



REVEALING PRIVATE MARITAL MATTERS AND ITS PUNISHMENT: A COMPARATIVE JURISPRUDENCE STUDY

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Abstract

The dwelling house in Sharia and law has a sanctity, no one may enter it except with the permission of its landlord and with their knowledge, and at the time they want, and in the condition in which they like to meet people, because the violation of the sanctity of the dwelling house by those entering without permission makes their eyes breach the privacy of its family and its secrets. If anyone asks permission to enter, it is his duty to keep in confidence everything he has seen while he is inside the dwelling house and not to disclose it after leaving. Rather, permission was required for sight, which means that permission is lawful and ordered, but it was required so that sight does not fall on the haram, so it is not permissible for anyone to look through a peephole or anything else, which may lead to his sight falling on a foreign woman. Keeping marital secrets between spouses is of great importance, as it is not permissible to disclose them as the Prophet (PBUH) forbade it, except for a legitimate interest, so it is permissible for a man to talk about what is happening between him and his wife, if she claims that he is turning away from her or claims that he is unable to have sexual intercourse. Moreover, the preservation of marital secrets extends beyond the termination of marriage by death or divorce. Article 379 of the Federal Penal Code regulates the provisions of this offence in the form of obtaining a private conversation, taking or transmitting a person's picture in a private place, or publishing pictures or news related to the secrets of private or family life by any means of publicity. It is also regulated by Article (21) of the Law on Combating Information Technology Crimes, and Article (79) of the Press and Publications Law.

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1. Introduction

The right to privacy is a fundamental Islamic moral, emphasized in numerous texts. It mandates treating all aspects of a person's dignity and honor as confidential. Confidentiality is considered a legitimate interest, and concealing it is considered a public interest. Islamic sharia provides provisions for maintaining privacy in family life, including prohibitions on spying and dwelling house inviolability. Family matters are significant secrets that must be observed. Spouses have the right to treat their family matters confidential within the boundaries of the household, without prejudice to household requirements or matrimonial guardianship. People often seek to uncover or exploit others' private family matters, particularly due to the growing blackmailing phenomenon and excessive talkative spouses. Unintentional mistakes can be criminalized by law, as they challenge the inviolability of private life. This article argues that marital life is a sacred sacrament, and that what happens between spouses is private and cannot be disclosed except for Sharia-compliant interests. Violation of this right is punishable by Sharia and jurisprudence, and the consequences of violating privacy are severe. The United Arab Emirates has established a significant body of local laws and practices to protect this right. This paper aims to achieve the goals of enhancing family privacy by defining terms from the Qur'an and ahadith, as well as classical fiqh books. It also seeks to establish generic modern-day principles that enhance the privacy of family members. Sacrilege, defined as violating inviolability of dwelling houses, includes house trespass and allowing oneself to handle what is not permissible for them. Secret, defined as a confidential matter that someone tells another with a prior or subsequent request to keep it secret, includes private matters or faults that people are loath to reveal in public. In legal jurisprudence, a secret is defined as a confidential matter that damages reputation and dignity when revealed. It is also a quality attached to a situation, status, news, or action that leads to a bond between those who have the right to know about it and those who owe an obligation not to disclose it.

Background of Study

Requesting to keep a secret is not conditional, as evidence is sufficient to inform the other party, even if the person did not explicitly request its confidentiality. This is in accordance with the law and Islamic Sharia. Privacy refers to matters that belong to a person and are exclusion from publicity. For example, money belongs to a person's property, and no one else has the right to contest it. Private matters are limited to the person's possessions. Marital secrets are common

