



Violation of Privacy at the Stage of Crime Detection from the Perspective of Afghanistan's Criminal Justice System and Islamic Jurisprudence

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Abstract

Violation of privacy as a security tool in the stage of crime detection is an issue that needs to be identified and evaluated in the criminal justice system of Afghanistan and Islamic jurisprudence, in the light of international human rights documents and to explain the degree of convergence and difference between the two variables mentioned methods investigated using the descriptive-analytical method. After examining the criminal laws of Afghanistan, it was concluded that the privacy of the suspects has been widely violated in the criminal justice system of Afghanistan because monitoring economic activities, accessing computer systems, networks, and servers, controlling electronic communications and recording activities, and conversations, especially about dangerous and complex crimes such as terrorist crimes, money laundering, crimes against internal and external security, drug crimes, corruption Administrative, human trafficking, murder, crimes against judicial justice and the crimes included in the Statute of the International Criminal Court and the final document of the Rome Diplomatic Conference have been considered legitimate and perhaps necessary. The said policy is in line with the international standards and indicators of human rights, which consider maintaining national security, public security, the economic well-being of the country, preventing chaos and crimes, protecting health and morals, and protecting the rights of others as the criteria for limiting rights and freedoms. Islamic jurisprudence does not have a clear difference with Afghanistan's criminal justice system due to the strictness of prohibitions against entry into privacy, because it is permissible and perhaps necessary to enter the privacy of people in exceptional circumstances, based on internal and external evidence.

Keywords: *Violation of Privacy; Investigation; Crime Detection; Islamic Jurisprudence; Criminal Justice System of Afghanistan*

Introduction///Problem Explanation

Every person, in accordance with his being a human and a citizen, has a realm of life that normally and mystically or with prior notice, it is expected that others will not have access to its information without his consent, or from entering, watching and monitoring or any other type of invasion. To refrain from the said territory, but this territory may be violated by the judicial system during the proceedings, especially during the crime discovery phase; because the discovery phase includes a series of actions such as identifying the perpetrator of the crime, controlling communications, and placing them under scrutiny, examining the suspect, fingerprinting, examining the crime scene, examining human remains, which will inevitably lead to a violation of privacy. However, the extent of the entry of judicial and executive bodies into privacy will be different according to the legal systems. The more compliance of the legal system with the teachings and principles of human rights, the more protected the privacy of people will be.

Now the question is, what is the status of privacy in Afghanistan's criminal justice system? Considering the importance of the crime detection stage, does the mentioned system allow access to people's privacy at this stage? If yes, what is its scope and is this matter predominantly and as a rule or as an exception only regarding some discovery measures and in relation to specific crimes? To what extent is the Afghanistan's criminal justice system compatible with international human rights documents and Islamic jurisprudence?

In order to find answers to these questions and to identify the position of "violation of privacy in the criminal justice system of Afghanistan" and "evaluation of the policy adopted by this system", the research problem is analyzed using analytical-descriptive analysis due to the international human rights documents and with Islamic jurisprudence should be explained in a comparative way. It is natural that in this comparison, the degree of convergence and difference of opinion between the two mentioned variables in the stage of crime detection will also be clear.

The research and explanation mechanism will be such that first, the manifestations of privacy violations at this stage will be extracted by referring to the criminal code of Afghanistan, especially on criminal procedures that was approved in 2013, and often analyzed and examined in the light of international human rights documents. Then the extracted effects are presented on Islamic jurisprudence. Finally, the selected point of view and the cases of overlap and difference between Afghanistan's criminal justice system and Islamic jurisprudence should be clarified in this regard.

Based on this, the main question of the research is, in what cases has the Afghan criminal justice system violated the privacy of people during the crime detection stage, and what overlaps and differences does have with international human rights documents and Islamic jurisprudence?

A) Violation of Privacy During the Crime Detection Stage, From the Perspective of Afghanistan's Criminal Justice System

At this stage, in Afghanistan's legal system, privacy violations can be discussed under the two headings of "types of privacy violations" and "subject territory of privacy violations".

