



LEGAL PROTECTION AGAINST EXPOSURE TO FAMILY PRIVACY

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Article history:		Abstract:
Received:	January 10 th 2023	Infringement of the private life of the family constitutes a violation of the constitution which guaranteed her protection first, and a clear violation of the laws second, which required the guarantee of protection from infringement of her privacy, and gave her the right to file a lawsuit before the judiciary demanding compensation for the damages suffered as a result of these violations, so that she may demand the lifting of the damage represented by the removal of the infringement in addition to seeking monetary compensation it is the infringement for which the family can seek compensation that falls on any member of the family if he or she is challenged with his honour offer or reputation so that the family as a whole is affected. The judiciary should not tolerate the imposition of compensation on the aggressor because of the goal of reparation, and the preservation of the privacy of the family from the encroachment of others, because it has an impact on the preservation of society, because the family is the basis of society.
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INTRODUCTION:

The right to private life occupies an important place for individuals, as it is one of the rights inherent in the life of the individual and relates to his personality and has a great influence in achieving human dignity, and when it comes to the privacy of the family, it has the greatest impact on the need to preserve its entity and criminalize any attack affecting this entity, because of the importance of the family in society. The preservation of society cannot be achieved without respect for the privacy of the family Islamic law along with other laws and laws and constitutions in countries around the world, including Iraq has protected the right to private life from any attack that may affect the moral entity of the family or the individual, and has imposed sanctions consisting of compensation in kind and criticism on those who cause damage to the family because the aggressor violates its privacy by breaking its secrets or challenging the honor and consideration of one of its members or publish pictures without their consent, whether through newspapers, television or the Internet and modern communication devices.

The importance of research lies in the proliferation of read and visual media from which the individual no longer secures his secrets, as well as the tremendous scientific development in the field of espionage, taking and publishing images which have a significant impact on the threat of private life.

Those manifestations that we have mentioned were the reason for choosing research, because it has a direct impact on human dignity, and the preservation of the right to private life is a reason to make the

individual or family feel the security and tranquility that has become scarce in our time.

Based on these considerations, this paper was divided into two researchers as follows:

The first topic: exposure to the privacy of the family.

The second is to compensate for damage to family privacy.

First research

Exposure to family privacy

Family privacy is one of the most precious manifestations of the sanctity of private life, and therefore all the actions involving privacy that occur inside the home are at the heart of the private life that criminalizes assault, and must be protected from the actions of the curious. This paper will thus be divided into two demands the first limited to the statement of the concept of privacy and the second is exposed to exposure.

The first requirement

The concept of privacy

Privacy or the so-called right to private life which is considered the essence of personal rights and freedoms that enables the human being to practice his private life and demand the protection of his right with his sanctity has indicated to this right civilizations and laws of the old and modern status if we exclude the Law of Hammurabi, which is concerned with social reform and ensuring the freedoms of individuals and the administration of justice. These include the Manu law in India, ancient Egyptian civilization, Greek, Germanic and Roman legislation.(1), In addition to the



Judeo-Christian heavenly laws that indicated the human being's keenness to cover his privacy.(2).

Islam considered the sanctity of private life to be a human necessity, as was the case with other necessities of the Islamic society referred to by the Holy Quran and the Sunnah of the Prophet, which were represented by protecting the privacy of the human being in his life and death.(3), In the context of giving a concept of the right to privacy, we did not find between the folds of the laws indicating the definition of privacy, but rather the development of legal articles referred to by the constitutions and civil and criminal laws, which considered the right to the sanctity of private life a protected right that cannot be attacked as indicated by the constitution of the Republic of Iraq 2005 in article (15) of which stipulated that "everyone has the right to life security and freedom and may not be denied or restricted except in accordance with the law and on the basis of a decision. Issued by a competent judicial body." For this reason, the jurists have worked hard to define the concept of privacy despite the difficulties they face in establishing a comprehensive definition of a barrier, but this did not prevent them from taking it upon themselves to state the concept of the right to privacy considering it to be a non-public or non-public life the facts of which revolve behind closed walls and doors. If compared to public life, it includes professional activities such as lawyers, doctors, pharmacists, and the activities of the public authorities, represented by military service, the right to vote, and other political rights, which means that everything that is public or not public by a person is considered a private life (4), another aspect of jurisprudence was that privacy means unity represented by intimacy, retreat, temporary isolation, isolation, withdrawal, calmness and tranquility, i.e., that man has the right to choose retreat from the reality of social life, as he does not want the intervention of others.(5) The American Law Institute defined it as "every person who seriously and unjustly violates another person's right not to reach the knowledge of others, and that his image is not exposed to the public's attention and is responsible to the aggressor."(6). French jurisprudence in its attempts to define privacy as "the right of a person to be left quietly and quietly considering that every human being has a range of life must be of his own or limited to it so that no one else may enter it without his permission and leave it to stay away from society and live alone for a while."(7), by presenting doctrinal attempts to define privacy or the so-called private life our point of view must be made clear as the right to private life means that "a person has the right to exercise his or her privacy with the family or alone without having to control him or spy with intent."

