

The Right to Privacy between Constitutional and Penal Legislations in Palestine

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Abstract

The right to privacy has emerged in the current century as one of the most significant individual rights affected by technological development, particularly through cybercrimes and advances in artificial intelligence. This evolution has been accompanied by the adoption and use of such means, especially in criminal prosecution. This study aims to examine the right to privacy within the framework of constitutional and penal legislations in Palestine, with the objective of identifying the extent to which constitutional provisions and substantive and procedural penal legislations protect this fundamental right in light of contemporary challenges such as technological advancement, cybercrimes. Moreover, artificial intelligence. The study seeks to assess the compatibility of penal legislations with constitutional guarantees through a comparative presentation of international experiences to identify the strengths and weaknesses of national legislations and propose methods for their development. To this end, the inductive-analytical method was employed, enabling the researchers to analyze legal rules, examine their scope of application. Moreover, derive generalizations that highlighted the weak constitutional protection of the right to privacy. Moreover, the study observed violations of this right in procedural aspects of criminal law and noted the inadequacy of its substantive penal protection due to

limited capabilities in addressing violations of correspondence confidentiality, phone tapping, infringement of image rights. Moreover, the repercussions of artificial intelligence. The study recommends strengthening legislative and judicial protection of privacy, while emphasizing the need to strike a balance between this right and the requirements of societal security in the digital age.

Keywords: Constitutional Protection, Penal Legislations, Cybercrimes, Human Rights.

Introduction

In light of the rapid technological advancements and the increasing forms of infringement on personal data, the right to privacy has become one of the most pressing challenges facing modern legislation, where constitutional guarantees intersect with penal provisions to provide the necessary legal protection. This research aims to examine the extent to which these legislations complement or conflict in protecting privacy, whether at the national level or within the framework of international conventions.

Professor Henri Mazeaud once stated: “The deep sense of secrecy and modesty that permeates the depths of every human being requires the protection of the secrecy of private life, whether personal or familial. Without this secrecy, freedom cannot exist. The secrecy of private life is one of the manifestations of the freedom of our existence, for every being has a private life” (Kayser, 1985). This secret and safe space demands respect. Moreover, any intrusion into it is, in principle, considered an unlawful violation (Chauvin, 1971, p. 605).

The jurisprudence of the Palestinian Constitutional Court, in an interpretive decision concerning the status of international agreements among the hierarchy of legal norms in Palestinian law, clarified that international agreements hold a rank lower than the Basic Law and higher than ordinary legislation (Decision No. 5/2017, dated 12-3-2018). It can be said that personal rights, including the right to privacy, are considered part of the broader framework of human rights, as enshrined in international agreements, particularly the Universal Declaration of Human Rights issued on 10 December 1948, as well as in constitutions and local

legislations. The right to privacy is deemed one of the most important human rights and is protected under the broader category of freedoms. Article 12 of the Universal Declaration of Human Rights states: “No one shall be subjected to arbitrary interference with his privacy, family, home, or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.”

Most constitutions have embraced the principle of protecting correspondence, telephone communications. Moreover, exchanges transmitted via communication networks, considering them among public freedoms and fundamental rights. Accordingly, a narrow definition of the right to privacy may be adopted, distinguishing it from related terms such as the sanctity of private life and the protection of data or personal information. Nonetheless, the right to privacy may encompass the protection of private data when related to correspondence, personal communications, or images involving the transmission of personal data. The right to privacy is considered a natural right, extending from individual liberty and human dignity; thus, any violation of this right constitutes an affront to human dignity. The difference between the right to private life and the right to privacy lies in the former typically representing the material aspect, such as the sanctity of the home and correspondence. Carbonnier (1969) defined it as “the secret sphere where the individual has the right to retreat from others and to be left in peace, away from curiosity.” In contrast, the term privacy usually pertains to intangible aspects, such as personal conversations, telephone calls. Moreover, the right to one’s image (Lakhsheen, 2020, p. 113). Contrary to this, Abdel Rahman (2024, p. 103) argues that “this narrow material concept of privacy has evolved to include the intangible dimension of human life, such as thoughts, emotions, feelings. Moreover, mental faculties. Hence, spying on secrets and personal information has become a violation of privacy.” It may be concluded that Abdel Rahman’s position reinforces the narrow definition of the right to privacy which, although it has expanded, remains within the bounds of the components of the right to privacy itself.

Theoretical Significance

The subject of this study reflects one of the most prominent aspects of the evolution of life and its technologies, along with the accompanying philosophical and intellectual challenges. These include the tension between those who support the right to privacy and advocate for the sanctity of individual rights and freedoms, asserting that they should not be infringed upon. Moreover, those who support the notion of societal security, calling for the possibility of restricting freedoms in order to ensure public safety and maintain public order. The research aspires to enrich legal thought, particularly given that the development of technological tools—especially means of communication—has cast its shadow over the right to privacy, which has become increasingly threatened amid an ongoing jurisprudential debate. This debate centers on whether individuals must relinquish much of their privacy to keep pace with developments in social communication, or whether the sanctity of confidential communications, correspondence. Moreover, the right to one’s image must be preserved.