rights between spouses that must be observed, ensuring honesty in the marriage contract. Trustworthiness between husband and wife is essential, and it is not permissible for any actions without permission or knowledge of each other, except as permitted by Allah Almighty. In his final sermon, Muhammad ﷺ emphasized the importance of fearing Allah regarding women and their rights. He emphasized the right of wives to provide for them and clothe them in a reasonable manner. One of the most important marital secrets is the right of spouses to see each other's bodies, with women only exposing parts of their bodies to their husband. This issue has been a source of debate among scholars. Islamic Sharia also grants spouses the right to look at each other's bodies without being reprehensible. The secrets of conjugal bed matters and their relationship between spouses are also considered serious marital secrets. Muhammad ﷺ forbade discussing such secrets, as they were considered deviant and not chivalrous. However, some men and women reveal these secrets without shame or shyness, which is considered a serious act that must be avoided. Islam has decreed avoiding all means leading to revealing marital secrets to the public. Some scholars argue that spouse's testimony against the other is not accepted due to the fear of divulging family private matters. However, there are diverging views on this question. Private marital secrets are a legitimate requirement for both spouses, as they are exclusive to each other and cannot be divulged. This is because revealing such secrets may cause harm. A hadith of Muhammad ﷺ states that the most evil of the people to Allah on the Day of Resurrection will be the man who consorts with his wife and then publicizes her secret. Muhammad ﷺ asked the men to be seated in their places and ask if any man approached his wife, closed the door, and covered himself with a curtain. The people kept silence, but Muhammad ﷺ turned to the women and asked if any woman narrated the secrets of intercourse. She said that the men described the secrets of intercourse, while the women also described them. He said that the similitude of this act is the likeness of a female Satan meeting the male Satan on the roadside, fulfilling his desire with her while the people are looking at him. The hadith suggests that revealing intimate relationship secrets is considered immoral and bad manners, and it is forbidden for Muslim spouses to discuss their private affairs. Imam al-Nawawi criticized this hadith, stating that it is immoral for a man to reveal private details about their relationship with his wife. He also emphasized that mentioning sexual intercourse if there is no benefit or need for it is disliked. However, if there

is a benefit, such as blaming the husband for turning away from his wife or claiming their husband is incapable of intercourse, mentioning such private matters is permissible. A'isha narrated a story where a person asked Muhammad ﷺ about a man who had sexual intercourse with his wife and parts away without orgasm, and Muhammad ﷺ replied that he and his wife did it and then took a bath. Muhammad ﷺ then asked Abu Talha if he spent the right time with her. Jabir bin 'Abdullah and Allah's Messenger were on an expedition when Jabir urged his camel to move quickly. A rider approached him and he wentaded it with an iron-tipped stick. Jabir was surprised to find Allah's Messenger, who asked if he was newly married or previously married. He replied with a young girl, allowing Jabir to play with her. When they arrived in Medina, he instructed them to enter by night to comb dishevelled hair and clean the woman whose husband had been away. The sub-narrator, Hashim, reported that the prophet added in the hadith "(seek to beget) children!" This phrase suggests urging sexual intercourse while exercising care and politeness, with the intention of granting a righteous child. The word "seek to beget" could also mean the acumen and strict preservation of something, as Muhammad ﷺ instructed him to be gentle with his wife and exercise caution when engaging in intercourse, as he might consort with her while she was menstruating or be more burdensome. Muhammad ﷺ forbade a man from coming to his family like an unexpected night visitor, doubting their fidelity and spying into their lapses. This narration suggests that it is not preferable for a man who has been away from home for a long time to come to his wife as an unexpected night visitor. However, it is permissible for a man who has been away for a short time and his wife is expecting him to come at night. In some narrations, if a man has been away for a long time or on a great expedition or military, and their arrival is known, it is permissible for him to come whenever he wishes, as the reason for the forbidden visit has been removed and the wife's purpose is to be prepared. Marital secrets must be kept even after divorce, as stated by Abu Hamid al-Ghazali in his book on the Etiquette of Marriage. This is due to the threat of revealing women's secrets. A virtuous man who wanted to divorce his wife was told not to reveal his wife's secrets, but after divorcing her, he replied that the affairs of someone else's wife were not his concern. However, it is permissible to reveal such secrets for a legitimate interest. The wives of Muhammad ﷺ described his guidance and acts in terms of his intimate relationship, kissing, and consorting with them. This was due to the public's