The second requirement

Exposure to privacy

Most of the world's constitutions if not all of them have gone to protect the family from being exposed to its privacy including the Iraqi constitution, and exposure to that privacy is done in many ways, which require legal protection to prevent those who try to attack the privacy of the family or to reveal marital secrets or publish pictures of the family or infringe on the sanctity of housing, these considerations that require legal protection will be detailed in turn:

First: family privacy.

The family is the nucleus of society and preserving it is a dimension of the necessary things that the state is required to protect as article 29 of the Constitution of the Republic of Iraq 2005 stipulates: "First: family is the foundation of society and the state protects its entity and its religious moral and national values...." Islam has taken special care of the family, considering marriage as the origin from which it grows as the marital family was considered a kind of housing and affection.(8), in doing so he has taken the first care of family life as one of the most important aspects of private life that is protected and not to be assaulted, and the laws have also taken the sanctity of assaulting family life as a private life. The French judiciary has not authorized the assault on the private life of a married woman if this involves assaulting the husband's right to private life as well as one of the matters of family life is the relationship between the husband and the marriage and the success or failure of that relationship.(9), the Paris Court of Indy thought argued that the disclosure of the emotional life of a girl was not only an assault on the sanctity of a girl's private life, but an attack on the private life of the family to which she belonged.(10), we believe that this ruling is logical and sound, as harming the emotional life of a girl has a negative impact on the family to which the girl belongs, and therefore the assault on the privacy of any member of the family is an infringement of the privacy of the family as a whole because of its impact on the reputation and honour of the family. It is considered to be subject to the privacy of the family as well as related to motherhood and childhood, so it is not permissible to publish legal details of a child and who is his real mother or the dispute over custody of the child in case of separation between the mother and the father(11), private conversations between family members are also a family privacy that can't be disclosed as they are protected and legally protected.

Second: divulging the secrets of marriage.

Everything that goes around in family life and its secrets goes within the scope of private life one spouse cannot disclose without the consent of the other what he has communicated to him during marriage, even after their separation. Unless one of



them is sued or sued for a felony or misdemeanor that occurred against the other(12), the wisdom that marriage secrets cannot be disclosed by spouses is due to the desire to establish some degree of mutual trust between the spouses. Except if there are lawsuits filed between the spouses, a lawsuit by one of them is the same, i.e., whether it is a subject or a type, it lifts the duty of secrecy imposed by the interest of the family and imposed by mutual trust between the spouses, but this should not be outside the scope of the adjourned case, i.e. the husband must abide by the necessity of defending and not exaggerate the disclosure of the secrets of marriage.(13). We support and agree with the text of article (67) of the Proof Act, since it is not the wife's fault to choose a husband who is unable to maintain their privacy during the marriage period as disclosing the secrets of marriage without what he needs to win the case is one of the things that does not correspond to the morals and prescriptions required by society that the husband must have.

Third: publishing family photos.

Article 30 of the Egyptian Publications and Publications act No. 49 of 1984 stipulates that "news images or comments relating to the secrets of private or family loved ones may not be published. Unless the publication is in accordance with a judicial decision or an administrative decision requiring a public interest and the license to publish is by decision of the Minister of Information," which means that it is not possible to publish any image affecting the family's private life or its own news or comments, as it is considered an infringement on the privacy of the family in its right to maintain confidentiality and privacy. We believe that even if a picture of a person is published displayed or circulated even if it affects the honour of the person himself, it negatively affects the privacy of the family as it is an explicit attack on the right of the family to respect the privacy of its members.

