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Jurisprudential Analysis of the Protection of Privacy and the Limits of the Judge's Authority in Obtaining Evidence

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ABSTRACT

Protecting the privacy of individuals is among the important foundations of safeguarding human dignity in Islamic jurisprudence. On the other hand, a judge, in order to perform his judicial duty and ascertain the truth, needs to obtain and examine information and evidence in certain cases. Therefore, when obtaining evidence necessitates encroaching upon individuals' privacy, a conflict arises between the necessity of discovering the truth and the necessity of protecting individual rights, the delimitation of which requires jurisprudential analysis. The present research aims, through a descriptive-analytical method and by referring to jurisprudential sources and studies conducted on the subjects of *tajassus* (spying/intrusion), privacy, and obtaining evidence, to offer a solution for resolving this conflict. The findings of the research indicate that in Islamic jurisprudence, the principle is based on the protection of privacy and the prohibition of unjustified intrusion into the personal affairs of individuals, and the judge's duty to discover the truth alone does not constitute a license for unlimited interference in this privacy. However, in cases where obtaining evidence is of genuine necessity for judicial proceedings and it is not possible to obtain it through conventional and minimally intrusive methods, the principle of limited and targeted intervention can be examined by relying on the relevant jurisprudential rules and foundations. In such cases, necessity, the absence of an effective alternative, proportionality between the objective and the extent of intervention, observance of the minimum necessary intervention, the direct relevance of the action to the subject matter of the proceedings, and adherence to impartiality and judicial oversight are among the most important criteria for limiting the judge's authority. Furthermore, an examination of jurisprudential foundations indicates that discovering the truth cannot serve as a means to justify any method of obtaining information, and a distinction must be made between the judicial action of obtaining evidence itself and the probative effects of information obtained through a privacy-infringing measure. Accordingly, the conclusion of the research is that the judge's authority in obtaining evidence in cases of conflict with privacy is an exceptional and restricted authority, limited to the extent of necessity, and its exercise must be such that, while fulfilling the actual needs of the proceedings, it prevents unnecessary encroachment upon individuals' privacy and dignity. This approach can provide a foundation for establishing a balance among discovering the truth, judicial justice, and protecting individual rights in the litigation process.

Keywords: *Privacy, Obtaining Evidence, Tajassus, Discovery of Truth, Necessity, Proportionality.*

Introduction

Maintaining the sanctity and privacy of the private lives of human beings is among the principles that hold a fundamental position within the value system of Islamic Sharia. Privacy is not merely a sphere of individual life that



is protected against interference by ordinary persons; rather, in many cases, even institutions holding power and public authority cannot enter into it without a justifiable and regulated reason. The explicit prohibition of *tajassus* (unjustified intrusion/spying) in the Holy Quran, in verse twelve of Surah Al-Hujurat, along with the teachings concerning the preservation of honor, the sanctity of the believer, and the prohibition of violating the sanctity of persons, demonstrates that entering into the hidden and private affairs of others, in the logic of Sharia, is an exceptional matter requiring justification. From this perspective, the protection of privacy is not merely a moral consideration; rather, it is one of the important constraints on judicial conduct and the exercise of public authority.

On the other hand, fair judgment and judicial proceedings are not possible without the judge's access to the necessary information and evidence to establish the subject matter and to uncover the judicial truth. On the one hand, the judge is obligated to conduct a fair hearing, prevent the infringement of individuals' rights, and issue a verdict based on reliable evidence; on the other hand, during the proceedings, he may encounter a situation where information effective in discovering the truth lies within the private sphere of individuals. Thus, the fundamental issue is to what extent the judge's discretionary authority to obtain evidence for adjudicating the dispute extends, and at what point the necessity of obtaining evidence encounters the obligation to protect privacy. The present paper addresses this challenge within the connection between the necessity of discovering the truth, the judicial role of the judge, and the protection of privacy.

In this context, the distinction between legitimate inquiry and investigation, on the one hand, and *tajassus* (unjustified intrusion/spying) into the hidden affairs of persons, on the other, holds fundamental importance. Not every search for information can be regarded as *tajassus* in its prohibited sense merely because it is employed in the service of judicial proceedings; just as the title of "discovering the truth" cannot justify any type of intrusion into the private sphere of individuals. The basic criterion here is that the mere fact that a judge needs information in order to discover the truth, establish justice, or adjudicate a dispute does not, by itself, constitute a license to encroach upon individuals' privacy; rather, the method of accessing the information, its necessity, the degree of relevance of the information to the subject matter of the dispute, and the limits of intervention in individual rights must also be assessed. Therefore, the deeper the access to information necessitates intrusion into the private sphere of individuals, the greater the necessity for providing a clearer jurisprudential justification and observing more precise restrictions.

An examination of jurisprudential foundations indicates that the principle of prohibiting *tajassus* (unjustified intrusion/spying), along with rules and standards such as *Lā Ḍarar* (the no-harm rule), observance of human dignity, prioritization of the more important over the important (*Taqdīm al-Aham 'alā al-Muhim*), and the necessity of preserving public interests, can play a role in determining the scope of the judge's authority. However, invoking necessity or public interest cannot be construed as granting unlimited authority to the judicial authority; because accepting such an interpretation would, in practice, leave privacy defenseless against judicial power. Therefore, if, in a specific situation, intervention in privacy is proposed to fulfill a genuine judicial necessity, the main issue is the determination of the conditions and limits of this intervention, and from this perspective, it cannot be formulated within the simple dichotomy of "the judge's authority or the protection of privacy"; rather, it must be regarded as the issue of determining the limits of the exercise of judicial authority in light of the principle of protecting privacy. The judge, in the position of administering justice, cannot disregard effective evidence; however, this very duty does not exempt him from observing the legal (*shar'i*) limits of judicial interventions. Accordingly, the starting point of the present research is that discovering the truth is a fundamental objective of judicial proceedings; but a legitimate

objective does not, by itself, legitimize any means of achieving it. Every interventionist measure must fall within a framework of criteria that both preserves the possibility of realizing judicial justice and prevents the litigation process from becoming a means of unregulated access to the private lives of individuals.

In previous studies, each of the dimensions of the issue—including the jurisprudential foundations of *tajassus* (unjustified intrusion/spying), privacy, obtained evidence, and the limits of the judge's role in obtaining evidence—has been examined separately. However, the focus of these works has often been on the principle of prohibiting *tajassus*, its exceptions, or the general aspects of privacy, and less effort has been made to formulate the protection of privacy as an independent criterion for limiting the judge's authority in the process of obtaining evidence. On the other hand, some research has also addressed the issue of obtaining evidence by the judge; however, the matter of privacy has not necessarily been placed as an independent axis for analyzing the limits of judicial authority in them. Therefore, the main gap in this field is the provision of a coherent jurisprudential framework for discerning the limits of the judge's intervention in privacy when obtaining evidence.

Accordingly, the main question of the research is:

- How can the limits of the judge's authority in obtaining evidence be explained, considering the necessity of protecting privacy from the perspective of Islamic jurisprudence?

To answer this question, other sub-issues are also raised:

- What are the jurisprudential foundations of protecting privacy against judicial intervention?
- Where is the boundary between judicial investigation and inquiry, and *tajassus* (unjustified intrusion/spying) in private affairs?
- Can the necessity of discovering the truth alone be a license to enter into privacy?
- If such intervention is possible, what criteria should limit its scope and intensity?

The basic hypothesis of the research is that the principle in social relations is the protection of privacy and the prohibition of interference in the hidden affairs of individuals, and the judge's authority to enter this domain, should specific conditions be met, is an exceptional and restricted authority, bound by necessity, the absence of an effective alternative, proportionality, minimum intervention, direct relevance to the subject matter of the proceedings, and judicial oversight. On this basis, discovering the truth cannot be regarded as a general license to use any means in obtaining evidence.