Practical Significance

The study gains its practical value from the presence of legal frameworks that have not effectively offered legislative solutions or Palestinian judicial contributions to reinforce the protection of privacy—whether for individuals or institutions. The Palestinian legislator has not taken significant steps to address legal loopholes, particularly in comparison with some international legislations. Accordingly, the study contributes to bridging these gaps and opens new avenues for academic research in the field of human rights and digital law. It also serves to assist judges in interpreting penal provisions related to privacy violations and raises public awareness of the importance of this right in the face of growing digitization and increasing risks to personal data.

Research Objectives

- To analyze the constitutional guarantees of the right to privacy and the extent to which they are reflected in penal legislations within various legal systems.

- To study contemporary challenges to privacy protection in the digital age, such as cybercrimes, data trading, and the use of artificial intelligence.
- To assess the effectiveness of current legal frameworks in addressing emerging privacy violations and identify their strengths and weaknesses.
- To provide practical recommendations for developing legislations and judicial protection mechanisms to ensure a fair balance between the right to privacy and the requirements of societal security.
- To enhance legal awareness of the importance and boundaries of the right to privacy in light of technological developments, both for individuals and institutions.

Research Methodology

The researchers adopted the comparative inductive-analytical methodology, based on the provisions of constitutional and penal legislations related to the right to privacy, along with the analysis of judicial rulings and legal scholarship to evaluate the effectiveness of the existing legal protections. The study also employed a knowledge-based approach to identify contemporary challenges to privacy in the digital environment, such as data breaches and cybercrimes, through the examination of practical cases and international reports. Additionally, the research relied on the critical methodology to assess the adequacy of existing legal texts in addressing technological developments, while offering practical recommendations to strengthen the legal protection of privacy.

Research Problem

The main problem addressed in this study revolves around the question of how effective constitutional and penal legislations are in protecting the right to privacy amid rapid technological developments. On one hand, the issue lies in the extent to which abstract constitutional provisions are capable of keeping pace with the dynamics of the digital age. On the other hand, it raises the question of whether penal provisions are sufficient to criminalize modern forms of privacy violations, such as data breaches and cybercrimes.

The central research problem gives rise to the following sub-questions:

- To what extent are constitutional guarantees sufficient to protect the right to privacy in the face of contemporary digital challenges?
- How do penal legislations address modern privacy violations, such as data breaches and cybercrimes?
- What are the points of convergence or divergence between constitutional provisions and penal laws in regulating the right to privacy?
- To what degree do national legislations succeed in balancing the protection of privacy with the requirements of societal security?
- What are the most effective means of strengthening judicial protection and the practical enforcement of legal frameworks governing privacy?

It can be stated that there is an implicit constitutional enshrinement of the right to privacy (Section One). Moreover, that there is an acknowledgment of penal protection of the right to privacy within the relevant legislations (Section Two).

Section One: Implicit Enshrinement of the Right to Privacy at the Constitutional Level

The constitutional regulation of privacy represents one of the fundamental pillars in the construction of the rule of law, which upholds individual rights and preserves human dignity, particularly in light of the technological and societal developments that impose new challenges to the protection of private life (Abdel-Fattah, 2025, p. 762). Accordingly, this section explores the theoretical framework of such regulation by analyzing its constitutional foundations and practical safeguards, beginning with the constitutional principles that protect privacy (Subsection One). Moreover, concluding with the deficiencies in the constitutional regulation of the right to privacy (Subsection Two).

Subsection One: Enshrinement at the Level of Constitutional Provisions:

Constitutional principles guarantee the protection of the right to privacy either through explicit provisions that affirm the inviolability of private life and prohibit its violation except within legal limits (Branch One), or through implicit principles

derived from guarantees of public freedoms and human rights enshrined in constitutions—such as the confidentiality of correspondence, freedom of expression. Moreover, protection from arbitrary interference (Branch Two). This reflects the integrative nature of the constitutional framework in safeguarding individual dignity and freedom.

Branch One: Constitutional Provisions Protecting the Right to Privacy:

The right to privacy is considered an inherent and inalienable human right. It encompasses various aspects related to the individual's secrets and private life, all of which stem from personal liberty. Among the most important manifestations of this right is the individual's entitlement to keep personal secrets private, which may include confidential correspondence, personal emails. Moreover, images (Al-Assar, 2024, p. 42).