1- Types of Privacy Violations at the Stage of Crime Detection in Afghanistan's Criminal Justice System

Afghanistan's criminal justice system has provided for measures such as body search in a special way, search of residential places, comprehensive control and surveillance of people's privacy in the stage of crime detection, which seem to be incompatible with human rights and citizenship of people.

1-1- Inspection and Search Without the Consent of the Suspect and the Permission of the Court

What challenges citizens' rights and freedoms is not an inspection, because sometimes this is necessary to discover the crime and identify the culprit. On the contrary, it is this type of inspection that distinguishes the strict view of the criminal justice system from its citizen-oriented view. In this regard, the Afghan legislator has acted in such a way that even the internal inspection of the suspect's body, in case of necessity and urgency, does not require the consent of the suspect and the prior permission of the court. (Law on Combating Narcotics and Intoxicants, Article 23, Paragraph 2) Whether such permission is only for narcotics and intoxicants crimes, or whether there is such a license for other crimes as well, is a question that can be answered in the existing laws. It is possible that due to the specific nature of the said law and based on the "proportion of sentence and issue" rule on the one hand and attention to the importance of drug crimes, on the other hand, the aforementioned license may be considered specific to the detection of drug-related crimes. But since the "characteristics of the case" cannot be the allocator of the verdict, this type of inspection can be applied to other dangerous crimes with the "rule of cancellation of character" and considering the importance of the crime, whose method of committing and discovering them is complicated and the scope of the victims of the crime is wide. It seems like a generalization. A clear witness of this generalizability is the opinion of the lawmaker regarding terrorist crimes, money laundering, crimes against internal and external security, drugs and intoxicants, administrative corruption, kidnapping, human trafficking, murder, threats to witnesses, judges, hostages, and family members and the crimes included in the statutes of the Criminal Court between It is the international and final document of the diplomatic conference of Rome, which has allowed access to privacy and extensive investigative measures against the suspect and the accused (Afghanistan Criminal Procedure Law, Article 112).

The expansion of judicial officers' powers regarding physical search cases is another thing that brings Afghanistan's criminal justice system closer to adopting a strict approach in the crime detection phase. If security measures are required, if a person is caught or detained carrying prohibited objects or objects belonging to a crime or which can be used in committing a crime, the judicial officer can search the person with his authority and without prior permission from the competent authority (Ibid, Article 123). Also, when the crime committed is a felony or a misdemeanor, the punishment of which is medium imprisonment, or the crime is a felony and there is a possibility of escape or disappearance of a person, the judicial officer can, with his authority and without the authority's permission competent person to arrest (ibid, article 81) and as a result to inspect him (ibid, article 122). In addition, if caution is required, if there is a disruption in the investigation process or the provision of justice, or if there is a negative impact on national interests, the prosecutor can search the suspect and the accused without prior permission from the competent court. (Ibid, Article 7, Paragraph 11).

Perhaps, the most important problem with the authority of the judicial officer and inspection in the criminal justice system of Afghanistan is the reliance of this system on subjective personal criteria. The Afghan legislator considered "the possibility of the suspect's escape and disappearance" sufficient for his arrest and search (ibid, Article 81). The imaginability of his escape and disappearance is based on two bases, one is the state of perception and imagination, which is a psychological matter and depends on the experience and scientific-judicial power of the judge (Ashuri: 2007, vol. 2, p. 137) and based on this idea, the Necessity or non-necessity of arrest and body search of the suspect is decided. According to this, the legislator in the matter of arresting and searching the suspect, which affects his dignity and citizenship rights, he has considered the subjective criteria and personal interpretation and the opinion of the judicial officer to be sufficient to limit the legitimate rights and freedoms of the suspect. But its second base is the origin of the idea of a judicial officer. Are mere doubts or suspicions enough for such an action, or should the aforementioned reasons be beyond the stage of suspicion? Logic and legal justice require that there must be sufficient reasons in this regard to prevent the deprivation of the suspect's rights; Therefore, the perceptive state of the officer should be based on evidence that may create such an impression for others and normal people. Therefore, it can be said that the criterion for detecting the suspect's escape and