The distinguishing feature and innovation of this research lies in the fact that, instead of a general formulation of the issue as "permission or prohibition of *tajassus*," it seeks to extract the criteria for limiting the judge's authority in obtaining evidence that is intrusive into privacy and to analyze them within a coherent framework. Accordingly, the ultimate goal of the research is to present a model in which judicial justice and the discovery of truth can be reconciled within a jurisprudential framework, without sacrificing the principle of protecting privacy.

Clarification of Concepts

It is appropriate that, before entering into the discussion, the important terms and expressions of the research be defined and conceptualized:

Tajassus

Determining the concept of *tajassus* in the present research is a necessary preliminary for delimiting the subject; because not every type of search, examination, or collection of information can be termed *tajassus*. *Tajassus* in jurisprudential usage is a value-laden term and not merely descriptive; this term becomes subject to a *shar'i* ruling when the search for information is directed toward the hidden and concealed affairs of individuals and extends beyond the realm of publicly available information. Therefore, the element of "concealment" in the subject of *tajassus* is of fundamental importance.

From a linguistic perspective, *tajassus* is related to the root "J-S-S" and denotes a type of pursuit and exploration aimed at accessing something concealed. Recent Qur'anic studies have also drawn a conceptual distinction between *tahassus* (seeking/inquiring) and *tajassus* (spying/intrusion), and have demonstrated that the usage of *tajassus* in verse 12 of Surah Al-Hujurat refers to pursuing and uncovering the hidden affairs of others (1).

From a jurisprudential perspective, the importance of the concept of *tajassus* arises from the fact that the subject of the Qur'anic prohibition is not "knowing" or "investigating" per se; rather, it is a method of obtaining information that entails pursuing the concealed affairs of individuals. Within this framework, the principle of "non-*tajassus*" has also been examined as a rule or a limiting foundation in contemporary jurisprudential research (2).

It is worth noting that the mere availability of a piece of data or information in the public sphere does not, by itself, make it the subject of *tajassus*; the criterion is intrusion into the concealed and protected part of an individual's life. In this regard, *tajassus* should not be equated with *tahqīq* (investigation/inquiry). *Tahqīq* is a general concept for examining a subject and obtaining the necessary information, and it can be carried out without encroaching upon the private sphere. Even in the judicial process, extensive investigations may take place without any of the actions taken carrying the attribute of *tajassus*. In contrast, when an investigation goes beyond the limits of available sources and evidentiary materials and leads to the pursuit of the concealed and private affairs of a person, the attribute of *tajassus* becomes relevant.

For this very reason, in the present article, "judicial *tajassus*" does not mean absolute judicial investigations; rather, it refers to a judicial action directed toward uncovering a concealed matter within the private sphere of individuals. Such a definition makes it possible to subsequently establish a clear distinction between "the principle of the judge's authority to investigate" and "the *shar'i* restriction on his authority when entering into privacy." This approach is also consistent with contemporary jurisprudential literature on *tajassus*, which has considered the principle of prohibition alongside examining its exceptions and conditions (3, 4).

Privacy

"Privacy" is a modern concept in legal language; however, the absence of this term as a technical expression in primary jurisprudential sources does not mean the absence of Sharia's protection of the private sphere of the individual. In fact, Islamic Sharia, through a set of rulings concerning the home, solitude, secrets, honor, communications, and personal information, renders a sphere of the individual's life immune from unjustified intervention. Therefore, in order to extract the jurisprudential concept of "privacy," attention must be paid to the protective content of these rulings; because various spheres can be considered for human life, and a regulated relationship can be established between the individual's right to privacy and social interests (5).

From a jurisprudential-legal perspective, privacy can be understood as a set of interests and rights that enable an individual to protect certain dimensions of their existence and information pertaining to themselves from unauthorized access, surveillance, use, or disclosure by others. Despite the fact that the very term "privacy" is not mentioned in religious texts, principles and rulings—particularly within the criminal evidentiary system—support its framework (6).

From this perspective, privacy is not limited merely to the home or an enclosed place. Personal information, private communications, and data concerning family and financial affairs may also, as the case may be, fall within the sphere of protection. Of course, the scope of this protection is not absolute and uniform, and its determination in each case depends on the type of information, the degree of its publicity, the consent of the data subject, the relationship between the persons, and the existence of a valid authorization.

Based on this approach, in the present article, privacy is defined as the sphere of life, information, communications, and personal affairs which is, in principle, to be preserved from access and intervention by others, and entry into which requires the consent of the right-holder or a valid *shar'i* authorization.

This definition, in addition to the element of seclusion, also encompasses the element of "control"; that is, the person must, in principle, be able to have a determinative role regarding who, to what extent, and for what purpose accesses a part of their private information.

An important point is that privacy in the present research is not merely an individual right against private persons; rather, it is also considered a constraint on the exercise of public authority. This means that the judge's holding of official status does not, by itself, exclude individuals' privacy from protection. On the contrary, when access to private information is carried out by judicial authority, the necessity of having a valid basis for this intervention becomes even more significant. In domestic jurisprudential-legal literature, the relationship between privacy and the exercise of public power, particularly in the area of surveillance and information collection, has also been studied as one of the central issues (5, 7).

Obtaining Evidence

"Obtaining evidence" refers to the process through which data, documents, indications, statements, or any other matter capable of assisting in proving or disproving the subject matter under consideration is acquired. In this sense, obtaining evidence must be distinguished from the "probative value of evidence"; because the former pertains to the method of acquisition, while the latter relates to the ability of the evidence to prove the subject matter.

This distinction holds particular significance in the present research. A piece of evidence may be very important in terms of its content for discovering the truth; however, the manner of obtaining it may be accompanied by a violation of privacy. Therefore, the informational utility of the evidence does not, by itself, answer the question of the legitimacy of the method of acquisition. The issue of the paper is precisely formed at the point where "obtaining evidence" intersects with "entering into privacy."

In jurisprudential-legal literature, the issue of obtaining evidence by the judge is linked to the limits of the judge's role in the truth-seeking process. Bahrami, in a jurisprudential-legal examination of obtaining evidence by the judge, analyzes the issue in relation to two reciprocal necessities: discovering the truth and maintaining the judge's impartiality, and considers the possibility of the judge's intervention in obtaining evidence to be subject to specific limits and conditions (8). Therefore, in the present research, "obtaining evidence" is a descriptive concept and not a normative one; i.e., merely because the judge has acted to obtain evidence, his action cannot be deemed

permissible or impermissible from the outset. The jurisprudential and legal characterization of the action is determined after examining the method of acquisition and the limits of intervention. This distinction is particularly necessary when the judge needs information that lies within the private sphere of individuals.

Accordingly, obtaining evidence in this research is defined as any conscious and purposeful process for accessing information or matters that can be effective in establishing the subject matter, discovering the truth, and making a judicial decision. In this definition, evidence may be presented by the parties to the litigation, or the judicial authority may act to obtain it; however, only the second category—namely, actions involving the active intervention of the judge—is the direct subject of the discussion on the limits of judicial authority.

The Judge's Authority in Obtaining Evidence

In the judicial system, the judge possesses competencies that are necessary for performing the duty of adjudication and achieving a just decision; however, judicial authority cannot be regarded as a power independent of its purpose and *shar'i* constraints. In jurisprudential thought, the position of judgeship is accompanied by the grave responsibility of establishing justice, preventing oppression, and observing the rights of the parties; therefore, every action taken by the judge must fall within the scope of the duty and authority that has been established for him.

Jurisprudential-legal studies conducted on privacy have also emphasized the necessity of limiting the intervention of public authorities and the need for the existence of necessity and the observance of regulations and criteria in the exercise of such authorities (9).