Many constitutions contain explicit provisions that safeguard the right to privacy, either by directly referring to the sanctity of private life or by incorporating it within fundamental rights, such as the right to personal security, the confidentiality of communications. Moreover, protection from unauthorized surveillance. Such protections are typically conditional upon legal authorization, which must be written and specific—identifying the competent judicial authority, the name and identity of the individual concerned, the reason for the restriction, the description of the crime. Moreover, the date and location of issuance. These elements collectively form the legal basis for any restriction on the right to privacy.

Moreover, constitutional guarantees must be backed by sufficient judicial oversight, reflecting the legislator's commitment to protecting this fundamental right. The issuance of such authorizations must come from competent judicial bodies, with the judiciary recognized as the primary protector of rights and freedoms. Consequently, the authority to issue written authorizations is delegated to the Public Prosecution, which assesses the necessity of procedures such as searches or surveillance.

The Amended Palestinian Basic Law of 2003 generally affirms the protection of personal freedoms and the sanctity of private life. Article 32 prohibits any

infringement on personal freedoms or private life and stipulates that any violation of these freedoms or other public rights enshrined in the Basic Law or other laws constitutes a criminal offense, with no statute of limitations applying to related civil or criminal actions. The Palestinian Authority is required to provide fair compensation to those harmed.

The Basic Law explicitly protects several components of the right to privacy, including bodily privacy and spatial privacy, such as the sanctity of the home (Jamous, 2022, p. 32). Article 11 prohibits the search of any person without a judicial order and in accordance with legal procedures. Article 16 prohibits subjecting anyone to medical or therapeutic procedures without their prior consent and in accordance with legal frameworks. Regarding spatial privacy, Article 17 prohibits the surveillance, entry, or search of homes without a reasoned judicial order and in accordance with the law. It declares null and void any outcomes resulting from a violation of this article and grants individuals the right to fair compensation for any unlawful searches, to be guaranteed by the State of Palestine.

Most countries recognize the right to privacy as a constitutional right. Constitutions generally lay down broad principles, leaving the regulatory details to ordinary legislators. However, some countries assign the regulation of the right to privacy to ordinary legislation without setting specific constitutional guidelines (Zakaria, 2023, p. 759). For instance, Article 22 of the Palestinian Decree-Law No. 10 of 2018 on Cybercrime prohibits arbitrary or unlawful interference with a person's privacy, family, home, or correspondence.

Similarly, Cabinet Decision No. 3 of 2019 concerning citizens' personal data prohibits the use of personal (direct or indirect) data by companies or service providers for commercial purposes without the prior consent of the data subject, subject to legal liability.

Branch Two: Constitutional Principles Safeguarding Components of the Right to Privacy:

In addition to explicit provisions, the protection of privacy in many constitutions is derived from implicit principles such as human dignity, freedom of expression.

Moreover, personal security. These general guarantees—although they may not explicitly mention the right to privacy—are interpreted as encompassing the protection of personal data and the confidentiality of correspondence and communications.

States and regional bodies work collectively to protect and promote the right to privacy by enacting laws that align with digital developments and address digital privacy concerns, or by amending existing legislative and procedural frameworks to better safeguard individuals' privacy in the digital age and provide effective legal protections (Salmoudi et al., 2017).

Although there is no specific legislation regulating the right to privacy, this right is protected under the Amended Palestinian Basic Law of 2003. Article 11 states: "Personal freedom is a natural right and shall be guaranteed and may not be violated," recognizing privacy as a subset of the broader right to personal liberty.

These principles obligate authorities to adhere to legal and constitutional procedures when restricting privacy. For example, judicial authorization is required for procedural acts such as phone surveillance or searches, including the search and opening of letters. The Basic Law of 2003 dedicates Article 17 specifically to this matter, stating: "Homes are inviolable. They may not be surveilled, entered, or searched except by a reasoned judicial order and in accordance with the law. Any act in violation of this article shall be considered null and void. Moreover, any person harmed as a result shall have the right to fair compensation guaranteed by the Palestinian National Authority." Although the article broadly protects the sanctity of private life, the right to privacy is inherently protected within its scope.

Subsection Two: Deficiencies in Constitutional Protection of the Right to Privacy:

Despite Palestine's accession to several international agreements and conventions concerned with human rights—particularly those addressing the right to privacy—there remains a clear lack of a comprehensive legal framework that guarantees individuals full privacy protection, including the safeguarding of personal and

especially digital data. There is an urgent need for legislation to monitor violations, establish accountability. Moreover, criminalize all forms of privacy violations across public, civil. Moreover, private sectors (Farraj, 2023, p. 7).

The constitutional framework for the right to privacy suffers from notable shortcomings, most evidently in the ambiguous definition of this right within constitutional texts (Branch One). This ambiguity opens the door to conflicting interpretations that undermine its protection. Furthermore, there is a weakness in the procedural guarantees necessary to ensure effective protection against potential violations (Branch Two). These deficiencies call for a legislative review that enhances clarity and effectiveness in this domain.