disappearance is an objective matter. However, even if it is not possible to claim that the Afghan criminal justice system relies on the subjectivity of the criterion, there is a possibility of relying on it. It is obvious that the principle is to secure the rights and freedoms of the suspect and limiting them is an exceptional matter. The support of exceptional cases must have legal force to be able to limit the scope of the principle. Of course, if subjectivism,

the criterion of understanding escape and disappearance, is not accepted from the expression of the Afghan legislator, this expression has another problem, and that is referring to the perception and understanding of the suspect's escape and disappearance to the judicial officer. Delegating such an important matter to a judicial officer will result in the unfair limitation of citizens' rights.

Despite the fact that the Afghan legislature has prohibited the search of places, objects, and documents at night. It has been allowed in cases of obvious crimes or in cases where there is a fear of losing the evidence of committing or the continuation of a misdemeanor crime or an imagined crime (Criminal Proceedings Law, Articles 151 and 124). Regardless of the fact that the search, especially its permissibility at night, puts the judicial system away from the accusation situation and in the search mode which is a manifestation of strictness, the legislator has relied on the criterion of mental diagnosis in this case as well as the physical search; because the purport of the article 151 of the Criminal Procedures Law of Afghanistan "unless the crime was evident or the fear of losing the reasons for committing or continuing the crime or crime" is based on the understanding, imagination, and interpretation of the investigating authority from the evidence and the situation and the state of the crime scene. In understanding this issue, he may have come to the conclusion not based on specific and objective reasons, but based on subjective and personal reasons and his special conclusion that in such a case, if the investigation is not carried out, the evidence of committing the crime will be lost or the crime will continue. If such an inference from the said article is accepted, it is obvious that the rights and freedoms of the accused will be threatened; In addition to that, the primary order of inspection is prohibition at night (Ibid, Article 151). But the limit of the night has not been determined, while the laws of some countries have clearly limited it to 9:00 p.m. to 6:00 a.m. (French Criminal Procedure Code, Article 59).

In this way, the obviousness of the crime, its importance, the disruption in the investigation process, and the disruption in the provision of judicial justice are some of the cases that the Afghan legislator has given permission to search and enter the privacy of people during the crime detection stage.

2-1-Control and Supervision

The meaning of "control" in this text is control with the motive of crime detection, which may be used before its occurrence and for the prevention of crime. Since the communication methods of people in the real and virtual space have a wide variety and range in proportion to the progress of human social life and its complexity, their control is also diverse and different. In order to study and evaluate the point of view of the criminal justice system regarding the quantity and quality of communication control, it seems necessary to examine the types of control actions and measures.

Exploratory control and monitoring of the suspect's movements includes different areas of his real and virtual life, which can be divided in wiretapping, electronic control, control of transactions and bank accounts, and "supervised surrender". Although the aforementioned division seems to be a clear division and diversification, at least in the Afghan justice system, it has no other benefit except for the creation of multiple titles; because all the secret actions that may be included under each of the mentioned titles, in terms of permissibility and non-permissibility, conditions and how to implement the actions and crimes covered by security measures, have a single ruling; Therefore, all the secret measures allowed by the legislator to detect the crime are stated without distinction.

