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## PROTECTION OF THE RIGHT TO PRIVACY UNDER INTERNATIONAL LAW AND THE IRANIAN LEGAL SYSTEM WITH A FOCUS ON THE VICTIMS OF RAPE

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*Privacy is one of the important parameters to support personal freedom and rights that should be provided on the basis of both international and domestic law. Lack of privacy in the court process and police investigation is the major complaint of victims of sexual offences and their family and relatives. Open investigation, the request to explain details involving their personal and family life, disclosure of private information and interference with physical, mental or moral integrity are examples of privacy violation in the process of criminal investigation. The failure to treat the victim's privacy respectfully on the part of authorities can lead to the risk of secondary victimization. The purpose of this paper is to analyze how the right to privacy has been protected under international law and the Iranian legal system, particularly with regard to victims of rape. The paper is divided into three main parts. The first part analyses the definition and aspects of privacy and the consequences of privacy violations. The second part explains how International law supports and recognizes the right of privacy. In the end, some examples of the Iranian legislative approach to protect this right will be analyzed. This paper will conclude that although the Iranian legislative system is familiar with the right to privacy and stipulates some protective strategies in different laws, this right has not been properly implemented in practice. Finally, this paper proposes to extend the conceptual framework of privacy and offers some suggestions to improve protective strategies.*

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## INTRODUCTION

Right to privacy is one of the important aspects of human rights which has been emphasized in international documents and the Iranian legal system. Protection of the right to privacy of victims is an important issue under criminal justice system.<sup>1</sup> One of the major consequences of privacy violation is that victims prefer to avoid cooperation with the criminal justice system because of the increasing concern with the lack of privacy and confidentiality of their information in criminal justice institutions.<sup>2</sup> The fear of who might access police reports, pre-sentence investigations, victim compensation files, or victim impact statements may prevent victims from notifying authorities or participating in a criminal process.<sup>3</sup> This is one of the main factors why victims give up complaints. Even those who immediately report crime to the police in the early stages or talk about that to a legal advisor or physician may wish to give up their treatment or cooperation if their privacy is violated in the institution in the question. Accordingly, in this situation, the victims are forced to choose between following their complaints or preserving their dignity and honor. The privacy of victims of rape is more important than in other crimes. The specific nature of rape, shame and embarrassment that are attached to the crime for both family and victims require that the information about their personal life and privacy, particularly about how the crime was accrued, the injuries related to the crime and other information remains secure and confidential during the criminal procedure.<sup>4</sup> Lack of privacy during the police and courts investigation, fear of losing their social prestige as well as lack of adequate legal guarantees for the recognition of the right to privacy

<sup>1</sup> D. E. BELOOF, *VICTIMS' RIGHTS: A DOCUMENTARY AND REFERENCE GUIDE*, at 295 (Greenwood, 2012). N. RONEL, D. SEGEV, *POSITIVE CRIMINOLOGY*, at 295 (Taylor & Francis, 2015).

<sup>2</sup> Bonnie J. Campbell, *Confidentiality of Communication between Sexual Assault Victims and Their Counselors*, in *FINDING AND MODEL LEGISLATION* (Washington DC: Violence against Woman Office (VAWO), December 1995).

<sup>3</sup> Nagel Wil, *Privacy Schmirivacy? Drafting Privacy Policy in an Integrated Justice Environment (and Why It's Important)* (Illinois Integrated Justice System, June 2004).