Branch One: Ambiguity of the Concept of the Right to Privacy in Constitutional Texts:

The constitutional regulation of the right to privacy is marked by significant ambiguity due to the absence of a precise and comprehensive definition. This stems from ongoing debates regarding the independent recognition of privacy as a right. Moreover, the variability in how constitutions define and frame it. The right to privacy is often described in relative, flexible. Moreover, evolving terms that differ across cultures, traditions. Moreover, political contexts (Al-Mashaikhi, 2020, p. 29). Such variability creates interpretive inconsistencies that weaken the actual protection of this fundamental right in the face of potential abuse.

Typically, legal frameworks do not explicitly state a "right to privacy" but instead incorporate it under broader categories such as the sanctity of private life, the inviolability of the home, confidentiality of correspondence, or human dignity. This lack of specificity within constitutional texts constitutes a legal and political dilemma—especially in an era of rapid technological advancements and increasing privacy violations—leading to divergent judicial interpretations of the concept of privacy and inconsistent rulings. Often, the legislative details are left to ordinary laws or judicial discretion.

Additionally, the right to privacy is sometimes restricted under constitutional exceptions aimed at protecting public order. Exceptional circumstances and states

of emergency may necessitate curtailing the exercise of this right. The Amended Palestinian Basic Law, in Article 111, stipulates that no restrictions may be imposed on fundamental rights and freedoms except to the extent necessary to achieve the objective stated in the emergency declaration.

States of emergency are extraordinary regimes used by governments in response to threats to national security and stability. Depending on the nature of the threat, specific measures are adopted that may significantly impact rights and freedoms. In such contexts, governments may argue that relinquishing certain privacy protections is necessary. Consequently, the right to privacy is among the most affected rights in these situations, as state actions primarily target its core components, including the confidentiality of correspondence, telephone communications. Moreover, image rights.

Branch Two: Weak Constitutional Judicial Engagement with the Right to Privacy:

Constitutions aim to guarantee individual rights and freedoms, which can only be achieved by upholding the supremacy and authority of the constitution. When constitutions are used merely to consolidate political power—subject to unilateral changes by ruling authorities—they lose their normative value and their ability to restrain political powers. Such practices transform democratic systems into authoritarian regimes.

Rights and freedoms become tangible only when protected by an independent higher authority—namely, constitutional or supreme courts—that exercises oversight and ensures their preservation. It is therefore logical to grant constitutional courts the authority to monitor the actions of both legislative and executive branches, assessing the constitutionality of their acts to ensure individual rights and freedoms are not infringed upon.

This oversight strengthens popular sovereignty by enabling citizens to exercise indirect supervision over political authorities through judicial and regulatory institutions. As Taiss (2012, p. 4) explains, this mechanism affirms the active role of the people in governance and reinforces justice. Judicial review of the

constitutionality of laws, including the court's power to act *ex officio* in matters of unconstitutionality, is a vital tool in safeguarding fundamental rights. In such cases, individuals can appeal to an independent and neutral body to annul, amend, or seek compensation for governmental actions that violate constitutional principles.

The constitutional judge plays a central role in protecting the right to privacy by examining whether laws and regulations comply with constitutional standards and do not impose unjustified restrictions on rights. Some legislations explicitly empower constitutional courts to examine the constitutionality of laws and regulations related to the issues under their review. Article 27, Paragraph 4, of the Palestinian Constitutional Court Law No. 3 of 2006 states that if the court, in the course of adjudicating a case, finds a legal provision that is unconstitutional and relevant to the dispute at hand, it may examine the provision's constitutionality *ex officio*, provided it is substantively connected to the case.

However, the Palestinian constitutional judiciary faces major challenges in protecting the right to privacy, largely due to the absence of a comprehensive legislative framework that regulates this right independently and systematically. While the Amended Palestinian Basic Law of 2003, particularly Article 32, generally prohibits violations of personal freedoms and the sanctity of private life, these provisions remain vague and lack detailed regulations that define the parameters of the right to privacy—especially in the face of digital challenges such as data breaches, electronic surveillance, artificial intelligence applications. Moreover, the tracking and monitoring of activists and political opponents.

Moreover, the Palestinian Constitutional Court, established in 2016, is still in its early stages, resulting in a limited body of jurisprudence in this area. Independent oversight mechanisms are lacking. Despite its existence, the Palestinian Constitutional Court suffers from limited independence and authority, particularly in the absence of a functioning legislative authority (AMAN, 2022). This limits the court's ability to monitor privacy violations committed by security agencies or governmental bodies.

Additionally, current laws—such as the Cybercrime Law—contain vague provisions that permit privacy violations under the pretext of national security. These laws grant broad powers to security agencies to monitor communications and access personal data without sufficient safeguards to protect citizens from abuse.