As an explanation of how to conduct the judicial process, the Criminal Procedures Law of Afghanistan, in Article 112, has identified secret actions that are an exception to the principle of "immunity from aggression" in Article 37 of the Constitution as follows:

- 1- Eavesdropping, monitoring, or recording the contents, conversations, and communication of suspects and accused persons through telephone, computer, internet, or other telecommunications and information technology devices and collecting information about location, source, distance, route, time, date, size, the duration of conversations and the type of communication.
- 2- Covert electronic surveillance or recording of conversations, movements, and activities of people in places, private homes, and public places.
- 3- Supervision of financial transactions that are done through banks or other financial and commercial institutions.
- 4- Inspection of letters, packages, containers, parcels, material, and technical means.
- 5- Allowing the transfer and passage (surrendering under supervision) of illegal or suspicious cargo from the territory of Afghanistan to the territory of one or more other countries with the knowledge and under the supervision of competent legal and judicial authorities.

Article 47 of the Law on Combating Money Laundering and Proceeds of Crime stipulates: "In order to receive proof of the crimes listed in this law, judicial confiscation officers can make the following decisions for a certain period of time: 1- Supervision of bank accounts and like those. 2- Access to computer systems, networks, and computer servers. 3- Monitoring and controlling telephone conversations, fax machines, and other electronic transmission and telecommunication facilities. 4- Audio or video recording of activities, methods, or conversations.

The most obvious example of the measures that the criminal justice system of Afghanistan has foreseen in the mentioned laws to control and monitor individuals is "exhaustive surveillance and widespread violation of people's privacy". However, since such measures are firstly a restriction on the general principle of "immunity from aggression" and secondly, they were carried out in line with the guidelines of new international documents, the said view is not considered as a rule but as an exception. According to the international conventions of Merida and Palermo, if necessary, it is possible to use the controlled delivery of cargo and other special investigative techniques such as electronic surveillance or other forms of surveillance and covert operations, in such a way that the resulting evidence is admissible in court (Merida Convention, Article 50, Paragraph 1 and 60 Paragraph 1, Part A and Palermo Convention, Article 20 Paragraph 1).

Overall, the criminal justice system of Afghanistan has accepted surveillance measures and widespread violation of the privacy of individuals as an exception, it has allowed these measures against the suspect and the accused as a general rule and against them as well as against the perpetrators of obvious crimes. Crimes that violate judicial justice and important crimes have followed the strict system of investigation. To further explain and complete the discussion, the crimes that are allowed to enter privacy are explained briefly.

2- The Subject Area of Violation of Privacy in the Stage of Crime Detection in Afghanistan's Criminal Justice System

The executive laws of Afghanistan focus on the crimes of Article 113 of the Criminal Procedure Law in terms of entering the privacy of individuals in the stage of crime detection and perhaps in other preliminary stages of proceedings. These crimes include the most important crimes that have received special attention in international and domestic laws and have a wide scope. The mentioned article stipulates: "Secret intelligence measures are used against the suspects and accused of the following crimes: 1- Terrorist crimes, money laundering and terrorist financing. 2- Crimes included in the law on crimes against internal and external security. - Narcotics and intoxicants crimes. 4- Crimes of

administrative corruption. 5- Crimes of kidnapping and human trafficking 6- Crimes of murder. 7- The crime of threatening witnesses, judges, prosecutors, and their family members in connection with their case, in order to prevent the application of justice. 8- Crimes included in the Statute of the International Criminal Court and the final document of the Rome Diplomatic Conference.” Considering the range of crimes included in the statute of the International Criminal Court and the final document of the Rome Diplomatic Conference, which includes the crime of genocide, crime against humanity, war crimes, and the crime of aggression, the subject range of controllable crimes and covert operations in order to detect the crime, more it is revealed.