interest in these matters. 'A'isha narrated that a person asked Muhammad ﷺ about a man who had sexual intercourse with his wife and parts away without orgasm. Muhammad ﷺ and 'A'isha performed this act, indicating the permissibility of publicizing the private intimate secrets of spouses for a legitimate interest. This concept was understood by Imam al-Nasai, who narrated this hadith under the section (Relationship with Women) in 'The Large Sunan 'As-Sunan al-Kubra' under the title "The permission concerning the man narrating the private affairs with his wife."

Imam al-Nawawi states that it is permissible for a man to reveal the secret of his private affairs with his wife if she claims he has turned away from her or if the wife claims that her husband is incapable of intercourse. The second requirement is Prudence and caution concerning aspects of marital privacy. Scholars agree that it is obligatory to cover one's private parts when bathing and that it is forbidden to take a bath naked in public. This is because covering private parts is obligatory and exposing them is forbidden except between spouses. The hadith narrated by Bahz bin Hakim from his father and grandfather explains that it is obligatory to cover one's private parts when bathing and that it is forbidden to take a bath naked in public. However, most scholars restrict this permissibility to "Makrooh" (disliked or offensive act) and prefer to cover up even when alone. In another hadith, Bahz bin Hakim asks Muhammad ﷺ to conceal his private parts except from his wife and slave-girls. He replies that if it is within his power that no one looks at it, then no one should look at it. If one of us is alone, he replies that Allah is more entitled than people that bashfulness should be shown to him. In the Sunnah of Muhammad ﷺ, there are numerous hadiths where Muhammad ﷺ used to chat and talk with his wives, often engaging in activities that brought him near to Allah the Mighty and Sublime. One such anecdote is the story of Umm Zar', where 'A'isha tells Muhammad ﷺ that he has been to her as Abu Zar was to Umm Zar'. This was done to comfort her and show his good treatment towards her. Muhammad ﷺ also excluded the act of divorcing his wife, which was praised except that Abu Zar' divorced his wife, which was his only fault. Instead, he did not divorce her, providing reassurance and clarity. 'A'isha responded that he was better for her than Abu Zara', as she mentioned her overwhelming love to Abu Zara' and his kindness to her. The man's view of his wife's guilt as unforgivable and her sin as a sin that cannot be expiated by sincere repentance is a vicious habit. He would punish her without caring about her repentance, which is a vicious habit. Allah

Almighty has spoken the truth in the Quran, stating that Allah accepts the repentance of His worshipers and takes their charity.

2. Findings And Discussion

Sharia texts emphasize the importance of concealing Muslims' secrets, including marital secrets, to protect them from gossip. Al-Bukhari's Sahih chapter in "Al-adab al-mufrad" states that a believer should conceal sins he may commit, as it is permissible and preferable for them to do so. al-Baghawi's chapter on the prohibition of exposing Muslims' secrets also includes a chapter on covering up, citing hadiths such as Ibn 'Umar's warning against harming Muslims, reviling them, or spying on them. The Prophet ﷺ also narrated that whoever sees something that should be kept hidden and conceals it will be like bringing a girl buried alive. The narration by Imam al-Tabari also implies covering up the raped woman's secret, as seen in the narration by Amer. A sister of a Yemeni man committed an indecency, cut her jugular veins with a razor, and was rescued, treated, and healed. She was asked in marriage by her uncle, who hated deception and wanted to avoid spreading the word about his niece. Umar, who hated deception, mentioned this to Umar, who warned him that if someone whose religious and character satisfied him asked her in marriage, he would punish her. In another version, he replied that marrying a pious Muslim woman would be the same as marrying a pious Muslim woman. Umar believed that a woman guilty of adultery should be concealed and not publicly judged. Instead, the indecency committed should be concealed and not publicized, and she should be given a chance to start with repentance, avoiding sin, and embarking on a life of piety and chastity. According to a hadith, if a person accidentally glances at a non-Mahram woman, they bear no sin at the beginning but must lower their gaze immediately. This is in line with Allah Almighty's command to lower their gaze from looking at forbidden things. Salah al-Qadi stated that it is not compulsory for women to cover their faces in public, but rather a desirable Sunnah for them. Men must lower their gazes from looking at non-Mahram women in all cases except for valid legitimate purposes, such as testimony, medical treatment, marriage proposals, purchasing female slaves, and transactions. The prohibition of spying on others' private affairs is also a linguistic definition of spying. In Arabic, the words (التجسس) and (التحسس) are almost identical in writing except for a dot under one of the letters. Spying is the act of secretly collecting information for others or delving into other people's affairs, while