Therefore, in the present article, "the judge's authority" means a limited and duty-oriented competence to perform actions that law and Sharia have placed at his disposal for adjudication and discovering the truth. The important consequence of this definition is that the existence of authority does not equate to the unlimited scope of its exercise. Whenever the use of this authority encounters the fundamental rights of individuals, including privacy, new limits will be imposed on the manner of its exercise.

Investigation and Inquiry; Concepts Distinct from Tajassus

Since one of the main risks in this discussion is the excessive expansion of the concept of *tajassus*, it is necessary to distinguish it from "investigation" (*tahqīq*) and "inquiry" (*estelām*). Investigation, in its general sense, consists of a systematic examination of a subject in order to achieve a more precise understanding. This process may take place through public sources, existing documents, testimonies, and other conventional means, and therefore, it has no necessary connection with encroaching upon privacy.

Inquiry (*estelām*) also essentially denotes obtaining information from a specified authority or a particular source. If the information being inquired about falls within an area to which access for the judicial authority is permitted and conventional, the inquiry cannot be termed *tajassus*. In contrast, if the inquiry itself necessitates opening a confidential domain, accessing private data, or pursuing a concealed matter, then examining the classification of *tajassus* and its restrictions becomes necessary.

This distinction has also been taken into consideration in jurisprudential research concerning the meaning of *tajassus*. In the literature related to the re-examination of the concept of *tajassus* and *tahassus* (seeking/inquiring) in the Qur'an, efforts have been made to clarify the semantic limits of these terms and their differences from other methods of obtaining information (1).

Accordingly, in the present article, the relationship between the three concepts can be formulated as follows: investigation (*tahqīq*) is the general concept of examining and discovering information; inquiry (*estelām*) is one of the methods of obtaining information from a specified source; and *tajassus* is a specific form of searching for concealed and protected information within the personal sphere of another. This distinction prevents any type of judicial truth-seeking activity from being subsumed under the heading of *tajassus*, while at the same time it prevents the general heading of "investigation" from serving as a cover for unnecessary interventions in privacy.

Judicial Truth-Discovery

Judicial truth-discovery is the fundamental goal of the judicial truth-seeking process; because the judge, in order to render a just verdict, must be able to clarify the relationship between claims, events, and evidence. From this perspective, obtaining evidence is a means to reach the truth, and not an independent end. The judge cannot, merely due to the difficulty of the proceedings, disregard effective evidence; however, on the other hand, the importance of discovering the truth does not mean that any means of achieving it is permitted.

Here, a distinction must be made between the value of the goal and the legitimacy of the means. It is possible that discovering a fact is of great importance for the case; however, this does not, by itself, remove all the limitations governing the method of obtaining information. If accessing the truth necessitates entering into privacy, then, in addition to the importance of the information, the necessity and limits of the action must also be established.

This view is also aligned with some jurisprudential studies on privacy and criminal evidentiary rules. In some contemporary research, it has been stated that the protection of privacy in Islamic law does not have an absolute conflict with the enforcement of law and the criminal evidentiary system; rather, Sharia, in the context of crimes committed in private, has provided specific mechanisms for reconciling truth-finding with the privacy of individuals (6).

Therefore, in the present research, discovering the truth is a legitimate goal of judicial proceedings; however, it is not considered an absolute and authorizing justification for violating privacy. This understanding forms the basis of the subsequent analysis in the article; that is, whenever obtaining evidence is accompanied by intervention in privacy, the importance of the judicial goal must be assessed alongside necessity, the method of action, and the extent of the intrusion.

In general, in light of the foregoing discussions, the relationship between the main concepts of the research can be distinguished from one another. Obtaining evidence is the process of accessing information effective in judicial proceedings; *tajassus* is one of the specific forms of obtaining information in which the element of uncovering concealed matters exists; privacy is the protected sphere of the individual that may be the subject of such a search; and the judge's authority is a competence that can be employed for conducting investigations and, under specific conditions, for obtaining evidence.

Jurisprudential Foundations of Protecting Privacy and Restricting the Judge's Authority in Obtaining Evidence

A jurisprudential examination of privacy and the limits of the judge's authority demonstrates that judicial intervention in private affairs is subject to principles and rules that, on the one hand, emphasize the protection of individuals' rights and, on the other hand, emphasize the necessity of fulfilling the objectives of judicial proceedings.

Therefore, determining the limits of this intervention requires an examination of the jurisprudential foundations governing it:

The Principle of Protecting Privacy and the Prohibition of Encroaching upon Concealed Affairs

The protection of privacy in Islamic jurisprudence cannot be regarded merely as the result of the acceptance of a customary right or a recent legal institution; rather, a set of Qur'anic, narrative, and jurisprudential teachings provides independent support for this protection in terms of prohibiting unauthorized entry into the concealed spheres of individuals' lives. In this system, the primary principle is that the personal and concealed affairs of individuals are immune from encroachment and curiosity by others, and no person, merely due to the possibility of access or an interest in discovering information, has the right to enter this sphere. Jurisprudential analysis of the concept of privacy also indicates that the subject of protection is not merely "the secret" in the narrow sense of the word; rather, it encompasses a set of information, communications, familial relations, private space, and other affairs that are customarily under the authority of the individual, and intervention in which requires a *shar'i* justification (10, 11).

The most important Qur'anic evidence for this principle is the explicit prohibition of *tajassus* in verse twelve of Surah Al-Hujurat: "وَلَا تَجَسَّسُوا" (And do not spy). The purport of this prohibition, in jurisprudential analysis, is not limited to moral curiosity and ordinary relations among individuals; rather, from it, the principle of the prohibition of deliberately searching into the hidden affairs of others can also be inferred. The significance of this ruling becomes clearer when *tajassus* is carried out with the aim of obtaining information that a person has not naturally exposed to public observation and access. From this perspective, the confidentiality and concealment of certain aspects of individuals' lives themselves become subject to *shar'i* protection, and the principle is that this concealment remains respected as long as there is no valid authorization to remove it (1, 12).

Alongside the prohibition of *tajassus*, a set of teachings concerning the prohibition of violating sanctity, disclosing faults, and entering into the concealed spheres of individuals also reinforces this direction. Therefore, the protection of privacy should not be regarded as the outcome of a single isolated rule; rather, it should be analyzed within a network of jurisprudential values such as the preservation of human dignity, the prohibition of insult and violation, the protection of secrets, and the necessity of refraining from disclosing matters that the Lawgiver has emphasized should remain concealed. On this basis, the principle of privacy, prior to being placed in conflict with a public interest, possesses an independent *shar'i* value, and this necessitates that any intervention in it requires evidence and justification (6, 13).

This foundation is equally valid in the judicial domain. Judicial status does not, in itself, exempt individuals from the protection of privacy, and the judge cannot regard his mere possession of judicial office as a license to become aware of all aspects of individuals' lives. Therefore, there is a fundamental distinction between "judicial authority for adjudication" and "an unlimited right to access private affairs." The former is essential for the realization of justice; however, the latter is incompatible with the principle of protecting privacy. Consequently, when obtaining evidence necessitates entering into the private sphere, the starting point of analysis must be the principle of prohibition of intrusion, rather than the presumption of permissibility of intervention and then searching for its limitations (14).

Human Dignity and the Sanctity of Violating Individuals' Privacy

Another important foundation for the protection of privacy is the principle of human dignity. Although modern legal terms such as "the right to privacy" have not been used in this exact form in classical jurisprudential literature, there are numerous foundations in jurisprudence that consider human beings to possess inherent worth and sanctity and regard unregulated encroachment upon their personal sphere as incompatible with this worth. The consequence of this foundation is that even in cases where information pertaining to an individual is attractive or beneficial to another, that individual is not a subject for unlimited curiosity; rather, he possesses a sphere of immunity, and others, including public officials and judicial authorities, must observe *shar'i* limits in entering it (10, 13).