Examining the cases mentioned under the above heading shows that the criminal justice system of Afghanistan has widely limited the rights and freedoms of the suspect during the detection stage of the crime. Of course, this limitation is not exclusive to the aforementioned system; Rather, most other legal systems have reached such a limit due to the complexity, organization, and expansion of crimes; For example, the French judicial system is sometimes based on the severity of the punishment (French Criminal Procedure Code, Article 100) And sometimes, based on the severity of the crimes, controlling the communications of the suspect and the accused and infiltrating criminal groups in order to discover the crime is allowed (*ibid.*, Article 706-80). The basis of limiting the scope of the mentioned crimes is also in accordance with the cases stipulated in the international human rights documents. The mentioned documents, while emphasizing the immunity of the honor, dignity, and private life of individuals from arbitrary intervention, (Civil and Political Rights Convention, Article 17: Paragraph 1 and Universal Declaration of Human Rights, Article 12). Interventions in accordance with the law and cases that are considered legitimate in a democratic society for the reasons of maintaining national security, public safety, or economic welfare of the country, preventing chaos and crimes, protecting health and morals, or protecting the rights of others (European Convention on Human Rights, Article 8, Universal Declaration of Human Rights, Article 29 and Convention on the Rights of the Child, Article 13, Paragraph 2, Articles 14, Paragraph 3 and 15, Paragraph 2). Meanwhile, some international documents about specific crimes have shown special sensitivity; For example, the United Nations in its 8th Congress on the Prevention of Crime and the Treatment of Criminals, entitled "Corruption in Government" acknowledges the universality of administrative corruption and its harmful effects on the economy of nations, its close connection with injustice, economic crimes, organized crimes, drug trafficking, and money laundering, he advised the member states, must update their judicial system to prevent and fight corruption and adopt appropriate methods to discover, investigate and convict corrupt officials and confiscate the funds resulting from corruption.

Considering the restrictions that according to international documents can limit the rights and freedoms of individuals, especially the condition of "legality of restrictions", Intruding into the privacy of individuals and adopting the method of surveillance in the criminal justice system regarding some crimes and perpetrators, finds international legitimacy; Because the domestic legislature can easily foresee restrictive restrictions in its laws to avoid conflicts with international documents. Of course, there is another stipulation in international documents that considers only predictions in-laws approved in a democratic political system as valid. Based on this, although the criminal justice system of Afghanistan has recognized the rights of the suspect such as the right to remain silent, the prohibition of torture, and the right to have a defense lawyer during the discovery phase. However, it has permitted inspection, investigation, control, and secret measures for a large part of crimes, which ultimately lead to one of the criteria in international documents. Irrespective of the aforementioned bases, which justify the legitimacy of restricting the rights and freedoms of individuals, necessity and justice also require, the officers to detect and fight crimes against complex, organized, and terrorist crimes that disrupt public order and global security formation, they can use control measures and secret detection methods, otherwise, it would be unrealistic to expect officers to discover such crimes.

B) Violation of Privacy in the Stage of Crime Detection from the Perspective of Islamic Jurisprudence

Islamic jurisprudence, as a knowledge that considers all human behavior to be subject to one of the five obligatory rules, in terms of proof, should be included in the statement of the ruling of measures such as inspection and control of private areas of individuals has done. In terms of proof, if we look at the verses, traditions, and life of the Prophet of Islam (PBUH) and Shia imams (PBUH), such an entry seems to be certain. But to know the details and how it is, it is necessary to remember that most jurists, as a principle and rule, any kind of entering into the privacy of others and revealing their secrets, even if it is motivated by the duty of "enjoining what is good and forbidding what is evil" (Bahjat: 2007, vol. 3, p. 145, question 3865 and Makarem Shirazi: 2008, p. 39) or discover and prosecute the crime, they consider it forbidden (Center for Cultural Documents of the Islamic Revolution: 1985, vol. 17, p. 106). This point of view among the jurists is so emphatic that some of them not only prohibit the detection of crimes by entering into the privacy of individuals, but also consider such behavior as a crime and sin, and perhaps some of the above behaviors require penal discretionary punishment or hadd punishment. They know to a certain extent (ibid, p. 98). Since the opinion of the vast majority of jurists is on the prohibition of violating the privacy, there is no need to quote numerous proofs; rather, the evidence of the said word is mentioned in the sense that it shows the validity of the claim and the extent of the prohibition.