inquisitiveness is asking questions inordinately or improperly curious about others' affairs.

Spying is a method of obtaining information from others, while eavesdropping involves listening to private information. Spying requires patience and deliberation to obtain the required information, while eavesdropping is carried out with haste. Some argue that spying is used to find out others' faults and is mainly used with evil acts, while eavesdropping is to obtain information whether good or bad through listening. Eavesdropping is prohibited as Muhammad ﷺ forbade it, as he said, "Anyone who listens to people's conversation when they move away from him will have molten lead poured into his ears." He also warned against suspicion, as suspicion is the worst of false tales, and advised against spying on one another. Examples of eavesdropping include al-Faruq Umar ibn al-Khattab's account of a Muslim man who listened to a Muslim man's prayer and stayed for a month without knowing what made him sick. Another example is al-Faruq Umar ibn al-Khattab's exile to Basra to prevent women from attempting to shave his head, causing him to be exiled to Basra. Muhammad ﷺ warned against harming Muslims or exposing their faults as a way of punishment. Nafi' narrated that Ibn 'Umar warned Muslims not to harm or spy on them to expose their secrets, as Allah exposes their secrets wide open even if he is in the depth of his house. In conclusion, eavesdropping and spying are two distinct methods of obtaining information from others. While spying is often used to obtain information, eavesdropping is a more legitimate method of obtaining information. In the Quran, Umar bin Al-Khattab explains that people are judged by their public deeds, not by the revealing of Divine Inspiration during the lifetime of Allah's Apostle. He states that people will trust and favor the one who does good deeds in front of them, and they will not call them to account about what they are really doing in secret. However, they will not trust or believe the one who presents to them with an evil deed even if they claim that their intentions were good. Ibn Mas'ud also states that they are prohibited from spying on Muslims and finding faults with them, but they can take to task only if the sin is overt. In Medina, Umar and Abu Qilabah witnessed a house where Rabia bin Umayyah bin Khalaf was drinking, and they were warned not to spy on one another. Abu Mihjen al-Thaqafi was also warned against spying, so Umar went out and left him. Zaid bin Aslam recounts a story where Umar and Abd al-Rahman went out patrolling and found a woman singing and a man holding a cup. Umar asked the man what he was doing, and he informed him that he was

