in the field of privacy (Hanish, 2023).

#### Ministry of Communications and Information Technology of Iraq:

This ministry is responsible for regulating and overseeing activities related to information technology and communications in the country. In the field of privacy, the Ministry of Communications and Information Technology of Iraq performs several functions, including:

- **Drafting and Enforcing Privacy Laws in the Digital Space:** The Ministry can draft and enforce laws and regulations to protect individuals' personal data in the digital world (Al-Hajj, 2022).
- **Supervising the Activities of IT and Communication Companies:** The Ministry can oversee the activities of IT and communication companies in the field of privacy and impose penalties on companies that violate privacy laws.
- **Raising Public Awareness on Digital Privacy:** The Ministry can increase public awareness of digital privacy and associated risks through educational and informational campaigns.
- **Supporting Research in Privacy:** The Ministry can support research in the field of privacy and the development of new technologies to protect individuals' privacy in the digital world (Doustizadeh et al., 2024).

**Iraqi Law Enforcement:** The law enforcement agencies in Iraq are responsible for maintaining public order and security, as well as investigating and prosecuting crimes in the country. In the field of privacy, Iraqi law enforcement agencies perform several functions, including:

- **Investigating Privacy-Related Crimes:** Law enforcement can investigate crimes such as hacking, personal data theft, and illegal surveillance.
- **Collecting Evidence Related to Privacy Crimes:** Law enforcement can gather evidence,



such as digital data, documents, and witness statements, to prove privacy crimes.

- **Arresting Suspects of Privacy Crimes:** Law enforcement can arrest suspects of privacy crimes.
- **Prosecuting Suspects of Privacy Crimes:** Law enforcement can refer suspects of privacy crimes to the judiciary.
- **Preserving Crime Scenes Related to Privacy:** Law enforcement must preserve crime scenes related to privacy to prevent the destruction of evidence.
- **Collaborating with Other Agencies on Privacy Crimes:** Law enforcement can collaborate with other agencies, such as the Iraqi Human Rights Commission and the Supreme Court of Iraq, on privacy crimes (Ali Thamer, 2023, p. 22).

**Ministry of Justice of Iraq:** The Ministry of Justice is responsible for drafting and enforcing laws, prosecuting criminals, and providing legal services to citizens. In the field of privacy, the Ministry of Justice of Iraq performs several functions, including:

- **Drafting Privacy Legislation:** The Ministry can draft legislation to protect individuals' privacy in various areas, such as data collection, surveillance, freedom of expression, and online privacy (Ali Thamer, 2023, p. 22).
- **Providing Legal Advice to the Government on Privacy:** The Ministry can advise the government on how to draft and implement privacy-related laws and policies.
- **Representing the Government in Privacy-Related Lawsuits:** The Ministry can represent the government in lawsuits related to privacy. This ministry is responsible for drafting and amending privacy laws.

## 5. Aligning Iraq's Privacy Law with International Standards

In recent years, the Iraqi government has taken steps to improve privacy and align it with international standards. Some of the key actions taken include:

### 5.1. Legal Reforms

**Amending the Civil Code:** The amendment of the Iraqi Civil Code in the field of privacy in 2020 aimed to strengthen privacy guarantees for individuals and align them more closely with international standards. The most significant changes in these amendments include:

- **Expanding the Definition of Privacy:** The definition of privacy was expanded to include the privacy of the home, correspondence, personal information, and personal data (Ali Thamer, 2023, p. 22).
- **Strengthening the Right to Access Personal Information:** Individuals have the right to access their personal information held by others and to correct it.
- **Restrictions on the Collection and Use of Personal Data:** The collection and use of personal data are only permitted with the informed consent of individuals and for specific, legitimate purposes.
- **Increasing Security Guarantees for Personal Data:** Organizations that collect and store personal data are required to implement appropriate security measures to protect it from unauthorized access, disclosure, misuse, or loss.
- **Creating a Right to Compensation for Privacy Violations:** Individuals have the right to compensation if their privacy is violated.

These reforms represent an important step toward improving privacy in Iraq. However, more measures are necessary to ensure maximum protection of individuals' privacy (Salehi, 2017).