Qur'anic verses and Islamic hadith backbiting, spying, suspicion, (Surah Hijarat, verse 12) fault-finding, (Al-Bayhaqi: 2003, vol.8, p. 578,) spreading prostitution, (Surah Noor, verse 19) violation of secrets and entering without permission. They have clearly forbidden the residential places of others (ibid., verse 27), which are examples of violation of privacy and pervasive surveillance. The Holy Qur'an has paid attention to this matter to the extent that it has ordered family members not to enter each other's privacy at special times and places without permission (ibid, verse 58). In addition, the prohibition of revealing the secrets of individuals and advising certain people such as statesmen and judges not to reveal the secrets of people also indicates that it is not permissible to enter into the privacy of individuals (Fakhar Toosi: 2012, p. 436). Therefore, including this group of verses and traditions, there is no doubt about the prohibition of violating people's privacy and general surveillance; Because the types of inspections, investigations, types of control, and supervision are based on suspicion and fault finding and motivated to know or reveal the secrets and spread the behavior of the perpetrator. In this sense, there is no restriction, the said evidence includes all citizens regardless of the type of crime and the identity of the perpetrator.

The only ambiguity in the application of the above proofs is the restriction of the prohibition to faith (Al-Baraghi: 1951, vol. 1, p. 103); It seems that the sanctity of spying on non-Muslims and perhaps on opposing Muslims will be ruled out; (Al-Mousavi al-Qazwini: 2003, vol. 2, p. 259). Just as some commentators of the Holy Qur'an and jurists prohibit spying in verse 12 of Surah Al-Hujrat, either because it is addressed to believers (Al-Tabarsi: 1993, vol. 9, p. 137 and al-Zahili: 1997, vol. 26, p. 255) or because the address of believers is placed next to the condemnation of "do not eat." "The meat of a dead brother" due to the exclusiveness of brotherhood to believers (Al-Tabatabai: 1996, vol. 18, p. 486) or the importance of the security of a Muslim's life, life, and property from the relevant traditions, they have carried over the sanctity of entering the privacy of Muslims (Ali Akbari Babukani: 2012, p. 175).

At first glance, the said ambiguity seems stable; But such an understanding of the mentioned reasons is subject to a value challenge shifting and relativizing the ugliness of entering the privacy of others; Therefore, the above reasons cannot be the basis of legislation with this reading; Because it doesn't make sense that God, who is the creator of all human beings and in the capacity of educating them for the proper regulation of social relations, tolerates such discrimination in basic human rights; Therefore, he has prohibited entry into the privacy of others from the ground up and for everyone (Aghababai: 2017, p. 219).

This ambiguity has another solution besides the above-mentioned extra-religious solution, and that is paying attention to matters such as the extension of "Zhamma" contracts to all non-Muslim states and nations, (Omid Zanjani: 2000, Vol. 3, p. 281) "Estiman" And there are other religious and historical contracts such as "Hedna" which have the necessary validity in Islamic jurisprudence and can be considered as an intra-religious solution. According to the aforementioned agreements, all citizens living in the territory of the Islamic system, as well as other independent states and nations, enjoy complete immunity as long as they adhere to such unwritten agreements, and when they are considered to be in violation of the aforementioned obligations, they are subject to the same penalties as Muslim citizens. Research, investigation, monitoring, and control measures will be taken. In other words, the Islamic State and its sub-groups have no right to violate the privacy of people, whether they are Muslims or non-Muslims, in their personal lives; But when the issue is related to social affairs and there is a danger from their side to the security and public order of the country, all citizens regardless of religion can be under their watch.