The practical impact of the Palestinian constitutional judiciary is also limited due to procedural obstacles, slow processes. Moreover, a general lack of public awareness regarding the importance of the right to privacy. These factors hinder individuals from seeking judicial protection for privacy violations. Most violations, such as electronic surveillance or unauthorized data collection, are not challenged in constitutional courts due to lack of trust in their effectiveness or fear of potential security repercussions.

Furthermore, the absence of established judicial precedents in the field of privacy protection makes the court hesitant to issue bold rulings to uphold this right (Tuwam & Khalil, 2023, p. 33). As a result, individuals remain without effective protection against the growing number of privacy violations in the digital age. Moreover, the right to privacy continues to be overshadowed by political and security considerations that often take precedence over human rights concerns.

Section Two: Acknowledgement of Criminal Protection for the Right to Privacy

Infringing on the right to privacy may take various forms, such as photographing a person in their private space, publicly publishing their image in a way that could humiliate or demean them, copying or using the content of a message or any unpublished text without the consent of its author or recipient, using someone's name, nickname, image, or voice for profit, disclosing or transmitting information related to someone's private affairs for purposes other than those for which it was provided. Moreover, publishing details about an individual's private life, including their sexual history, health status, or behavior in private settings. It may be said that the legislature has partially recognized the right to privacy by criminalizing and penalizing some of these acts through legislative acknowledgment of criminal

protection (Subsection One). However, this recognition remains incomplete due to deficiencies in procedural rules that fail to fully support privacy protection (Subsection Two).

Subsection One: Legislative Acknowledgement of Criminal Protection for the Right to Privacy:

As a reinforcement of constitutional protection for the right to privacy, Article 32 of the Amended Palestinian Basic Law—found at the conclusion of Title Two on Public Rights and Freedoms—states: "Any violation of personal freedoms, the sanctity of private life, or other basic rights and freedoms guaranteed by the Basic Law or any law shall constitute a crime for which there is no statute of limitations for criminal or civil proceedings arising from it. Moreover, the Palestinian National Authority shall guarantee fair compensation to any person who suffers harm." The penal law, representing the authority and sovereignty of the state, intervenes to criminalize and punish any act that violates this right and the constitutional interest it represents—namely, the right to equality. Although criminal protection appears in various forms, it remains insufficient to achieve its intended goals.

Branch One: Limited Scope of Penal Provisions in Addressing Privacy Violations:

Protecting the right to privacy is a fundamental counterpart to the public's right to information and to transparency in judicial procedures, particularly during investigations (Fredric, 1998, p. 6). Among the most fundamental rights championed by the international community is the protection of the confidentiality of correspondence and telephone conversations as essential components of privacy. This stems from rapid advances in communication technologies and growing concerns about their impact on private life. Article 8 of the European Convention on Human Rights affirms: "Everyone has the right to respect for his... correspondence. There shall be no interference by a public authority with the exercise of this right except as is in accordance with the law and is necessary... in the interests of national security or public safety."

In the context of Palestinian criminal law, the right to privacy is somewhat protected through specific legal frameworks. Access to information that affects individuals' privacy is subject to various and strict restrictions (Hamdan, 1996, p. 383). In the public interest, the legislature seeks to preserve such information, especially when its disclosure could unveil sensitive secrets. For this reason, Palestinian legislation, particularly the Criminal Procedure Law, prohibits the investigating officer from opening sealed documents or examining items unrelated to the crime under investigation. Article 50(3) of the Palestinian Criminal Procedure Law stipulates that sealed papers and envelopes may not be opened but must be seized and submitted to the competent authority.

Furthermore, Article 50(4) mandates that all search procedures must be documented in an official report by the investigating officer, listing the seized items and signed by both the officer and any witnesses present during the search.

With regard to correspondence, Article 51 of the Criminal Procedure Law states:

"The Attorney General or one of his assistants may seize, at telegraph and post offices, letters, newspapers, printed materials, packages, and telegrams relating to the crime and its perpetrator."

This clearly indicates that the authority to seize items involving private correspondence, such as letters, telegrams, printed materials, and packages, lies with the judiciary—specifically the Public Prosecution.

Concerning telephone surveillance, the same article provides in Paragraph 2:

2. "He may also monitor wire and wireless conversations and record conversations in private places based on a warrant from a magistrate judge if such actions are useful for uncovering the truth in a felony or misdemeanor punishable by imprisonment for at least one year."

"The seizure warrant or surveillance/recording authorization must be justified and limited to a maximum duration of fifteen days, renewable once only."