From this perspective, the harm caused by encroachment upon privacy is not limited solely to material loss or the disclosure of information. Unnecessary intrusion into familial relationships, private communications, personal information, or the exclusive space of individuals can lead to the violation of dignity, anxiety, distrust, and damage to their personality. Consequently, the jurisprudential criterion for evaluating judicial intervention should not be merely "the extent of the probable benefit for discovering the truth"; rather, the human and moral cost of the action must also be taken into consideration. Contemporary jurisprudential and legal literature on privacy emphasizes the same point: that intervention in the private sphere is justifiable only when it does not exceed the limits of necessity and does not conflict with human dignity (15, 16).

Based on this analysis, even assuming the existence of a public interest, one cannot conclude from the principle of dignity that any means of achieving that benefit is permitted. The means must also possess a minimum degree of legitimacy; because accepting a legitimate objective does not, by itself, legitimize all methods of attaining that objective. For this reason, severe, extensive, or degrading interventions in privacy, even when carried out under the heading of crime detection or the administration of justice, require independent evaluation (14).

The Rule of Lā Ḍarar (No Harm) and Limiting Intervention in Privacy

The rule of *Lā Ḍarar* is one of the general jurisprudential rules that can play an important role in evaluating encroachment upon the rights and interests of individuals. The significance of this rule in the present discussion lies in the fact that judicial action, even if carried out with the aim of securing a public interest, cannot be evaluated without considering the harm caused to the rights of individuals. In such a situation, a balancing must be conducted between the expected benefit of the action and the harm inflicted upon the person or persons. In jurisprudential studies related to privacy, the possibility of utilizing the rules of repelling harm (*Daf' al-Ḍarar*) and negating harm (*Nafy al-Ḍarar*) to limit interventionist measures has also been taken into consideration (17, 18).

The function of *Lā Ḍarar* in this area should not be understood as negating any investigative action. The main issue is to prevent the transformation of the power of investigation into a license for imposing unlimited and disproportionate harms. In other words, if there exists a way to establish the judicial reality that can be carried out with less harm to privacy, the choice of a more severe method would not be consistent with the logic of limiting harm. In this regard, *Lā Ḍarar* is not merely a negative foundation for prohibiting certain actions, but also a criterion for choosing among different methods of obtaining information.

On this basis, the intensity of intervention must be proportionate to its necessity. Access to a specific document or piece of data cannot serve as a pretext for unlimited access to a wide range of personal information; just as the

examination of a specific judicial matter does not, in principle, constitute a license for searching all dimensions of an individual's life. This approach is also consistent with the findings of studies related to privacy, which emphasize the limited nature of interventions, the necessity of justifying them, and the avoidance of unregulated expansion of informational access (19, 20).

The Rule of the More Important (Aham) and the Important (Muhim) and Its Actual Scope

In some cases, a conflict may arise between the interest in preserving privacy and a more important interest, such as preventing serious harm, uncovering a major crime, or protecting public security. Islamic jurisprudence utilizes, among other things, the criterion of the more important (*Aham*) and the important (*Muhim*) for analyzing conflicts between interests. However, the application of this rule in the area of privacy should not be understood in a general and expansive manner; because merely claiming the existence of a "public interest" is not sufficient for setting aside an individual right. What is important here is the actual establishment of the conflict and the superiority of the interest that is preferred over another right or interest through the application of the rule (7, 15).

The rule of the more important (*Aham*) and the important (*Muhim*) in the judicial context must be employed as a rule for resolving conflict, not as a rule for granting unlimited authority. First, the existence of the private interest as a *shar'i* value must be recognized; then, the opposing interest and its degree of importance must be established; and, in the next stage, it must be determined whether the intervention in question is truly necessary to secure the superior interest. Consequently, one cannot conclude from this rule that whenever the judge has a probability of discovering the truth, privacy automatically becomes subordinate.

The rule of *Aham* and *Muhim* also requires that, among multiple means, a method should be chosen that, while preserving the more important interest, causes the least possible encroachment upon the opposing interest. Accordingly, if evidence can be obtained through a less intrusive means, resorting to a more severe method would lack sufficient jurisprudential justification. This point clarifies the direct connection between the rule of *Aham* and *Muhim* and the principle of minimal intervention, and it can play a fundamental role in determining the limits of the judge's authority (4).

Preservation of the System and the Prohibition of Its Transformation into a General License for Intervention

The rule of preserving the system (*Hefz-e Nezam*) has also been cited in some jurisprudential analyses to justify governmental and public actions. The significance of this rule in the discussion of privacy lies in the fact that society, without order, security, and the possibility of administering justice, faces serious disruption, and the government cannot be indifferent to real threats against these interests. However, "preservation of the system" is a general concept, and precisely for this reason, if applied without determining limits, it can become a license for the unlimited expansion of sovereign authority. Therefore, its application in the area of privacy must be limited to cases where the relationship between the action and the preservation of order and security is real, direct, and provable (7, 21).

In the judicial domain as well, the mere fact that an action is taken in the course of administering justice is not sufficient for invoking the preservation of the system. There must be a rational relationship between the type of crime or dispute, the degree of risk posed to society, and the intensity of intervention in privacy. If the subject matter of the proceedings lacks such importance, or if the action in question has no appreciable effect in averting the risk, it would be difficult to rely on the preservation of the system to justify encroachment upon privacy.

In this regard, the preservation of the system must be interpreted within a limited and purposeful framework, in such a way that this rule can, in exceptional cases, prevent the suspension of the essential functions of government and the judiciary, while at the same time not undermining the protective structure of privacy. Such an interpretation is more consistent with the approach observed in recent jurisprudential and legal research regarding the distinction between the principle of prohibiting *tajassus* and its justified exceptions (2, 4).

Necessity and Emergency; Condition for Departure from the Principle of Prohibition of Intrusion

The principle of prohibiting *tajassus* can be confronted with intervention in privacy in a judicial situation only when exceptional circumstances, in the true sense of the word, have materialized. In this context, "necessity" holds central importance; because it indicates that the intervention is carried out not out of convenience, curiosity, or mere probability of benefit, but due to the existence of a serious and indispensable need for information. Jurisprudential research on *tajassus*, in analyzing exceptions, has also emphasized this very connection between necessity and departure from the principle of prohibition (4, 22).

Necessity is also a concept beyond the "usefulness" or "helpfulness" of an action. A method of obtaining evidence may be beneficial to the judge, but as long as its absence does not cause a serious disruption in the possibility of adjudication or the establishment of justice, the attribute of necessity in the exact jurisprudential sense does not apply to it. This distinction is of great importance in the context of privacy; because if "benefit" replaces "necessity," any type of informational access can be justified by the argument that it might be useful in discovering the truth.

Accordingly, judicial necessity must have at least three elements: the existence of a real need for the information, a clear connection between the information in question and the subject matter of the proceedings, and the absence of another effective means that could achieve the same goal without intervention or with less intervention. Such an understanding is also consistent with studies related to search and privacy in preliminary investigations, which distinguish between the requirements of criminal investigation and the necessity of observing the limits of interventions (14).

The Principle of Minimum Intervention as a Common Outcome of Jurisprudential Foundations

From the combination of the aforementioned foundations, it can be concluded that the judge, even in cases where judicial intervention in privacy may be examined, does not have the authority to choose any method. On the one hand, the prohibition of *tajassus* and the foundations of human dignity delineate the primary sphere of protection; on the other hand, *Lā Ğarar*, the rule of the more important (*Aham*) and the important (*Muhim*), and necessity specify the conditions and quality of a limited departure from this sphere. The natural consequence of this combination is the acceptance of the principle of "minimum intervention"; that is, judicial action must be limited to the extent necessary to achieve the legitimate objective, and after the need is fulfilled, its continuation no longer has relevance.