What has been said guides us to the fact that although the application of the above reasons prohibits any kind of entry into the privacy of natural and legal persons; this does not mean that the above-mentioned meaning cannot be defined; Rather, sometimes it is necessary for the government to protect the security of the society, spread justice, cut the roots of corruption, establish and strengthen public order, prevent chaos and other such goals, it must enter the privacy of people and discover crimes. This perception is not the type of conflict with the previous point of view, but only the type of primary confrontation that can be resolved by referring to the generalities of "prohibition of entry into the privacy of others" to the interaction of people with each other in their relationships outside the government and political system. Therefore, the first rule of entering into a person's privacy and spying on people's private life is based on respect; But this respect may be changed according to the case and in an exceptional manner; this means that whenever the commission of a crime is supported by evidence or the accused is of such importance that it disturbs the public order and endangers the existence of the Islamic Ummah, violating the privacy of others is not only permissible but also becomes a responsibility. Al-Mirza al-Qami: 1992, vol. 1, p. 377, Hosseini Tehrani: 2000, vol. 2, p. 26 and Ahmadi Mianji: 2014, p. 132).

There are many pieces of evidence that can limit the application of the above-mentioned evidence and prove the permissibility of violating privacy in some cases; But the most important of them can be presented and explained under the two headings of "Intra-religious reasons" and "Extra-religious reasons". The reasons within the religion can be divided into three categories: the verses of the Holy Quran, the hadiths, and the Sirah. The clearest Qur'anic proof of the permissibility of violating privacy is verse 76 of Surah Joseph. According to this verse, in order to find the "stolen cup dear to Egypt", they searched the cargo of Joseph's brothers. If this was not permissible, prophet Joseph, who is innocent of sin according to Muslims, would not have done it (Bandar Ibn Abdul Aziz: 2006, pp. 263-264). It is an inference. The implication of this on the aforementioned claim becomes clearer when the value of the trophy is compared with the discovery of complex and important crimes.

There are many hadiths in this regard, but only two ones from Hazrat Ali (AS) can be summarized. The first is letter 52 of Nahj al-Balagha. In this letter, he ordered Malik Ashtar to hire honest and loyal spies among his agents and to act on their reports about the misconduct and betrayal of his employees (Nahj al-Balagha: 1993, p. 374). The second one is Imam Ali's response to Abu al-Aswad Dauli's report about the betrayal of the government agent. His Holiness wrote in his reply: "Your letter has been received, people like you are benefactors of the Imam and Ummah and guides to the right and overcomes oppression." I wrote a letter to your friend and colleague about what you had written and did not inform him about your letter. After that, report what you see for the good of the Ummah, whether it is what you deserve and this is obligatory on you" (Al-Balazari: 1996, vol. 2, 170). Both hadiths point to the fact that Imam Ali was more sensitive to crimes related to government officials and employees than ordinary people and controlled their behavior.

Prophet Muhammad's behavior was also based on the fact that whenever he sent an army, he would place reliable people in it to investigate the behavior of the army commander. (Al-Hamiri: 1992, p. 342). It can be understood from his behavior that he was invading the privacy of government employees, especially military commanders.

Conclusion

In the criminal justice system of Afghanistan, extensive violation of privacy during the detection of a crime is accepted as an exception for citizens and as a principle for suspects. A review of Afghanistan's criminal laws shows that the said system at this stage, especially in relation to dangerous, organized, and complex crimes, has extensive surveillance and control measures such as comprehensive monitoring of economic activities, access to computer systems, networks, and servers, monitoring and control of conversations. by phone, fax, and other electronic communication facilities, audio or video recording of activities, methods or conversations and surrendering under surveillance are considered legitimate and the first principle is based on suspicion in the stage of crime detection. The above limitations are not a specific matter and are not related to the international custom of proceedings; Because international human rights documents have also called legal interventions legitimate if there are conditions. Although Islamic jurisprudence has accepted the prohibition of violating privacy as the first principle at this stage; as an exception, it is approved in special conditions and circumstances, and it does not have much difference with the criminal justice system of Afghanistan; Because the Qur'anic and hadith terms prohibit any kind of entry into the privacy of real and legal persons, they are bound by specific internal and external religious reasons, and perhaps for jurisprudential reasons, sometimes the government is required to enter into they know privacy and crime detection.

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