Fourth: the inviolability of the dwelling.

Housing is the place occupied by the person under the law and is one of the privacy issues that can not be infringed upon as it is the place where the family is entrusted to get rid of the burden of life that each of its members is facing. The basis for the protection of the sanctity of the dwelling derives from the sanctity of the private life of the owner, where every place where a person resides permanently or temporarily is considered a dwelling. It may not be entered without permission and cannot be searched without judicial authorization unless the family of the owner of the dwelling or the person himself makes his residence a public place.(14), this was shown in the Verse "27" of the Surat al-Nour, which is believed, do not enter houses other than yours until you have good time and say hello to its people, so that is good for you, so that

you may remember."1- This was confirmed by the Constitution of the Iraqi public in 2005, where article 17 of it stipulated that "everyone has the right to personal privacy in contravention of the rights of others and public morals. 2- The sanctity of housing is protected and it is not permissible to enter or enter or be subjected to it except by judicial decision in accordance with the law."

Second research

Compensation for damage to family privacy

When the infringement of the family's privacy is achieved it is entitled to file a claim claiming compensation for damages caused by the violation of its privacy or related to the privacy of any member of its members. The legislator has provided for the right to compensation as a means of civil protection of the right to privacy in the face of those who beg him to infringe on the privacy of others. The purpose of the text is to redress the damage done to those who have attacked their private lives, therefore the compensation claimed by the family may be in kind or monetary compensation. We will consider two requirements, one for the study of compensation in kind, and the other for cash compensation.

The first requirement

Compensation in kind

Article 209 of the Iraqi Civil Code stipulates that "1- The court shall appoint a path of compensation depending on the circumstances, and it is correct that the compensation should be undependable or arranged income, in which case the debtor may be obliged to provide insurance. 2. Compensation for cash is estimated to be that the court may depending on the circumstances and at the request of the victim order the re-establishment of the situation and rule on the performance of a particular order or the restitution of homosexuality as a matter of compensation.", from this text it is clear that the penalty for damage caused by the person is compensation in kind or in cash, if a person commits a harmful act resulting in harm he or she must force the damage, i.e. compensate the injured in kind, and if this is impossible the court resorts to monetary compensation, therefore, in infringing on privacy, compensation must be done in kind. The Paris court argued that the error was made by attacking a person's private life by publishing and disclosing the secrets of his health life, as an investigator of responsibility as a result of the mistake committed.(15), the French judiciary stressed the need to compensate the injured for the attack on his private life and one of its manifestations, namely healthy life.(16), not only does the realization of responsibility be achieved to compensate for the violation of the secrets of a person's private life related to his health, but also to include the violation of the moral entity of the human being represented by his reputation which



in turn affects family consideration as he was sentenced to the breach of the abuse on the family consideration of the plaintiff who was reported to be marrying women and releasing them out of greed for the money he owns, or what was said that his wife asked him to divorce because of impotence or the assault may be achieved by saying that the person has allowed his wife to take a lover whoever is assaulted in this way has the right to file a claim claiming compensation for the harm he has caused. If this news, which is challenged as a family matter and is considered a distortion of his reputation, is published he may demand that the aggressor be obliged to publish the judgment in the newspaper or any means by which it has been defamed.(17), as for the publication of pictures of the family, it is entitled to sue the aggressor for compensation by withdrawing the published images from the newspaper or magazine in which it was published, in order to compensate for the literary damage that has been done to the injured, in addition to monetary compensation for material damages if signed.