This principle has double significance in matters concerning personal information; because the nature of data and modern tools has made possible the extensive collection and accumulation of information. In such circumstances, even if the principle of access to a specific piece of data is justified, simultaneous access to a set of unrelated data cannot be justified merely by the same authorization. In other words, the necessity of a specific action does not create an automatic license for additional and unrelated actions. This approach is also consistent with jurisprudential and legal analyses concerning the scope of informational privacy (20, 23).

The principle of minimum intervention also has a temporal effect. The authorization to enter privacy should not be regarded as unlimited and permanent. Whenever the judicial need ceases or the intended objective is fulfilled, the continuation of access or the retention of information must be re-evaluated. Otherwise, an action that was initially justifiable as an exception may become an independent and unauthorized intervention. Thus, time, scope, type of information, and the manner of using data all form part of the limits of judicial authority.

Summary of Jurisprudential Foundations and Its Implication for the Judge's Authority

The outcome of the discussions in this section is that Islamic jurisprudence, on the one hand, recognizes privacy in the form of a set of protective principles and rulings, and, on the other hand, in exceptional situations, provides the possibility of the predominance of certain more important interests over this sphere within the framework of general jurisprudential rules. However, these exceptions should not be construed as transforming the primary prohibition into a general permissibility. The point of departure remains the protection of private affairs and the avoidance of unjustified entry into the hidden sphere of individuals' lives (1).

From the perspective of the present article, the importance of this conclusion lies in the fact that the judge's authority to obtain evidence cannot be analyzed independently of the rights of the privacy holder. The judge, in order to perform his duty, may, in specific circumstances, be compelled to obtain information that lies within the private sphere; however, this authority does not have an inherent and unlimited character, but rather arises from a case-specific necessity, a defined objective, and the *shar'i* standards governing it. Therefore, the more severe the intervention, the greater the necessity of justifying it; and the more a less intrusive alternative is available, the more difficult it will be to resort to a more severe method.

On this basis, the jurisprudential foundations of this area can be revisited in a three-stage logic: first, the principle of protecting privacy and prohibiting *tajassus*; second, the possibility of exceptional intervention upon the establishment of a more important interest and genuine necessity; and third, the obligation to limit the intervention to the necessary extent, proportionate, and relevant to the subject matter of the proceedings. Such a framework is both compatible with the jurisprudential foundations of protecting individuals' rights and does not negate the possibility of performing the judicial duty in truly necessary situations. Consequently, the main issue is not the absolute acceptance or rejection of the judge's authority, but rather the determination of boundaries within which obtaining evidence can be reconciled with preserving the dignity and privacy of individuals.

The Relationship between Truth-Discovery and Privacy, and the Limits of the Judge's Authority in Obtaining Evidence

Truth-discovery in criminal proceedings must be considered alongside the protection of individuals' privacy; therefore, this title examines the limits of the judge's authority in obtaining evidence and the extent of his intervention in the privacy of individuals with the aim of discovering the truth:

Truth-Discovery: The Goal of Judicial Proceedings, Not an Unlimited License for Obtaining Information

Discovering the truth is among the most important objectives of the judicial process, but accepting this objective does not mean granting the judge unlimited authority to access any type of information. In jurisprudential analysis, a distinction must be made between "the necessity of accessing the reality" and "unlimited freedom in choosing the means." Just as the judge, in order to render a just verdict, cannot depart from the standards of impartiality and

observance of the rights of the parties to the litigation, the necessity of discovering the truth cannot, by itself, justify encroachment upon all private aspects of individuals. In contemporary jurisprudential literature, obtaining evidence by the judge has also been examined in direct connection with two conflicting interests, namely, discovering the truth on the one hand and maintaining impartiality and the rights of the parties on the other (8).

Therefore, a distinction must be made between "discovering the truth" as the ultimate end of judicial proceedings and "*tajassus*" as one of the possible means of obtaining information. A legitimate end does not legitimize all possible means; rather, the means must also be independently compatible with the principles and rules governing judicial proceedings and the rights of individuals. Consequently, the judge cannot, merely on the probability that information in the private life of a person might assist in uncovering the truth, issue or exercise a license for extensive search into his relationships, communications, or personal information. The principle of prohibiting *tajassus* remains the starting point of analysis, and deviation from it requires the establishment of exceptional circumstances (1, 4).

The Distinction between Obtaining Evidence and Tajassus

One of the fundamental points in determining the limits of judicial authority is the distinction between the concept of "obtaining evidence" and "*tajassus*." Obtaining evidence is a general concept and includes actions aimed at providing the necessary information or evidence to establish the subject matter of the dispute or accusation; while *tajassus* pertains to the search for concealed matters and areas that the person has not exposed to public access. Therefore, not every obtaining of evidence is considered *tajassus*, but in cases where obtaining evidence necessitates deliberate entry into the hidden affairs of a person, the issue of privacy and the prohibition of *tajassus* will arise (8, 22).

This distinction has important implications in the judicial context. The judge may, in order to uncover the truth, evaluate the information available in the file, examine the evidence presented, and conduct the necessary investigations within the limits of his authority; however, moving beyond this stage and entering the sphere of private information requires additional justification. In other words, "the existence of investigative authority" does not entail "the existence of authority to encroach upon privacy." Such a distinction prevents the gradual expansion of the judge's investigative competence into the private sphere of individuals.

This point holds particular significance in preliminary investigations as well. Jurisprudential and legal examination of search (*taftish*) indicates that, on the one hand, detecting crime without effective investigative tools may face difficulties, and, on the other hand, search may enter into a sphere of personal life that is fundamentally protected. Therefore, the legitimacy of an investigative action must be assessed with regard to its necessity, subject matter, and limits, rather than merely on the basis of the general objective of crime detection (14).

The Necessity of a Direct Relationship between the Evidence in Question and the Subject Matter of the Proceedings

One of the important criteria for limiting the judge's authority is the existence of a direct and meaningful relationship between the information being sought and the subject matter of the proceedings. The weaker this relationship, the less the jurisprudential justification for intervention in privacy. Conversely, when specific information is directly related to the subject matter of the dispute or accusation, and its absence creates a serious obstacle in the path of establishing justice, the examination of the possibility of accessing it may be considered.

Accordingly, the judge must, prior to any intervention, answer the question of exactly what information is necessary for the proceedings and why this information is related to the subject matter of the case. This approach

prevents the proceedings from turning into a "general search" for any type of probable information. In fact, the purpose of the intervention must be specified and delimited from the outset, and the scope of the action must be determined in proportion to that same purpose (5, 6).

This criterion becomes even more significant with regard to informational data. In the digital environment, access to an account, device, or information repository may place a very large volume of related and unrelated data at the disposal of the investigative authority. Therefore, authorization to access a specific piece of data cannot be regarded as a license to examine all available information. The protection of informational privacy requires that the scope of the search, the type of accessible data, and the manner of their use be specified in advance as much as possible (20, 23).

The Absence of an Effective Alternative and the Priority of the Less Intrusive Method

The genuine necessity of intervention in privacy becomes apparent when there is no other means with similar effectiveness to achieve the judicial objective. Therefore, the mere difficulty of less intrusive methods cannot serve as a license to choose a more severe method. The correct criterion is whether the alternative method, despite differences in ease or speed, can practically fulfill the evidentiary need of the case.

This criterion can be inferred from the combination of the principle of prohibiting intrusion, the rule of *Lā ʿDarar*, and the principle of minimum intervention. Whenever the judge can reach a conclusion by examining existing documents, hearing testimony, evaluating circumstantial evidence, or using sources that are lawfully available, entry into the private sphere should be the last resort. In such a situation, more severe intervention will be considered lacking in necessity, because the objective can be achieved through a means that is less costly in terms of individual rights (4, 22).