This provision reflects a strict legal framework regulating phone tapping, recognized as one of the most serious intrusions into privacy due to the violation

of conversational confidentiality. The first restriction imposed by the legislator is the requirement of judicial authorization, which must be issued by a magistrate judge. Furthermore, in accordance with the principle of necessity and proportionality, the authorization must be based on the usefulness of the surveillance in uncovering the truth. The relevant authority must ensure that the interception is likely to yield valuable information before making the request. In addition, surveillance is only permitted in felonies and misdemeanors punishable by imprisonment of no less than one year. The authorization must be reasoned and written by the judge, who must be convinced by legal and factual grounds for granting it. The surveillance duration must not exceed fifteen days and may be extended only once.

The Decree-Law No. 10 of 2018 on Cybercrimes also criminalizes violations of the right to privacy in the digital sphere, such as unauthorized access to computer systems or personal data, the seizure or misuse of such data (Article 4, Paragraph 1). Moreover, the interception, monitoring, or eavesdropping on transmissions over the internet or technological means (Article 7), as well as unauthorized access to personal data or networks (Article 12). The law imposes harsher penalties on offenders and emphasizes the need to respect the confidentiality and privacy of data. It also encourages technical and administrative measures to protect such data and grants individuals the rights to access, correct, or object to the use of their personal information.

Branch Two: Weakness of the Legal Protection Granted to the Right to Privacy:

While the legislature has provided procedural protection for the right to privacy against interference by judicial authorities, the Palestinian legal framework has not effectively prevented violations of this right by the general public. The unauthorized publication, manipulation. Moreover, alteration of others' images has become widespread on social media. Unauthorized access to private conversations and correspondence is increasingly common, particularly among professional hackers of personal electronic accounts. Additionally, social media platforms now exert considerable control over the flow of private communications,

often engaging in surveillance practices. These platforms base their targeted advertisements on eavesdropping algorithms triggered by user keywords, thereby intruding into individual privacy without consent. Such developments necessitate legislative intervention to establish safeguards for individuals' accounts, conversations, correspondence. Moreover, images.

Perpetrators of traditional privacy violations have adopted modern methods to commit such acts, particularly in cases of sexual crimes committed online and through artificial intelligence. Numerous studies indicate that sexual content is among the most commonly accessed material on the internet. Personal images, conversations. Moreover, correspondence is frequently exploited. It has been found that the word "sex" is the most searched term online and that over 70% of internet content consists of pornographic material (Barak, 2005, p. 77). Given this reality, a serious question arises regarding the effectiveness of criminal protections for the right to privacy and the ability to combat internet-related crimes.

European governments have acknowledged that cyberspace presents new destructive practices, including the use of the internet for criminal purposes such as cybercrime. Cyberattacks are often transnational and remote, making it difficult to trace them back to specific perpetrators. These attacks are frequently carried out under the cover of botnets or proxies, allowing professional criminals to operate with relative ease and low cost. Moreover, without significant personal risk (diplomatie.gouv.fr).

Online sexual crimes have affected both adults and minors, who have been subjected to various forms of sexual exploitation—either through exposure to pornographic material or by having their images used in the online sex trade. The 2018 Cybercrime Law criminalizes the exploitation of children, including the production, possession, or storage of pornographic images on digital devices, as well as their importation, distribution, or commercial exchange. However, this criminalization has had limited impact in reducing such crimes, which continue to proliferate and invade private households. The law has also failed to deliver justice to victims of these offenses.

The Jordanian Penal Code in force in Palestine, under Article 319, criminalizes offenses against public morals with a penalty of imprisonment for up to three months or a fine not exceeding fifty Jordanian dinars. Article 320 criminalizes indecent acts committed in public or semi-public settings, punishable by up to six months' imprisonment or a fine not exceeding fifty dinars. However, these penalties are not proportionate to the severity of the offenses committed.

The Palestinian Cybercrime Law does not demonstrate a strong and proportionate commitment to protecting the right to privacy. The relatively light penalties, such as short prison terms not exceeding one year, raise concerns about the proportionality between the severity of the act—particularly in cases involving sexual exploitation of private images or conversations—and the punishment imposed (Tawalbeh, 2008).

When considering the psychological impact of such crimes, it becomes evident that current penalties are insufficient to achieve deterrence or justice. The ineffectiveness of the existing provisions suggests that the law lacks both efficacy and fairness based on principles of necessity and proportionality. Violations of the right to privacy involving the use of explicit material remain among the most critical issues facing societies throughout history. Today, such violations are among the most widespread and dangerous threats to social stability.

The development of modern technologies has significantly increased the circulation and demand for this illicit material. Despite international and national efforts to curb the phenomenon, the exploitation of individuals—particularly children—in the production and distribution of pornographic content continues to grow. It has become a highly profitable global industry, with an estimated market value in the billions of dollars (Krabej & Zouda, 2021, p. 11).

As Robert, Lambert, and Faugeron (2004, p. 10) wrote: “The vast majority of humanity... cannot accept that sin goes unpunished... The reason is that human beings are pragmatic creatures who try to turn everything they observe into a rule of action. In their eyes, the lives of others serve as moral models in action. Moreover, by their social instinct, they feel that the absence of moral oversight is

a destructive element in social life, one that poses a threat to both themselves and others.”