<sup>4</sup> RONEL AND SEGEV, *POSITIVE CRIMINOLOGY*, at 295.

are some reasons why victims prefer not to report the crime.<sup>5</sup> Failure to protect privacy can increase the danger of secondary victimization. It can consequently influence their recovery and social reintegration in their country and put the victims in the circumstances that are worse than the situation before the complaint.<sup>6</sup>

In addition, privacy violations can affect victims' family and work life.<sup>7</sup> It can disrupt continuity of family life and their safety and in most cases affects public attitudes combined with the blame of victims. Sometimes, disclosure information of victims of special crimes such as sexual ones causes work problems for them and can undermine their job security. In addition, provision of medical services to employees who have previously been victims of rape can sometimes lead to the disclosure of their medical secrets. In other words, in some cases the employer can put pressure on the employee by using their confidential information. Through the employer's access to this information, the victim may lose his or her job opportunities or cannot enhance them.<sup>8</sup> Computerized and recorded information related to accused criminals and victims could be an advanced tool of technical support in order to ensure information security and prohibit access to private data by unauthorized persons. However, sometimes, corruption in criminal justice administrative departments endangers the security of this data.<sup>9</sup>

The paper analyzes the protective strategies employed by international documents and the Iranian legal system to establish whether the right to privacy and its different aspects have been protected properly in Iran and if not, what kind of measures can be taken in order to improve it. Therefore, at the beginning the definition of privacy and its different aspects will be explained. In addition, the supportive role of the legislative system and criminal justice institutions (the police and courts) in ensuring the protection of this right will be examined. In the next part, the conceptual framework of

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<sup>5</sup> S. L. MC COMBIE, *THE RAPE CRISIS INTERVENTION HANDBOOK: A GUIDE FOR VICTIM CARE*, at 67 (Springer US, 2012).

<sup>6</sup> K. Rich, *Interviewing Rape Victims: Practice and Policy Issues in an International Context*, at 39 (Palgrave Macmillan UK, 2014).

<sup>7</sup> R. S. Pfeiffer and R. P. Forsberg, *Ethics on the Job: Cases and Strategies*, at 26 (Cengage Learning, 2012).

<sup>8</sup> W. Rudman, *Coding and Documentation of Domestic Violence*, Family Violence Prevention Fund (2002).

<sup>9</sup> For example in December 2002 a former lawyer on charges of US Department of Health was convicted because of access to protected computer data. He gave information obtained from the interrogation of security systems to a Private office in Los Angeles vs. 22/500 dollars. US Department of Justice (DOJ), Office of Justice Programs, Privacy, Civil Liberties, and Information Quality Policy Development for the Justice Decision Maker, Washington, DC, at 5 (2005), available at [http://www.it.ojp.gov/documents/200411\\_global\\_privacy\\_document.pdf](http://www.it.ojp.gov/documents/200411_global_privacy_document.pdf).

the right to privacy with regard to international documents will be discussed and lastly, the Iranian approach towards the right to privacy will be evaluated.

### I. DEFINITION OF PRIVACY AND ITS DIFFERENT ASPECTS

Literature relating to public rights and freedoms does not provide the precise definition of privacy. Experts and authors have presented different definitions according to their intellectual foundations and different interpretations of the concept.

Some scholars believe that privacy is the right to have control on disclosure of some personal information that is inspired by the right of property.<sup>10</sup> While others consider it as a broader concept of human dignity<sup>11</sup>, Bloustein argues that the right to privacy is important because it protects personality<sup>12</sup> or is crucial for intimacy.<sup>13</sup> Fried, for example, defines privacy as control over information about oneself. He argues that this right is necessary for forming intimate relationships involving respect, love, friendship and trust.<sup>14</sup> Other scholars believe that privacy is essential in order to develop meaningful interpersonal relationships<sup>15</sup>, or the value that offers people the possibility to control the access to others information<sup>16</sup>. For example, Bok discusses that privacy protects people from undesirable access by others.<sup>17</sup> Gavison argues that privacy is related to giving access to others, for instance, what/to which extent others know about us, how much access they have to our information.<sup>18</sup> Adam Moore, also considers privacy as the right to have “*control over access to bodies or places and information*

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<sup>10</sup> William A. Parent, *Privacy, Morality, and the Law*, in PRIVACY, MORALITY AND THE LAW (JSTOR, 1983).

<sup>11</sup> Edward J. Bloustein, *Privacy as an Aspect of Human Dignity: An Answer to Dean Prosser*, 39 NYUL REV. (1964).