From this same perspective, the phrase "discovering the truth" should not be understood as a general and independent license for any type of investigative action. Judicial truth must be discovered through paths that are not themselves incompatible with justice and the rights of individuals. This understanding is consistent with the emphasis in jurisprudential and legal sources on maintaining a balance between public interests and individual rights (18, 24).

Proportionality between the Importance of the Subject Matter of the Proceedings and the Intensity of Intervention

Even in cases where necessity and the absence of an alternative have been established, the intensity of intervention must be proportionate to the importance of the subject matter. One cannot apply the same level of intrusion to a matter of minor importance or lacking serious consequences as is required when facing a significant threat to life, security, or the fundamental rights of individuals. Proportionality, in this sense, requires that a rational relationship be established between the weight of the interest being protected and the extent of the limitation imposed on privacy.

This criterion can also be supported by the rule of the more important (*Aham*) and the important (*Muhim*). The predominance of the more important interest over the important interest does not mean the complete elimination of the latter; rather, it requires that the limitation be imposed only to the extent necessary for securing the superior interest. Therefore, even assuming the acceptance of intervention, any extension of it to unrelated information or persons must be prevented (7, 15).

Consequently, proportionality must be assessed both from the perspective of "the importance of the objective" and from the perspective of "the intensity of the means." The more intrusive the means, the stronger the need to prove the more important interest and the stronger the necessity. This criterion becomes particularly significant in the use of wiretapping, access to communications data, control of personal information, or similar measures; because the effects of such actions may extend beyond the person who is the subject of the proceedings to include family members and persons associated with him (25, 26).

The Judge's Impartiality and the Limits of Obtaining Evidence

Obtaining evidence by the judge, in addition to the issue of privacy, is also examinable from the perspective of the principle of impartiality. Any action that moves the adjudicator from the position of evaluator of evidence to that of an active provider of evidence in favor of one of the parties may undermine his relationship with judicial impartiality. Jurisprudential research on obtaining evidence by the judge has also shown that, in the jurisprudential analysis of this issue, a reconciliation must be established between the necessity of establishing justice and the necessity of maintaining the judge's impartiality, and neither can be absolutely prioritized over the other (8).

This issue is more pronounced in cases brought between two private parties. In such cases, the judge must be careful that investigation for discovering the truth does not turn into a search for evidence to strengthen the position of one of the parties. Consequently, the greater the likelihood of bias or the creation of an appearance of bias, the more limited the judge's authority in actively obtaining evidence should be.

In criminal cases, the issue is more complex; because the purpose of investigations is not merely to resolve a dispute between two individuals, and the detection of crime and the protection of society are also at stake. Nevertheless, these very considerations do not mean abandoning the principle of impartiality. Rather, the necessity of distinguishing between the investigative authority and the adjudicative authority, as well as exercising oversight over investigative actions, can support the reconciliation between the necessity of crime detection and the necessity of maintaining impartiality (8, 14).

Judicial Oversight and Limiting the Scope of Intervention

Whenever obtaining evidence necessitates entry into privacy, the existence of effective oversight becomes particularly important. Oversight here is not merely administrative formalities, but a means for assessing necessity, determining the scope of action, preventing the arbitrary expansion of intervention, and evaluating compliance with the prescribed conditions. Such oversight is more consistent with the jurisprudential foundation of justice and the necessity of preventing transgression against the rights of individuals.

Within this framework, the decision to intervene must, as far as possible, be based on a clear subject matter, a specific necessity, and a defined scope. General and unlimited authorizations, particularly in the field of information and communications, increase the risk of transforming an exception into a routine practice. Therefore, every investigative action must be limited to the same extent and duration that is necessary for the intended purpose, and any expansion of it requires re-evaluation (11, 19).

Summary: A Model for Restricting the Judge's Authority in Obtaining Evidence

Based on the foregoing discussions, it can be stated that the judge's authority to obtain evidence, when it relates to privacy, is subject to a series of interrelated conditions. First, a real need for the information must be established;

second, the direct relevance of the information to the subject matter of the proceedings must be specified; third, there must be no effective and less intrusive alternative; fourth, proportionality must exist between the importance of the objective and the intensity of the intervention; fifth, the action must not be incompatible with the principle of impartiality; and finally, the scope and duration of the intervention must be subject to oversight. These criteria, taken together, transform the limits of judicial authority from a broad and indefinite competence into an exceptional, purposeful, and restricted authority.

Accordingly, what can be accepted in Islamic jurisprudence is not "the absolute authority of the judge to search for the truth"; rather, it is the limited use of investigative tools under conditions where the judicial interest genuinely necessitates it and the protective rules of privacy are also observed. In this model, privacy is not an absolute obstacle to the administration of justice, but, on the other hand, discovering the truth is also not a title that can set aside all *shar'i* limitations. The desirable outcome is the establishment of a balanced relationship between the two; a relationship in which, the more the judicial necessity increases, the more precise, limited, and subject to oversight the intervention becomes.

Jurisprudential Effects of Obtaining Evidence through Intervention in Privacy

Obtaining evidence through intervention in privacy, from a jurisprudential perspective, is related to issues such as the prohibition of *tajassus*, the prohibition of violating the sanctity of persons, and the preservation of rights and human dignity; therefore, examining the legitimacy of such evidence requires the clarification of the jurisprudential foundations of the permissibility or prohibition of intervention and the effects attaching to evidence obtained through the violation of privacy:

5-1. Distinction between the Permissibility of the Action and the Validity of the Obtained Evidence

One of the fundamental issues in examining the obtaining of evidence through entry into privacy is the distinction between "the permissibility of carrying out the action" and "the validity of the evidence obtained." It is possible that, under certain circumstances, the principle of investigation and collection of information may be necessary for the judicial authority, but this does not necessarily mean that any information obtained through a violation of privacy, without further examination, possesses probative value. This distinction is important for preventing the necessity of discovering the truth from being interpreted in such a way as to deem any means of obtaining evidence permissible.

In jurisprudential analysis, the validity of any probative method is subject to the conditions of its authority (*hujjiyah*), and merely obtaining information does not equate to its *shar'i* authority. Therefore, if information has been obtained through a method that itself involved a *shar'i* prohibition or transgression against the rights of individuals, a distinction must be made between the epistemic value of the information and the legitimacy of the method by which it was obtained. This issue becomes particularly significant when the judicial action has been carried out without necessity or beyond the prescribed limits. In such a situation, merely discovering a fact cannot be considered sufficient to remove all objections concerning the method of its acquisition (6, 8).

Accordingly, in evaluating evidence obtained through intervention in privacy, two independent questions must be raised: first, was the action carried out permissible from a *shar'i* and judicial perspective? Second, even assuming the legitimacy of the action is not established, does the information obtained qualify as evidence admissible in the proceedings? The significance of distinguishing these two stages lies in the fact that "discovering the reality" and "the legitimacy of the method of accessing the reality" are not identical concepts.

The Effect of Exceeding the Limits of Necessity on Judicial Action

If intervention in privacy is justifiable on the basis of necessity, this necessity is valid only to the extent required for achieving the intended objective; therefore, exceeding the limits of necessity alters the nature of the action. For example, if access to a specific document is necessary for establishing the subject matter of the case, this necessity does not, by itself, constitute a license to examine other information unrelated to the case. Such an expansion would not be consistent with the principle of minimum intervention.

In Islamic jurisprudence, rules such as *Lā Ḍarar* and the rule of the more important (*Aham*) and the important (*Muhim*) are also concerned with determining the limits of intervention, not merely the principle of its possibility. If the interest invoked justifies only a limited amount of intrusion, it cannot be used as a broader authorization. Therefore, even assuming the acceptance of the exception, the scope of the action must precisely correspond to the extent of necessity (7, 15).