The judge will award compensation in kind if a neighbour uses it to infringe on the privacy of his neighbour, if the family seeks asylum in the judiciary, claiming compensation in kind, in which case the compensation is possible and the judge will carry it out.(18). The judiciary may also issue a judicial ruling to close a television channel that broadcasts certain programs in which it infringes on the privacy of a particular family or individual as the injured person has the right to ask the judiciary to close this channel and demand the broadcast of certain assertions that the news is denied as compensation in kind. But if the infringement of the privacy of the family or individuals took a new form, if modern means of communication such as the internet were used for example, the injured may also ask the judiciary to hold in kind by closing the site that offended the privacy of the family, or the trespasser used listening devices for the purpose of spying on family secrets it can also ask the judiciary to confiscate these devices and obtain a ruling on it as compensation in kind. However this does not mean that it will not claim compensation for material damages if available.(19).

The second requirement

Monetary compensation

It is not difficult for a judge to impose monetary compensation for material damage to the injured person as the compensation is estimated to be as much as the damage in accordance with the principles provided by law which is to estimate the compensation in accordance with the loss of the damage and loss he has suffered, as indicated in article (207) of the Iraqi Civil Code which stipulates "1- The court estimates compensation in any case as much as the damage and

loss of the injured person, provided that this is A natural consequence of illegal work..." In resolution 25 of 1979, the Iraqi Court of Cassation defined literary damage as "damage to the injured in his feelings passion dignity, honour or any meaning that people are keen on."(20).

There are no standards on which the judge can assess compensation, and he cannot create the kind of appropriateness required by each case, because monetary compensation for literary damage affecting the privacy of the family or the individual is not limited to moral compensation, but the injured person must be given monetary compensation that mitigates the damage done to him, such as relieving the mother and alleviating his suffering.(21). There is no criterion for obtaining compensation funds for literary damage to the family as a result of the attack on its privacy since any harm that harms the human being in his honour and considers it or affects his passion feelings or feelings can be compensated, and the judiciary appreciates it on the basis of the injury caused by the attack on his right to privacy by estimating a reasonable amount of cash that is not exaggerated commensurate with the damage to achieve the purpose of the award for literary damage.(22). There is no provision in Iraqi civil law that refers to compensation for damages to the family, and represents an attack on its privacy which occurs from the young man, as if an 18-year-old boy posted pictures of the family through social media sites, which often occur, and constitute an attack on the privacy of the family or to publish a picture of a girl which harms her reputation and that of her family, but the general rules of the Iraqi Civil Code, where article (191) referred to the destruction of the money of others and considered the guardian responsible for compensation for the damage caused by the young person, and article (204) stipulated that "any infringement that harms others other than what was mentioned in the previous articles requires compensation.", from this text, we understand that the Iraqi legislator obliged the boy to distinguish or not to distinguish or who in his ruling to compensate for the damage he causes if it infringes on the privacy of the family but the responsibility is reduced. But what is the verdict if the young aggressor does not have money from which the judge can compensate?

In this case, the civil law stipulates in the first paragraph of article (218) "The father and then the grandfather are obliged to compensate the damage caused by the young person" and based on this provision, if the young person does not have money to pay the amount of compensation then the person responsible is obliged to pay compensation from his money and then he can refer to the young person, and the article in question specified that the official is the



father and if there is no person responsible he is the grandfather.(23), in assessing the amount of compensation for literary damages to the family - which infringes on its privacy - the judge has discretion to take into account certain considerations in each case he considers so that each family considers certain actions by persons considered by law to be an attack on the privacy of the family although it concerns a particular individual but it affects the family to file a claim for civil prejudice for the harm of infringement on private life. In any case, the passage of time preventing the hearing of the case falls by 15 years. The family must file their case during it or its right to claim compensation will be lost.