<sup>12</sup> *Ibid.*

<sup>13</sup> JEAN L. COHEN, REGULATING INTIMACY: A NEW LEGAL PARADIGM (Princeton University press, 2009); Tom Gerety, *Redefining Privacy*, 12 HARV. CR-CLL REV. (1977); Robert S. Gerstein, *Intimacy and Privacy*, 89(1) ETHICS (1978).

<sup>14</sup> JUDITH DECEW, EDWARD N. ZALTA (ed.), PRIVACY, THE STANFORD ENCYCLOPEDIA OF PHILOSOPHY (2008), <http://plato.stanford.edu/archives/spr2015/entries/privacy/>.

<sup>15</sup> Charles Fried, *An Anatomy of Values*, CAMBRIDGE, MASS (1970); James Rachels, *Why Privacy is Important*, PHILOSOPHY & PUBLIC AFFAIRS (1975).

<sup>16</sup> Ruth Gavison, *Privacy and the Limits of Law*, 89(3) THE YALE LAW JOURNAL (1980); ANITA L. ALLEN, UNEASY ACCESS: PRIVACY FOR WOMEN IN A FREE SOCIETY (Rowman & Littlefield, 1988); Adam D. Moore, *Employee Monitoring and Computer Technology: Evaluative Surveillance V. Privacy*, 10(3) BUSINESS ETHICS QUARTERLY (2000).

<sup>17</sup> SISSELA BOK, ON THE ETHICS OF CONCEALMENT AND REVELATION (New York: Pantheon, 1982).

<sup>18</sup> Gavison, *Privacy and the Limits of Law*, at 347.

like education, health, and social relationships etc.”<sup>19</sup>

Some scholars recognize privacy as the right to be alone.<sup>20</sup> They regard this right as “the right to one’s personality” and describe it as control over information about oneself.<sup>21</sup> In addition, some researchers such as Alan Westin define privacy as the possibility to control what/when/ and how our personal information such as information about health, salary, weight, sexual orientation, etc. can be transmitted to others.<sup>22</sup> Parent defines privacy as the right of not having undocumented personal information known or possessed by others.

Regardless of evaluating each of these definitions, it can be argued that the common element within these definitions is the private domain and private area of individual human life. Therefore, the basic elements of privacy involve having enough freedom to make decisions in regard to what kind of information about oneself can be shared with others.

Another significant aspect regarding the definition of this right is identification of its different aspects, which will be briefly described here.

- **Territorial privacy** includes protection of the right to privacy in private and public places.<sup>23</sup> The place can be a house; a room in a hotel; a camping behind a park, a cabin in the train etc.<sup>24</sup> This right is rooted in the fundamental rights of the people such as the right of freedom, which means people are free to choosing an area where they can be secure and not threatened by any source of aggression. The basis of this right is that

...the house of the people (and following that the other similar places) is the most secret place for them and if a right has been recognized based on hiding his personal aspects and secrets (that is in this way) there is no place more suitable

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<sup>19</sup> Adam D Moore, *Privacy: Its Meaning and Value*, 40(3) AMERICAN PHILOSOPHICAL QUARTERLY (2003).

<sup>20</sup> Samuel D. Warren and Louis D. Brandeis, *The Right to Privacy*, HARVARD LAW REVIEW (1890).

<sup>21</sup> The law from commission of law Hong Kong, report on civil liability for invasion of privacy, at 7 (December 2004).

<sup>22</sup> ALAN F. WESTIN, *PRIVACY AND FREEDOM*, ATHENEUM, at 42 (New York, 1967).

<sup>23</sup> Many scholars believe that the people may also have the right to privacy in public places. It seems that the public places are various. Sometimes, the place is a public place, where there is no contrast between the personal and public use (e.g. a jungle is a public place and everybody may use it freely). The criterion of violating privacy is causing disturbance in public places, if a person is going to be near, the disturbance occurs but the disturbance is different in small places—Leave out the bit after “public places”? Some actions do not produce disturbance in many situations, but it has been disturbance now when? Not clear and it means that the place may change the subject matter. (Soroush Mahallati, the examination of the limit of privacy in terms of jurisprudence, the scientific meeting of privacy in jurisprudence and laws, the law group of Qom research institute of seminary and university, September 2010).