Some of the key actions that need to be taken include:

- Enacting Specific Laws on Topics Such as Data Privacy, Online Privacy, and Surveillance Privacy.
- Strengthening Institutions Responsible for Overseeing the Implementation of Privacy Laws.
- Increasing Public Awareness of the Right to Privacy.
- Supporting Civil Society Activities to Promote and Protect the Right to Privacy.
- Allocating Sufficient Resources for the Enforcement of Privacy Laws.

**Establishing a Regulatory Authority:** This law creates a regulatory authority to oversee the implementation of

the law and address complaints related to data privacy violations (Salehi, 2017).

However, the Data Privacy Law has also faced criticism, including:

- **Lack of Precise Definitions:** Some key definitions in this law, such as "personal information" and "consent," are vague, which could lead to inconsistent interpretation and enforcement.
- **Broad Exceptions:** The law includes broad exceptions to data privacy requirements, which could be exploited by the government and private sector to justify the collection and use of personal information without individuals' consent.
- **Weak Enforcement Guarantees:** The law lacks strong enforcement guarantees to ensure compliance.

Despite these criticisms, the adoption of the Data Privacy Law is an important step toward improving privacy in Iraq. The Iraqi government and other stakeholders must work together to ensure that this law is effectively implemented and that the privacy of all individuals in the country is protected.

### 5.2. Establishing Regulatory Bodies

**Establishing the National Privacy Commission:** In 2022, Iraq established the National Privacy Commission to oversee the implementation of privacy laws and promote a culture of privacy in the country. The main responsibilities of the National Privacy Commission include:

- Overseeing the Implementation of Privacy Laws.
- Investigating Privacy Violation Complaints.
- Advising the Government and Private Sector on Privacy Issues.
- Raising Awareness of the Right to Privacy.
- Collaborating with International Organizations on Privacy.

Establishing the National Privacy Commission is an important step toward improving privacy in Iraq. However, for the Commission to be effective, it must be independent, adequately funded, and staffed with qualified personnel (Diani et al., 2020).

**Strengthening the Capacity of Existing Institutions:** In addition to establishing the National Privacy

Commission, Iraq has taken steps to strengthen the capacity of existing institutions to enhance privacy protection. Some of these actions include:

- **Training Government Employees on Privacy Laws and Requirements:** The Iraqi government has launched training programs for government employees on privacy laws and requirements (Sabouri Pour, 2017).
- **Strengthening Privacy Units in Ministries and Government Agencies:** Ministries and government agencies have strengthened their privacy units to address privacy-related issues within their organizations.
- **Collaborating with Civil Society:** The Iraqi government collaborates with civil society organizations to promote and protect the right to privacy.

Strengthening the capacity of existing institutions is essential for effectively implementing privacy laws and protecting individuals' privacy in Iraq (Al-Hajj, 2022).

### 5.3. Raising Awareness

**Conducting Educational Campaigns:** The Iraqi government has launched educational campaigns to raise awareness about privacy rights among the general public, particularly among government employees, security forces, and media professionals.

**Supporting Civil Society Activities:** The Iraqi government supports civil society activities aimed at promoting and protecting the right to privacy.

### 5.4. International Cooperation

**Joining International Conventions:** Iraq has acceded to several international conventions related to human rights that include guarantees for privacy. These conventions include:

- **International Covenant on Civil and Political Rights:** This covenant guarantees the right to respect for individuals' privacy and prohibits governments from unlawfully interfering with an individual's private life, family, home, or correspondence.
- **European Convention on Human Rights:** This convention also guarantees the right to respect for individuals' privacy and prohibits governments from unlawfully interfering with

an individual's private life, family, home, or correspondence.

Iraq also cooperates with international organizations such as the United Nations High Commissioner for Human Rights (UNHCHR) and the Council of Europe to enhance privacy in the country. This cooperation includes:

- **Providing Technical Assistance and Capacity Building:** The UNHCHR and the Council of Europe assist the Iraqi government in drafting and implementing privacy laws, training government employees, and raising awareness about privacy rights.
- **Monitoring the Human Rights Situation:** The UNHCHR and the Council of Europe monitor the human rights situation in Iraq, including the state of privacy, and provide recommendations when necessary.
- **Supporting Civil Society:** The UNHCHR and the Council of Europe support civil society organizations in Iraq that work to promote and protect the right to privacy.