This understanding is also significant in the matter of search (*taftish*). Search, even when necessary for crime detection, is not an unlimited action and must be restricted to a specific subject and scope. Consequently, the greater the distance between the information in question and the subject matter of the proceedings, the weaker the jurisprudential justification for the continuation or expansion of the intervention will be (14).

Obtaining Evidence through Unjustified Intrusion and the Issue of the Prohibition of the Result (Hurmah al-Natījah)

One of the important consequences of the aforementioned foundations is that, in cases where intrusion into privacy is essentially devoid of *shar'i* necessity, one cannot justify the initial action by invoking its favorable outcome. In other words, the probative value of information should not be regarded in such a way as to legitimize an illegitimate means through a desirable result. Such an approach would, in practice, render the principle of prohibiting intrusion ineffective; because, in every case, one could set aside the *shar'i* restriction by claiming the discovery of an important truth.

From a jurisprudential perspective, if obtaining information necessitates committing a forbidden act (*ḥarām*), the principle is that the prohibition of the act is not removed by another title, unless there is valid evidence for the existence of a secondary title (*'unwān thānawī*) or a stronger interest. Therefore, it must be established that the action truly falls under the title of necessity, the preservation of the more important interest, or one of the valid *shar'i* authorizations. The mere usefulness of the result, or the probability that the information will assist in discovering the truth, is not sufficient for the realization of such an authorization (4, 22).

Of course, from this foundation it cannot be concluded that any evidence obtained during a violation of privacy necessarily lacks probative value. Such a general ruling requires independent evidence and cannot be derived solely from the principle of prohibiting *tajassus*. What can be stated with greater certainty is that the judge must distinguish between the legitimacy of the conduct of the evidence-obtainer and the authority (*hujjiyah*) of the evidence itself, and examine the effects of each separately.

The Role of the Privacy Holder's Consent in Obtaining Information

Consent can, in some cases, be one of the factors effective in removing the attribute of intrusion from an action; because many rights related to privacy have a nature in which the will of the right-holder is influential in the manner of their exercise. However, in the judicial domain, not every type of consent should be automatically deemed

sufficient. Consent must be informed, genuine, and pertaining to a specific scope of information or actions, and it cannot serve as a means to legitimize an indefinite and extensive intervention.

On the other hand, in relationships where there is an imbalance of power between the individual and the public authority, the examination of the genuineness of consent becomes more important. Therefore, the acceptance of access to information must, as far as possible, pertain to a clear subject matter, and general and vague consents, the scope of which is not clear even to the privacy holder, should be avoided. This issue is consistent with the general foundations of the protection of personal information and the necessity of limiting the scope of intervention (5, 23).

The Effects of Unjustified Intervention on Judicial Justice and Public Trust

Unjustified violation of privacy does not remain merely an individual transgression; rather, it can also affect the social legitimacy of the judicial process. Judicial justice is not dependent solely on the final outcome of the verdict; the manner of reaching that outcome is also influential in the assessment of justice. If individuals feel that the judicial system employs any means to arrive at the truth, their trust in the impartiality and justice of the judiciary will be damaged.

This concern has also been raised in research related to privacy and preliminary investigations. The more extensive the investigative powers and the weaker the oversight over them, the greater the likelihood that exceptional measures will become routine practices. In contrast, restricting actions to genuine necessity and observing proportionality, in addition to protecting the individual, contributes to strengthening public trust in the judicial process (14, 24).

Therefore, the protection of privacy should not be imagined as being in absolute conflict with the efficiency of criminal or judicial justice. Observing the limits of intervention can itself be one of the factors enhancing the credibility of the judicial system; because it demonstrates that discovering the truth in this system is bound by principles and standards, and that judicial power is not exercised outside the framework of individuals' rights.

The Final Criterion: Reconciling Truth-Finding and the Protection of Rights

An examination of the jurisprudential effects of obtaining evidence through intervention in privacy indicates that the desirable solution is neither the absolute acceptance of such an action nor the negation of its possibility in all cases. The appropriate criterion is the establishment of a disciplined relationship between the necessity of truth-finding and the protection of individual rights. Accordingly, intervention in privacy becomes acceptable only when the judicial need is genuine, the information in question is directly related to the subject matter of the proceedings, there is no effective alternative, and the chosen action does not cause more harm to the rights of the person than is necessary.

At the same time, the legitimacy of the action must be distinguished from the probative value of its outcome. An action may be permissible in principle, but exceed its limits in the manner of execution; just as information may possess epistemic value, but the method of its acquisition may be problematic from a *shar'i* perspective. This distinction enables a more precise analysis of cases of conflict between truth-discovery and privacy, and prevents the issuance of absolute and inflexible rulings.

Therefore, within the framework of Islamic jurisprudence, the judge in obtaining evidence is neither endowed with absolute authority nor merely a passive observer. His authority is subject to the objective of the proceedings,

shar'i principles, the rights of the parties to the litigation, and the case-specific necessity. Whenever intervention in privacy becomes necessary, this authority must be exercised within the narrowest possible scope, and once the objective is achieved, the basis for its continuation ceases to exist. Such an understanding both preserves the dignity of adjudication and the necessity of discovering the truth and prevents privacy from being reduced to a ceremonial right devoid of practical protection in the judicial process.

A Jurisprudential Model for Determining the Limits of the Judge's Authority in Obtaining Evidence

The foregoing discussions demonstrated that the judge's authority in obtaining evidence—particularly when it necessitates entry into the privacy of individuals—is neither absolutely negatable nor can it be regarded as unlimited authority. On the one hand, the judge, in order to administer justice and establish the subject matter of the dispute, sometimes requires investigation and examination, and the necessity of truth-finding cannot be disregarded; on the other hand, the principle of protecting privacy, the prohibition of *tajassus*, and the requirements arising from judicial impartiality impose limitations on this authority. Therefore, the fundamental issue is the determination of a set of criteria capable of delineating the boundary between justified judicial investigation and unjustified intervention in privacy. In the jurisprudential literature pertaining to obtaining evidence, attention to the conflict between truth-finding and judicial impartiality has also been considered among the central elements of analyzing this issue (8).

Establishment of Genuine Necessity

The first and most fundamental condition for intervention in privacy is the existence of a genuine necessity for obtaining information. What is meant by necessity is that the information in question is important for resolving the judicial issue and that its absence would place the proceedings or the establishment of justice in serious difficulty. Therefore, the mere probability that private information might prove useful to the judge in the future is not sufficient to justify intervention.

This criterion is consistent with the primary principle of prohibiting *tajassus*; because departure from this principle must be based on a clear justification. If every probability or benefit could be considered as necessity, the prohibition of *tajassus* would, in practice, lose its function. Therefore, the judge must be able to distinguish between a real need for information and mere curiosity or probability of benefit (1, 22).

Establishment of Direct Relevance to the Subject Matter of the Proceedings

Necessity, without subject-matter relevance, is not sufficient to justify intervention. The information to be obtained must have a specific connection to the subject matter of the dispute, accusation, or issue that the judge is duty-bound to adjudicate. Accordingly, the scope of the judge's authority must be limited to information that can, logically and evidentially, be effective in establishing the subject matter of the case.

This condition prevents the expansion of "judicial investigation" into a "general search into the lives of individuals." For this reason, even if the principle of access to specific information is permitted, unrelated information should not fall within its scope. This limitation is also consistent with the foundation of protecting privacy and the necessity of preventing extensive intrusion (5, 6).