<sup>24</sup> Daniel Benoliel, *Law, Geography and Cyberspace: The Case of on-Line Territorial Privacy*, 23 CARDOZO ARTS & ENT. LJ (2004).

than house for exercising this right.<sup>25</sup>

- **Bodily privacy** which is related to the person's body. Physical inspections, medical experiments, identification, fingerprinting, etc. are some examples of violating this aspect of privacy which is rooted in supporting the physical integrity and the information related to the health of humans.<sup>26</sup>

- **Privacy of personality and dignity** is another aspect of this right. Backbiting, slandering and so on are some aspects of violating this right.<sup>27</sup>

- **Information privacy** is another important aspect of this right which has been recognised in some legal systems under data processing rules which has prohibited each kind of acquisition, keep, organization, store, hack, replacement, use, disclosure, transfer, publication and similar activities related to data.<sup>28</sup> According to Kelleher, private information does not necessarily involve confidential information but every kind of information related to the persons including financial sources and income, personal needs, beliefs, ethnic affiliations, cultural identity etc.<sup>29</sup> Accordingly, all the forms of correspondence and communications including email, satellite communications and wireless telephones should be remained confidential. This right has been faced with new challenges by emerging new technologies. Therefore, nowadays the privacy of people and their information in digital and online networks should be protected as well and gathering personal information without the consent of the involved person is prohibited. Consequently, violating this technique shall involve the legal responsibility.<sup>30</sup>

## II. PROTECTION OF THE RIGHT TO PRIVACY UNDER INTERNATIONAL DOCUMENTS

Unfortunately, international documents do not explicitly refer to the protection of the right to privacy of rape victims. However, their rights can be protected generally under other international documents which recognize rights of victim. For instance, Article 12 of the Universal Declaration of

<sup>25</sup> ABOLFAZL GHAZI, *FUNDAMENTAL RIGHTS AND POLITICAL INSTITUTIONS*, at 12, 675, 143 (Tehran University, 1991).

<sup>26</sup> David Banisar, *Privacy and Human Rights 2000: An International Survey of Privacy Laws and Developments*, at 5 (Electronic Privacy Information Center, 2000).

<sup>27</sup> Soroush Mahallati, *Limitation of Privacy in Islamic Jurisprudence and Laws*, in *THE CONFERENCE ON PRIVACY IN JURISPRUDENCE AND LAWS* (The Law Department of Qom Research Institute, 2010).

<sup>28</sup> DENIS KELLEHER AND KAREN MURRAY, *IT LAW IN THE EUROPEAN UNION*, at 223 (Sweet & Maxwell, Ltd., 1999).

<sup>29</sup> *Ibid.*, at 221—270.

<sup>30</sup> *Ibid.*, at 224.

Human Rights was launched in December 1948. While it contains no definition of privacy, it mentions that

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks.

The right to respect one's private life is protected by article 17 of the International Covenant on the Civil and Political Rights (1966), which offers the right to be protected against arbitrary or unlawful interference with his or her privacy, family, home or correspondence as well as against unlawful attacks on his or her honor and reputation. According to this article, this right should be guaranteed in cases when the government or individual is intervening. Article 2 of this convention mentions the obligation of state parties. Therefore, state parties must provide information to enable the Committee to assess the effect of any laws and practices that may interfere with the right to enjoy privacy and other rights protected by article 17 without discrimination of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. States parties should report on any laws and public or private actions that interfere with the equal enjoyment by victims' rights under article 17 and with the measures taken to eliminate such interference and to afford victims protection from any such interference. The Office of the United Nations (UN) High Commissioner for Human Rights released General Comment Number 16 in 1988 explained how the UN interprets article 17 and how it should be applied in domestic law. It is mentioned in the General Comment that article 17 should protect citizens from all interferences and attacks on privacy, family, home or correspondence, "whether they emanate from State authorities or from natural or legal persons". In order to achieve this goal, all member states are required:

...to adopt legislative and other measures to give effect to the prohibition against such interferences and attacks as well as to the protection of this right.

state parties are under a duty themselves not to engage in interferences inconsistent with art 17 of the Covenant and to provide the legislative framework prohibiting such acts by natural or legal persons.<sup>31</sup>

In addition, Article 68 of the Rome Statute of the ICC and the Rules of Procedure and Evidence on the protection of the victims and witnesses and their participation in the proceedings mentions:

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<sup>31</sup> UN Human Rights Committee (HRC), CCPR General Comment No. 16: Article 17 (Right to Privacy), *The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation*, April 8, 1988, available at: <http://www.refworld.org/docid/453883f922.html>.

...the Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. In doing so, the Court shall have regard to all relevant factors, including age, gender as defined in Article 7, paragraph 3, and health, and the nature of the crime, in particular, but not limited to, where the crime involves sexual or gender violence or violence against children.

Section D of Article 6 of Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power adopted by General Assembly resolution 40/34 of 29 November 1985 states the obligation for protection of victims' privacy and safety:

Taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation.

The Nordic Conference of Jurists on the Right to Respect for Privacy organized by the International Commission of Jurists (JUSTICE) (1967) provides a practical definition of the right to privacy. Paragraphs 2 and 3 of its declaration state that

...the right of privacy is the right to be let alone to live one's own life with the minimum degree of interference. In expanded form, this means: the right of the individual to lead his own life protected against:

- (a) Interference with his private, family and home life;
- (b) Interference with his physical or mental integrity or his moral and intellectual freedom;
- (c) Attacks on his honor and reputation;
- (d) Being placed in a false light;
- (e) The disclosure of irrelevant embarrassing facts relating to his private life;
- (f) The use of his name, identity or likeness;
- (g) Spying, prying, watching and besetting;
- (h) Interference with his correspondence;
- (i) Misuse of his private communications, written or oral;
- (j) Disclosure of information given or received by him in circumstances of professional confidence.

Accordingly, the right to privacy can be defined as personal information that is not relevant to the community or the right to confidentiality of personal information.<sup>32</sup>

Nordic Conference of Jurists also mentioned some aspects of privacy:

The prohibition to use a person's name, identity or photograph without his consent, to spy on a person, respect for correspondence and the prohibition to

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<sup>32</sup> Conclusions of the Nordic Conference on the Right to Privacy, Geneva, International Commission of Jurists (1967).

disclose official information.<sup>33</sup>

In addition, Article 4 of the Code of Conduct for Law Enforcement Officials adopted by general assembly (1979) also states that

Matters of a confidential nature in the possession of law enforcement officials shall be kept confidential, unless the performance of duty, or the needs of justice, strictly require otherwise.<sup>34</sup>

At the European level, the right to respect for one's private life is protected by article 8 of the European Convention on Human Rights. Data Protection Convention at Council of Europe (1981) indicated the protection of privacy. According to Article 1 of this convention the purpose of the convention is to secure the territory of each Party for every individual, whatever his nationality or residence, respect for his or her rights and fundamental freedoms, and in particular his or her right to privacy, with regard to automatic processing of personal data ("data protection"). According to article 2, personal data, as one of the aspects of privacy of people, is "any information relating to an identified or identifiable individual ("data subject")"; Therefore, in this document, only one aspect of privacy, i.e. data protection, has been defined and there is no specific definition of privacy in general.