Joining international conventions and cooperating with international organizations is an important step toward enhancing privacy in Iraq. However, challenges remain in this area, including:

- **Weak Law Enforcement:** Privacy laws are not always fully enforced, leading to violations of this right.
- **Lack of Resources:** A shortage of financial and human resources can make it difficult for the Iraqi government to enforce privacy laws.
- **Political Instability:** Political instability can hinder the implementation of privacy reforms (Ghasemzadeh & Mohseni, 2013).
- **Lack of Awareness:** Awareness of the benefits and requirements of complying with international privacy standards is low among some organizations and stakeholders in Iraq.

The Iraqi government and other stakeholders need to work together to address these challenges and ensure that privacy in Iraq fully aligns with international standards and that the privacy rights of all individuals in the country are protected (Al-Hajj, 2022; Hanish, 2023). In recent years, the Iraqi government has made significant efforts to improve and enhance privacy and align it with international standards. These efforts

include legal reforms, the establishment of regulatory bodies, increasing public awareness, and international cooperation. These reforms are an important step toward enhancing privacy in Iraq. However, more measures are necessary to ensure the maximum protection of individuals' privacy. The Iraqi government and other stakeholders should collaborate to address these challenges to ensure that privacy in Iraq fully aligns with international standards and that the privacy rights of all individuals are protected.

## 6. Aligning Iran's Privacy Law with International Standards

Privacy laws in Iran have significant gaps in comprehensiveness and consistency when compared to international standards. There are several concerns regarding privacy protection in Iran, including:

- **Lack of Comprehensive Privacy Law:** Iran does not have a comprehensive privacy law, and existing laws are fragmented and inadequate.
- **Extensive Government Surveillance:** The Iranian government exercises extensive surveillance over its citizens through various agencies, including the Ministry of Intelligence and the police.
- **Restrictions on Freedom of Expression and Assembly:** Freedom of expression and assembly are heavily restricted in Iran, which affects individuals' ability to protect their privacy.
- **Weak Data Protection:** Data protection laws in Iran are weak, allowing companies and organizations to collect and use personal data without individuals' consent or knowledge (Asadi, 2019).

### 6.1. Specific Areas of Non-Compliance:

- **Lack of Clear Definition of Privacy:** Iranian laws do not provide a clear definition of privacy, making it difficult to interpret and enforce related laws.
- **Broad Exceptions for Government Surveillance:** Iranian laws allow government authorities to conduct surveillance on individuals without a judicial warrant in various situations.

- **Restrictions on Access to Information:** Access to public information in Iran is severely limited, affecting individuals' ability to monitor the government and protect their privacy.
- **Limited Corporate Accountability for Data:** Iranian laws do not fully hold companies accountable for the misuse of personal data (Vara & Namvar, 2024).

## 6.2. Efforts for Reform:

In recent years, some efforts have been made to reform privacy laws in Iran. For example, in 2017, a draft bill titled "Protection of Individuals' Rights Against the Collection, Processing, and Publication of Personal Information" was submitted to the Islamic Consultative Assembly. However, this bill has not yet been enacted into law. Several non-governmental organizations (NGOs) in Iran work on privacy-related issues. These organizations strive to raise awareness about privacy issues, educate people about their rights, and advocate for legal reforms (Diani et al., 2020).

### Challenges to Reform:

- **Government Opposition:** The Iranian government is reluctant to relinquish its power in the areas of surveillance and information collection.
- **Lack of Public Awareness:** Many people in Iran are unaware of their privacy rights.
- **Weak Civil Society:** Civil society in Iran is weak, limiting the ability of NGOs to effect change.

Iran's privacy laws significantly lag behind international standards, raising serious concerns. The absence of explicit and comprehensive laws in this area allows government authorities to access and use individuals' personal information without their consent or knowledge. Additionally, the lack of public awareness about privacy rights makes individuals more vulnerable to abuse. Addressing privacy issues in Iran requires a joint effort by the government, civil society, and the private sector. By reforming laws, increasing public awareness, and empowering civil society, the protection of individuals' rights in today's digital world can be improved.