Absence of an Effective Alternative

In the third stage, it must be examined whether the same objective can be achieved through a less intrusive means. This condition is the logical consequence of the principle of minimum intervention. As long as the judge can achieve the investigative objective by using the available evidence, submitted documents, statements of the parties, testimony, or other conventional means, entry into privacy will have less justification. In fact, necessity acquires meaning when there is no effective alternative method, or the available methods cannot fulfill the evidentiary need of the case. Therefore, the mere fact that a less intrusive method is more difficult or time-consuming is not, by itself, a license to use a more severe method. Such an understanding is also consistent with the discussions concerning search and privacy, which emphasize the necessity of limiting investigative actions and their proportionality with the need for proceedings (14).

Proportionality between the Objective and the Extent of Intervention

Even in the event of establishing necessity and the absence of an alternative, the scope of the action must be proportionate to the importance of the objective. Not every degree of public or judicial interest can justify every level of intrusion. In other words, there must be proportionality between the intensity of the intervention and the importance of the interest that is to be secured through it.

The rule of the more important (*Aham*) and the important (*Muhim*) can provide a suitable analytical framework at this stage. The preference of the more important interest does not mean completely disregarding the opposing interest; rather, action must be taken only to the extent necessary to secure the superior interest. Therefore, if the judicial objective can be achieved through limited intervention, the expansion of the action to broader domains would lack justification (7, 15).

Consequently, proportionality must be assessed both with respect to "the severity of the risk or interest" and "the severity of the intrusion." The deeper the intrusion, the stronger the necessity and importance of the objective must be correspondingly.

Temporal and Subject-Matter Limitation of the Action

Judicial authority to obtain evidence should not transform into a permanent authority to access private information. If access has become necessary for achieving a specific objective, then, after the objective is achieved or the necessity ceases, the basis for continuing the action must also be reviewed. This is important because an initial action may be justifiable, but its continuation after the necessity has ceased may acquire a different character.

The same logic applies to the subject-matter scope as well. The judge must specify as clearly as possible what information is needed and what information falls outside the subject matter of the proceedings. Any automatic expansion of the scope of investigation will be inconsistent with the principle of minimum intervention. The protection of informational privacy also emphasizes the necessity of limiting the scope of collection and use of personal information (20, 23).

Observance of Judicial Impartiality

Another criterion that is significant in determining the limits of obtaining evidence is the preservation of the judge's impartiality. Obtaining evidence may appear to be merely a tool for discovering the truth; however, if the manner in

which the judge enters into the process of evidence collection leads to supporting the position of one of the parties, the credibility of his impartiality is compromised. Therefore, every judicial investigation must be conducted in such a way that both parties to the case have the opportunity to defend themselves and to confront the result of the investigation.

This issue has also been explicitly addressed in the literature pertaining to obtaining evidence by the judge, and the potential conflict between the active role of the adjudicator in discovering the truth and the necessity of maintaining impartiality has been considered among the most important limitations of this authority (8).

Accordingly, obtaining evidence should not be confused with "constructing evidence in favor of one party." The purpose of judicial action must be the clarification of the reality of the matter, not the strengthening of the evidentiary position of one of the parties to the litigation.

The Necessity of Oversight and Control over Intervention

The more severe the intervention in privacy, the greater the necessity for exercising control and oversight over it. Effective oversight must make it possible to examine the necessity of the action, its scope, the proportionality of the means to the objective, and the manner of using the information obtained. This oversight is important because exceptions relating to privacy should not be transformed into a routine and unregulated practice.

From a jurisprudential perspective, this limitation is consistent with the principles of justice and the prevention of transgression against the rights of individuals. Judicial authority, like other governmental authorities, must be exercised within the limits of the interest that constituted the basis for its grant. Therefore, departing from those limits, even with the motive of discovering the truth, will require independent justification (4).

Proposing a Jurisprudential Test for Evaluating Intervention

Based on the totality of the above discussions, a staged test can be proposed for discerning the limits of the judge's authority in obtaining evidence. The judicial action must first be evaluated in terms of the existence of a real need; then, the direct relevance of the information in question to the subject matter of the proceedings must be established. In the next stage, it must be examined whether there is an effective and less intrusive alternative or not. After passing through these stages, the intensity of the intervention must be proportionate to the importance of the objective, and the action must also be limited to the necessary temporal and subject-matter scope. At all stages, the judge's impartiality and the possibility of oversight over the action must be preserved.

The significance of this model lies in the fact that it transforms "necessity" from a general claim into an assessable criterion. Consequently, the judge, in order to intervene in privacy, cannot merely cite the general title of discovering the truth; rather, he must demonstrate what information is necessary, why it is necessary, why another method does not suffice, and why the extent of the chosen intervention is proportionate to the importance of the subject matter.

The Place of This Model in Reconciling Judicial Justice and Privacy

This framework does not regard privacy and truth-discovery as two completely conflicting values; rather, it establishes a regulated relationship between them. On the one hand, the acceptance of privacy does not mean the suspension of judicial investigations; and, on the other hand, the acceptance of the judge's investigative role cannot lead to the elimination of protection for the private sphere of individuals. The jurisprudential solution, in such a situation, is the regulation of the exception based on necessity and its limitation to the extent required.

Thus, privacy does not become an absolute obstacle to justice; rather, it functions as a normative limitation on the manner of accessing the truth. The judge, within such a framework, is neither prohibited from investigation nor granted unlimited authority; rather, he must establish a balance between the necessity of discovering the reality, the rights of individuals, and the *shar'i* limits of intervention.

The outcome of this analysis is that whenever genuine necessity does not exist, the principle is the prohibition of intervention; whenever necessity exists but a less intrusive alternative is available, the use of a more severe method lacks sufficient justification; and even in the absence of an alternative, the intervention must be proportionate, limited, and subject to oversight. Therefore, "the extent of necessity" (*qadr al-ḍarūrah*) can be considered the most important common criterion for reconciling the judge's duty of truth-finding and the principle of protecting privacy. This conclusion is also consistent with the approach of jurisprudential sources and contemporary research on *tajassus*, privacy, and obtaining evidence (8, 14, 22).

Conclusion

An examination of the jurisprudential foundations demonstrated that privacy in Islamic jurisprudence enjoys independent protection, and the primary principle is the prohibition of *tajassus* and the avoidance of unauthorized entry into the concealed affairs of individuals. On the other hand, the judge's duty to discover the truth may, in certain cases, necessitate access to private information; however, this necessity does not create unlimited authority for intervention.

- The findings of the research indicate that judicial intervention in privacy is justifiable only upon the establishment of genuine necessity, the direct relevance of the information to the subject matter of the proceedings, the absence of an effective alternative, and the observance of proportionality between the objective and the extent of the intrusion. Moreover, the action must be limited to the minimum necessary extent, must not conflict with judicial impartiality, and must be subject to oversight. Rules such as *Lā Ḍarar*, the rule of the more important (*Aham*) and the important (*Muhim*), and the preservation of the system (*Hefz-e Nezam*) also serve, within this framework, as instruments for regulating the exception, and cannot be transformed into a general license for encroaching upon privacy.
- Furthermore, a distinction must be made between the legitimacy of the method of obtaining evidence and the probative value of the information obtained; because discovering the reality alone does not make any means of achieving it legitimate. Accordingly, the judge's authority in obtaining evidence, in cases of conflict with privacy, is an exceptional, limited, and restricted authority, bound by the extent of necessity.
- Ultimately, the reconciliation between judicial justice and the protection of privacy is achieved when truth-finding is carried out not against individual rights, but within the framework of observing them. The main criterion for this balance is the selection of the least intrusive effective means and the limitation of judicial action to the extent necessary for the establishment of justice.

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Authors' Contributions

All authors equally contributed to this study.

Declaration of Interest

The authors of this article declared no conflict of interest.

Ethical Considerations

All ethical principles were adhered in conducting and writing this article.

Transparency of Data

In accordance with the principles of transparency and open research, we declare that all data and materials used in this study are available upon request.

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