his wife. The woman said that she felt restless without a paramour to rejoice with, but her wisdom and shyness prevented her from honoring her husband when he was away. The narrations of the Quran emphasize the importance of ensuring the human right to privacy and the inviolability of dwelling houses. They also emphasize the prohibition of entering houses without permission, as per Islamic Sharia's legitimate framework. Ascertaining welcome is defined as seeking permission first, and Allah knows best. It can also involve letting the inhabitants know that one is entering the house by making certain sounds, such as clearing the throat or ensuring to proceed slowly before entering. Abu Ayyub al-Ansari narrated that ascertaining welcome to enter means a man saying SubhanAllah, Allahu Akbar, and Al Hamdulillah, and clearing his throat, announcing his arrival to the people in the house. Al-Qurtubi argued that ascertaining welcome is different from seeking permission to enter, as it is when one greets the inhabitants in the house, making them feel at ease, unlike if they entered without seeking permission. Abu Bakr al-Jassas argued that ascertaining welcome is different from seeking permission to enter, as it is when one greets the inhabitants in the house, making them feel at ease. Al-Mawardi emphasized that denying the voices of people coming out of a house is considered public, and denying what was behind the sounds is not permitted. A dwelling house is inviolable only if it is locked up and not allowed to enter without the permission and knowledge of its inhabitants. Entering the house without permission makes visitors' eyes fall on the private matters of inhabitants. If someone is given permission to enter, they must conceal everything they saw during their stay inside the house and not to divulge it after leaving, as Muhammad ﷺ explicitly forbade. Islam has ordained the necessity of keeping marital life secrets and not revealing them in public. However, private matters are being exposed on social media platforms like Twitter, Instagram, Facebook, and Snapchat. In the absence of legislation or law that obliges spouses to maintain complete confidentiality of family life and protect it from being disclosed on the internet, competent courts expanded law enforcement and considered it with paramount importance. They have given the husband the right not to financially compensate the woman in certain cases. If a woman publishes or exposes the privacy of her family, the husband has the right to institute judicial proceedings under the name "Fault-based divorce" as a result of the wife's disrespect for her family privacy and not for keeping marital secrets. In some cases, the judgement may include removal of parental custody of children for not being trustworthy

to be entrusted with children, filming them in parties while dancing and celebrating, or not wearing appropriate clothes and posting on social media. The issue of cyber spying between spouses and violating the privacy of sacred relationships can take four forms: exposing the spouses' intimate relationship, exposing the details of the relationship, or exposing the wife's secret. These matters may be permissible to speak of only when advice is sought from competent people, such as judges or muftis. The ruling on exposing one spouse's faults is similar to the ruling on backbiting or talking about someone in a manner they dislike. This is derived from Allah Almighty's comprehensive dictum, which states that slandering is to make false statements about someone, while backbiting implies malicious talk about someone even if it is true. This form is as forbidden as the previous one, and may be permissible only when advice is generally sought from competent people, such as judges or mufti. Regarding matters that one spouses' requests not to reveal, it constitutes a breach of trust and keeps secrets. The judgment is based on preventing mischiefs and bringing benefits, such as talking about family matters. If there is no benefit gained or the harm is greater, the wife or husband must refrain from revealing such matters to avoid arousing envy and stirring up hatred. Sharia opinion on a husband asking to access his wife's email is often brought up on religious websites, where people ask if the wife has an email and if she is entitled to keep the password for herself and not share it with her husband. This issue occurs between spouses, especially in cases of distrust or suspicion. Many religious entities have provided legal opinions (Fatwa) in this regard, which answer that the wife has the right to keep the password to herself and not share it with her husband, as this constitutes one of her inalienable rights. However, the wife should not arouse suspicions about herself, as this makes the husband feel distrust of her, leading to stability and turmoil in their relationship. The husband is not entitled to ask his wife to share her password with him or be under suspicion. It is recommended that each spouse avoid such matters that have no effect on family life. The husband has the right to ask his wife about her usage of email, as he is more aware of what is harmful and beneficial. He is the guardian of his wife and has the right to define her relationships in a way that safeguards and protects her. A hadith from Sunan Ibn Majah indicates that Muhammad ﷺ asked her about her place of residence, indicating the legitimacy of the husband asking his wife about such things. Although spying is generally prohibited, if there is a presumption that proves cheating, the other spouse has the right to search and investigate to ascertain whether the presumptive