Margins

1. Dr. Muhammad Al-Shibhawi, Criminal Protection for the Sanctity of Private Life, Dar Al-Nahda Al-Arabiya, Cairo, 2005, p. 6.
2. Dr. Tharwat Anis Al-Asyouty, The Family System between Economy and Religion, The Primitive Groups of the Children of Israel, Dar Al-Nahda Al-Arabiya, Cairo, 1966, p. 121
3. Dr. Ali Ahmed Abdel-Zoubi, The Right to Privacy in the Criminal Law, a Comparative Study, 1st Edition, The Modern Book Foundation, Lebanon, 2006, pg. 36.
4. Dr. Essam Ahmed Al-Bahaji, Protection of the Right to Private Life in Islamic Sharia and Civil Law, Dar Al-Fikr Al-Jamii, Alexandria 2014, p. 19 and beyond.
5. Dr. Mamdouh Khalil Al-Ani, Protection of private life in criminal law, a comparative study, PhD thesis submitted to the Faculty of Law, Cairo University 1983, p. 207.
6. Dr. Hussam Al-Ahwany, The Right to Respect for Private Life, Comparative Derayah, Dar Al-Nahda Al-Arabiya, Cairo 1978, p.49.
7. Dr. Muhammad Ahmed Ihsan, Towards a general theory of protecting the right to the sanctity of private life, Dar Al-Nahda Al-Arabiya, Cairo 2001, p. 19.
8. Surat al-Nisa, verse 21, Surat al-Baqarah, verse 187.
9. This ruling is referred to by Dr. Issam Al-Bahaji, previous source, p. 213, footnote 1.
10. Dr. Issam Al-Bahaji, previous source, p. 211, margin 4.
11. Dr. Issam Al-Bahaji, previous source, p. 211, footnote 5.
12. Article (67) of the Egyptian Law of Evidence in Civil and Commercial Matters, No. 25 of 1968, as amended.
13. Appeal No. 29 and 31 of the year 38 BC session 6/12/1973 o.240, p. 1198. Referred to by Dr. Issam Al-Bahaji, previous source, pg. 207, footnote 2.
14. Egyptian Cassation No. 674 of the year 56 BC session 4/6/1986, Egyptian Lawyers Journal, Year 169, Issue Three, p. 17.
15. Dr. Issam Al-Bahaji, previous source, p. 161, footnote 3.
16. This ruling is referred to by Dr. Issam Al-Bahaji, previous source, p. 161, footnote 5.
17. Dr. Hussam Al-Ahwany, previous source, pg. 432.
18. Dr. Eid Al-Razzaq Al-Sanhoury, Mediator in Explanation of Civil Law, Part VIII, revised by Counselor Mustafa Al-Fiqi, Edition 1982, Dar Al-Nahda Al-Arabiya, Cairo 1982, p. 937.
19. Dr. Ahmed Fathi Sorour, Mediator in the Penal Code, Special Section, Dar Al-Nahda Al-Arabiya, Cairo, 2013, p. 776.
20. This ruling is referred to by Dr. Nasser Jambal Al-Shamaila, Moral damage and the transfer of the right to compensation, PhD thesis, College of Law, University of Mosul 2002, p. 140.
21. Basil Muhd Yousef, Compensation for moral damage (a comparative study), a master's thesis submitted to the Faculty of Graduate Studies at An-Najah National University, Palestine 2009, p. 55 and beyond.
22. Dr. Issam Al-Bahaji, previous source, pg. 468. See the provisions of Article (102) of the Iraqi Civil Code.

CONCLUSION AND RECOMMENDATIONS

The most important results and recommendations we reached can be summarized as follows:

1. Private life is the essence of personal rights and freedoms that enable a person to claim protection of his right with the inviolability of this right recognized by legislation.
2. All civilizations and divine laws indicated the keenness of man to conceal his privacy and considered it a human necessity.
3. There is no comprehensive definition that clarifies the concept of the right to a private life, as the legislation considered it a protected right that should not be attacked, and jurisprudence referred to multiple definitions, most of which went towards a non-public life.
4. Attacking the privacy of a family member, such as revealing about the emotional life of a girl or insulting the honor and reputation of a person or publishing a picture that is considered an attack on the family's private life.
5. Assaulting private life in any way gives the right to demand compensation for material and moral damages by filing a lawsuit to the court, in addition to the in-kind compensation a financial compensation must be paid that contributes to alleviating the pain incurred by the family.



6. The judge, when estimating compensation, must take into account the first consideration that the family is the nucleus of society, and maintaining it is one of his priorities. He must not be negligent in evaluating compensation in order to serve as an example to others who may be tempted to violate the privacy of families.
2. The Constitution of the Republic of Iraq for the year 2005 in force.
3. Egyptian Press and Publication Law No. 49 of 1984.
4. The Egyptian Law of Evidence in Civil and Commercial Pleadings No. 25 of 1968, as amended.

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1. Iraqi Civil Code No. 40 of 1951.