Subsection Two: Shortcomings in Enshrining Protection within the Rules of Criminal Procedure:

Procedural laws—particularly criminal procedure laws—reflect the nature of the ruling system, whether democratic or otherwise. Thus, criminal procedure law is considered a deeply political law par excellence. It is the exceptional tool of the state that enables its institutions to restrict and limit individual freedoms. Given the material and moral vulnerability of the right to privacy. Moreover, due to a prevailing emphasis on procedural efficiency at the expense of fairness and transparency, privacy violations often occur within the framework of criminal procedures (Branch One), especially in light of the weak procedural safeguards protecting this right (Branch Two).

Branch One: Violation of the Right to Privacy under Criminal Procedures:

Article 39 of the Palestinian Criminal Procedure Law No. 3 of 2001 stipulates:

Entering and searching homes is an act of investigation that shall not be carried out without a warrant issued by the Public Prosecution or in its presence, based on an accusation against a person residing in the home to be searched for committing or participating in a felony or misdemeanor, or due to strong indications that the person possesses items related to the crime.

The search warrant must be justified.

The warrant must be issued in the name of one or more judicial officers.

Under such provisions, investigations may intrude upon components of a person’s private life that would otherwise remain confidential—had it not been for the initiation of criminal proceedings. This includes the search of the accused’s home, the inspection of personal correspondence. Moreover, the interception of telephone calls if deemed necessary for the investigation.

Thus, the investigation file comprises both the alleged offense and detailed personal information about the accused, including confidential aspects of their

private life. If third parties gain access to the investigation, they also gain access to sensitive details about the accused's personal possessions, family relationships. Moreover, financial status.

While the principle of investigative confidentiality is meant to protect personal privacy, it also upholds the presumption of innocence—a fundamental right equal in importance to the right to privacy. For this reason, the French legislator combined both concepts under a single chapter (Chapter 9 of the French Code of Criminal Procedure), underscoring that such principles should not be compromised in favor of the public's right to information.

Therefore, the confidentiality of investigations is essential for protecting the individual's secrets, family life. Moreover, personal reputation—even if there is strong evidence of guilt at this stage. As long as there is no final judicial conviction, the individual must be presumed innocent (Abdel Moneim, 1997, p. 518). This illustrates how any violation of the suspect's rights at this stage not only undermines the investigation but also the integrity of the justice system as a whole.

Crime is one of the gravest threats to rights and freedoms. Moreover, uncovering and investigating crimes often necessitates some limitation on the exercise of certain rights. Among the most affected is the right to privacy, which is frequently curtailed during criminal investigations. The Palestinian legislator has specified the types of crimes and situations where such restrictions may apply, as well as the aspects of privacy subject to such limitations. As Pradel (2000) notes, the legislature's role in balancing individual rights and public interest is a core element of the general theory of liberties. Moreover, criminal procedure is the twin of liberty.

For instance, Article 32 of the Decree-Law No. 10 of 2018 on Cybercrime states: "The Public Prosecution or any judicial officer it appoints may search persons, places. Moreover, information technology tools related to the crime. The search order must be justified and specific and may be renewed multiple times as long as the justifications for the measure persist."

However, the law does not require authorities to ensure that the search will lead to actual evidence, nor does it stipulate that such searches must be preceded by valid investigative procedures. Furthermore, by authorizing judicial officers to conduct searches independently, the law effectively allows infringements on the right to privacy without exclusive judicial oversight.

This shift means that the power to undertake privacy-invasive measures is no longer reserved solely for the judiciary—represented by the Public Prosecution during the preliminary investigation phase. Therefore, it is imperative to limit such powers—such as search, surveillance. Moreover, access to information—to judicial authorities alone, as they are the principal guarantors of rights and freedoms, including the right to privacy.

Branch Two: Weak Procedural Safeguards for the Protection of the Right to Privacy:

With the increasing adoption of legislation related to communication technologies, the complexity of drafting such laws has also intensified, exposing various procedural vulnerabilities. As a result, the safeguards necessary to protect the right to privacy remain weak and largely ineffective in many legal systems. This deficiency is especially evident in the absence of precise legislative regulation concerning grievance mechanisms and oversight procedures, weakening the practical enforceability of privacy protections and leaving them vulnerable to violation without effective deterrence or avenues for redress.

Criminal procedural laws must respect the requirements of the right to privacy, especially when dealing with suspects or accused individuals. This should be grounded in the presumption of innocence and a respect for individual liberty and human dignity, ultimately leading to the realization of the right to a fair trial. The Egyptian Constitutional Court emphasized this principle in its ruling of 15 June 1996. It has been stated that the legislator's role in balancing individual rights and public interest is a cornerstone of the general theory of liberties and that "criminal procedure is the twin of liberty" (*Droit constitutionnel et droit pénal*, 2000).