evidence is true. Trust between spouses is crucial for managing marital life. Sharia opinion on asking permission by children reached puberty is also important. Allah the Mighty and Sublime states that when children reach puberty, they should ask permission at all times, as those before them have done. This is a statement from Allah the Mighty and Sublime, explaining what is permissible and what is forbidden. Abu Ishaq al-Fazari stated that a child does not enter a place where a woman is until he asks permission. Al-Zuhri revealed this verse in al-Qurtubi, 1964 AD: 308, 12. The concept of the secret was not agreed upon by jurists, leading to several opinions on its definition. The most likely criterion is the interest in limiting knowledge of an incident, which depends on what is recognized in society and what is recognized by law. The court ruled that three defendants committed the crime of disclosing secrets by copying information about the nature of the work of a grieved factory and disclosing it to a competing factory owner. In cases where there is no interest in concealing the incident, such as if it does not relate to a person or is not recognized by the law, the crime of disclosing the secret is not realized through disclosure. In cases where a person tells a professional that they committed a crime, if the latter disclosed the secret, the crime of disclosing the secret is not realized through this disclosure, as the interest in secrecy in such a case is illegitimate. Married life is considered private life, and an assault on it shall be considered an assault on the inviolability of private life. Legal jurists did not agree on a single definition of private life, but some defined it as things related to man and surrounded by a fence of secrecy, while others saw it as a description or state of isolation or attempt to hide from the eyes and observation of others. Islam requires the inviolability of dwelling houses and not to enter them without the permission of their owners. Allah Almighty said, "O you who have believed, do not enter houses other than your own houses until you ascertain welcome and greet their inhabitants. That is best for you; perhaps you will be reminded." A dwelling house has no inviolability unless it is safe and only accessible to its inhabitants with permission and knowledge. Violation of this inviolability can lead to the imperfections and secrets of the family. If anyone asks permission to enter, they must keep everything they have seen while inside the dwelling house and not disclose it after leaving. The revelation of this verse was based on a story of a woman from the Ansar who wanted to hide her father or son from her husband. The verse was revealed to Muhammad ﷺ, who revealed that there is no fault in entering uninhabited houses. Imam al-Qurtubi interpreted the verse as a warning to

humans who have been granted houses and covered them from sight. He aimed to cover them up so that no one would see a vulnerability of another person. Muhammad ﷺ also stated that anyone who looks into a house without the permission of the occupants and puts out their eye has no right to blood money or retaliation. Secular scholars differ in their interpretation of the hadith. Some believe that if the occupant pulls out their eye, the hadith is abrogated, and it was before the revelation of Allah Almighty's command to "If you are punished, then punish." This interpretation may have been a threat rather than an inevitable order, and if the hadith is contrary to the Holy Quran, it may not be enforceable. Muhammad ﷺ used to say something when he wanted something else, as seen in the hadith when Abbas bin Mirdas praised him and said to Bilal, "Go and cut off his tongue." It is possible that the mention of pulling out the eye meant to punish him for spying on someone else's house. However, some scholars argue that there is no requirement for blood money or retaliation in the hadith.

Scholars debate the permissibility of punishing a spy before warning them. The most correct interpretation is that the sight is permissible, as it is lawful and required to avoid violating the forbidden or unlawful. Hadiths from Anas bin Malik and Sahl Bit Sa'd al Saadi indicate the inviolability of dwellings. In the hadith, it is permissible to throw a small thing at the eye of the looker, and if it leads to pulling his eye out, there is no blood money if he has looked at a house with no non-marriageable female relative. In the hereafter, torment will be severe. Al-Qurtubi narrated from Amr bin Dinar that a man from the people of Medina had a sister who died and died. He went down to her grave and found a bag containing dinars. He revealed her and found her grave on fire. He went to his mother and asked about her sister's actions, and she said that she used to delay prayer beyond its timing and spy on neighbors' houses. He said, "By this doing, she perished!" (Al Qurtubi, 1964: 232, 16). The text highlights the importance of asking permission before observing a spy, as it ensures that the sight does not fall on the forbidden or unlawful.

3. Conclusion

The article highlights the importance of privacy in the marital relationship, as both spouses and individuals have their own private spaces protected by law and Sharia. To maintain a healthy married life, couples must respect each other's privacy and provide each other with their own space. It is crucial to hold

awareness sessions for those about to marry and those who may confuse privacy with its meaning.

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