## 7. Conclusion

Privacy is one of the fundamental rights of every individual, which is addressed in various legal frameworks, including the legal systems of Iran and Iraq. Protecting individuals' privacy is crucial for preserving their dignity and rights against unwanted and undesirable intrusions into their personal lives. Currently, privacy laws in Iran are generally insufficient and fragmented, which can lead to violations of citizens' rights and privacy. Government surveillance, facilitated by agencies such as the Ministry of Intelligence and the police, sometimes results in infringements on individuals' privacy rather than its protection. Additionally, severe restrictions on freedom of expression and assembly can diminish people's ability to safeguard their privacy. The reality is that the protection of personal data faces numerous challenges due to weak laws and the collection of data without individuals' consent or knowledge.

In contrast, privacy protection in Iraq seems to be in a better state than in Iran. The Personal Data Law, enacted in 2019, generally aligns with international standards, which can help protect citizens' rights and privacy. The existence of an independent regulatory body can also aid in enforcing the law and protecting privacy, although the functioning of this body still requires scrutiny. Freedom of expression and assembly in Iraq is more protected, which can contribute to defending individuals' privacy rights. Additionally, stronger protections, including limitations on government surveillance, can help preserve privacy and prevent the misuse of personal data.

In Iranian law, the protection of privacy is emphasized as one of the fundamental rights of individuals. The Constitution of the Islamic Republic of Iran and other laws related to civil and human rights, including laws on publication and communication and the law on the protection of privacy against government and individual intrusions, protect citizens' rights against unwanted intrusions. In Iraqi law, privacy protection is also emphasized as a fundamental right. The Iraqi Constitution and other related laws, including the Law on the Protection of Citizens' Rights and the Law on Combating Privacy Violations, protect individuals against unwanted and undesirable intrusions.

Based on the foregoing, it can be concluded that although numerous provisions related to privacy have been enacted in various laws, this multiplicity and sometimes

overlap do not yield significant practical results; this is because, as discussed, in the Constitution, which forms the foundation of ordinary laws, privacy is not explicitly mentioned, and only a few articles provide for the protection of privacy in communications, professional activities, and physical integrity. Only the privacy of the home is explicitly protected. The Islamic Penal Code only protects the privacy of the home, secrets, correspondences, and communications. In the Code of Criminal Procedure, references are made solely during the preliminary investigation stage and concerning the protection of the rights of the accused (Fatemi, 2024). The Computer Crimes Law and the Electronic Commerce Law also criminalize offenses against privacy in cyberspace.

In Iranian law, no comprehensive law on privacy has yet been enacted, and fragmented laws, which are not based on principles appropriate to technological developments, cannot fully address the challenges. Islamic sources, without using the term "privacy," contain numerous provisions in various areas of privacy. In other words, with a "reductionist" approach, various privacy-related rules and regulations can be derived within the framework of rights, such as property rights, the prohibition of backbiting, slander, surveillance, the spread of immorality, and the like. Since Iranian laws and rights are formed and influenced by Islamic provisions, a rich and comprehensive source for legislative foundations in this area exists.

Privacy, along with the aforementioned developments, encompasses a wide range of human life and has taken on an informational approach in the era of information technology. This arises from the key role of information in the concept of privacy, as the foundation and underpinning of its various aspects. Although criminal law scholars and legal authorities have attempted to keep pace with scientific advancements by introducing new criminal categories and integrative discussions in this area, these matters remain grounded in traditional criminal law principles, upon which new categories have been built. However, the nature and impact of some crimes related to new technologies are fundamentally more significant than physical harm to an individual. Based on this, such an approach—where, for example, defamation, as a traditional crime, is defined based on specific elements and then, in cyberspace, the same concept is elaborated with a more severe punishment

due to the broader impact—is fundamentally a major mistake.

Therefore, it is suggested that when dealing with crimes in cyberspace, those relying on modern technologies, or new forms of deviance, we should, independent of traditional and classical definitions, review and reassess their nature. Subsequently, based on scientific criteria, including the extent of harm caused to the victim, the values protected, and real-world benchmarks such as the scope and impact of the crime, and considering causality and proportionality as emphasized in criminal law, we should define the criminal act and then determine the appropriate punishment.

### Authors' Contributions

Authors contributed equally to this article.

### Declaration

In order to correct and improve the academic writing of our paper, we have used the language model ChatGPT.

### Transparency Statement

Data are available for research purposes upon reasonable request to the corresponding author.

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### Declaration of Interest

The authors report no conflict of interest.

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### Ethical Considerations

In this research, ethical standards including obtaining informed consent, ensuring privacy and confidentiality were observed.

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