This does not negate the state's legitimate authority to pursue offenders effectively and impose sanctions, either on its own behalf or on behalf of society. Criminal procedures remain a faithful reflection of the total liberties a state grants—or withholds—from its citizens (Massol, 1996). However, current procedural systems continue to fall short of ensuring a comprehensive balance of rights, reflecting an ongoing crisis in criminal justice.

One of the limitations imposed on the right to privacy is the notion of public interest, which can justify intrusions into private matters if deemed necessary to protect collective interests. For instance, the publication of information related to the personal background of public officials—such as their image, biography, political views, or financial status—may be justified to allow the public to assess their suitability for office (Ben Haida, 2010).

These challenges have had direct consequences on the regulatory framework surrounding the right to privacy. A major issue is the lack of coherence among laws that might individually offer certain protections but are developed in isolation from each other. This legislative fragmentation leads to a lack of synergy and makes it difficult to enforce comprehensive privacy safeguards.

Additionally, there is a notable absence of procedural protections against the extensive powers granted to authorities, especially those that involve monitoring and analyzing users' behavior. This trend is reflected in the diminishing procedural guarantees surrounding privacy. A closer look at the legislative language reveals that most provisions related to criminalization and fines are clearly articulated, while protective provisions are often vague and imprecise. This includes a lack of explicit references to compensation or remedies in cases of harm, forcing victims of privacy violations to pursue traditional litigation channels, which are often lengthy and burdensome. These cases frequently require expert reports to prove the existence of damage and are typically adjudicated by non-specialized courts, leading to delays that may span years before any compensation is awarded (Masar, 2021, p. 20).

Extraordinary powers—though sometimes necessary—must be subject to judicial oversight to prevent misuse by authorities. Furthermore, law enforcement powers, particularly those involving arrest, search, or the examination of individuals' communication devices, must be clearly limited to prevent such operations from becoming grounds for violating personal privacy. These actions must remain within the scope of judicial authorization (Masar, 2021, p. 20).

To address the weakness in procedural safeguards, Paragraph 2 of Article 17 of the International Covenant on Civil and Political Rights (ICCPR) provides that every individual has the right to legal protection against unlawful or arbitrary interference with their privacy. The phrase “protection by law” must be realized through effective procedural safeguards, including adequate institutional arrangements supported by sufficient resources.

However, the lack of effective oversight continues to contribute to a climate of impunity for cases of arbitrary or unlawful privacy intrusions. As the United Nations General Assembly noted in 2014 (p. 16), this absence of accountability remains a major obstacle to enforcing the right to privacy in the digital age.

Conclusion

In conclusion, this study has demonstrated that the right to privacy constitutes one of the most pressing contemporary legal challenges. The analysis revealed a clear gap between abstract constitutional guarantees and the practical implementation of penal measures. While constitutions emphasize the sanctity of this right, penal legislations remain incapable of keeping pace with emerging forms of violations in the digital age. This calls for a comprehensive review of legal texts and the development of effective protection mechanisms. The researchers ultimately recommend the adoption of an integrated legislative approach that promotes a balance between safeguarding privacy and meeting the demands of public security, with a particular focus on updating penal provisions to address technological challenges and enhancing international cooperation in this field. Moreover, the study stresses the importance of raising societal awareness of the dimensions of

this issue and building institutional capacities capable of protecting this fundamental right amidst rapid digital transformations.

Findings and Recommendations

First: Findings:

- The study revealed a conflict between the constitutional and penal levels in regulating the right to privacy, as constitutional guarantees remain abstract while penal provisions fall short in addressing modern violations.
- The analysis showed a clear legislative deficiency in responding to digital challenges, with penal laws failing to cover many forms of electronic privacy violations.
- There is a weakness in procedural mechanisms, particularly in evidence gathering and investigations related to privacy violations.
- The study found an imbalance in many legislations between the need to protect privacy and the requirements of public security.
- The study highlighted a legislative shortfall in protecting the right to privacy, along with a lack of scrutiny over procedures that infringe on this right.

Second: Recommendations:

- Enact specific legislation to protect data and digital privacy, explicitly recognizing the right to digital privacy.
- Update penal provisions to encompass all modern forms of violations and define clear conditions for exceptions to this right.
- Establish specialized units to investigate privacy-related crimes.
- Develop advanced methods for digital evidence collection and validation.
- Ensure legislative review and scrutiny of procedures that affect the right to privacy.
- Provide training for judges and prosecutors to address privacy-related cases effectively.
- Launch public awareness campaigns to educate citizens on how to protect their privacy.

- Promote a culture of privacy within public and private institutions.
- Develop an effective oversight system to ensure institutional compliance with privacy protection regulations.

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