In addition, in 1983, the Council of Europe adopted a European Convention on the Compensation of Victims of Violent Crime. This was followed in 1985 by a Recommendation issued by the Council of Ministers on the position of victims within the framework of criminal law and procedure. The recommendation requires that victims should be kept informed at all stages of proceedings, that they should have the right to challenge a decision not to prosecute or the right to bring private proceedings, and that they should be able to obtain compensation within the criminal justice process.<sup>35</sup> Section B (Sub-Section 7) mentions that

The victim should have the right to ask for a review by a competent authority of a decision not to prosecute, or the right to institute private proceedings. Section F focusses on the right to privacy Information and public relations policies in connection with the investigation and trial of offences should give due consideration to the need to protect the victim from any publicity which will unduly affect his private life or dignity. If the type of offence or the

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<sup>33</sup> Pieter Van Dijk, Godefridus JH Hoof, and Godefridus JH Van Hoof, *Theory and Practice of the European Convention on Human Rights* (Kluwer Law International, 1998).

<sup>34</sup> GA Res. 34/169 of December 17, 1979. <http://www.un.org/documents/ga/res/34/a34res169.pdf>.

<sup>35</sup> Recommendation, No. R (85) 11 of the committee of ministers to member states on the position of the victim in the framework of criminal law and procedure (Adopted by the Committee of Ministers on June 28, 1985, at the 387th meeting of the Ministers' Deputies).

particular status or personal situation and safety of the victim make such special protection necessary, either the trial before the judgment should be held in camera or disclosure or publication of personal information should be restricted to whatever extent is appropriate.

In addition, Europe Union has ratified some resolutions in this regard such as the EU Council Resolution 1995 on protection of personal data. Article 1 of this resolution mentions that the state shall protect the fundamental rights and freedoms of natural persons and in particular their right to privacy with respect to the processing of personal data.<sup>36</sup> Council of Europe Resolution 428 (1970) has stated the element of privacy right,

The right to privacy consists essentially in the right to live one's own life with a minimum of interference. It concerns private, family and home life, physical and moral integrity, honor and reputation, avoidance of being placed in a false light, non-revelation of irrelevant and embarrassing facts, unauthorized publication of private photographs, protection from disclosure of information given or received by the individual confidentially.

The Council framework decision of March 15, 2001 on the standing of victims in criminal proceedings mentions the obligation of State parties to ensure the protection of privacy, which has recently been revised into a directive. The directive is designed to afford victims the best legal protection and defense of their interests, irrespective of the Member State in which they find themselves. Article 21 states that

1. Member States shall ensure that competent authorities may take during the criminal proceedings appropriate measures to protect the privacy, including personal characteristics of the victim taken into account in the individual assessment provided for under Article 22, and images of victims and of their family members. Furthermore, Member States shall ensure that competent authorities may take all lawful measures to prevent public dissemination of any information that could lead to the identification of a child victim.

2. In order to protect the privacy, personal integrity and personal data of victims, Member States shall, with respect for freedom of expression and information and freedom and pluralism of the media, encourage the media to take self-regulatory measures.<sup>37</sup>

With regard to the protection of the right to privacy of victims, the international and regional documents as well as the special Rapporteur of the UN have taken a protective approach in different reports. However, a specific definition of privacy is not provided. Instead, only aspects of

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<sup>36</sup> Directive 95/46/EC of the European Parliament and of the Council of October 24, 1995 on the Protection of Individuals with Regard to the Processing of Personal Data and on the Free Movement of Such Data, Official Journal L 281, 23/11/1995, at 31—50.

<sup>37</sup> Official Journal of the European Union, 14.11.2012, L 315/71.

privacy are described. It should be mentioned, however, that the special Rapporteur explicitly referred to victims of sexual abuses in some of these reports. For instance, the special Rapporteur of the United Nations committee on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted on 3 August 2007 mentions that:

The State party should put in place specific mechanisms to receive complaints of sexual abuse that will ensure the privacy of victims and protect both victims and witnesses against ill-treatment or intimidation as a consequence of the complaint (art. 13).<sup>38</sup>

Ertürk, Special Rapporteur of the Committee on the Elimination of Discrimination against Women, indicates that State party has to assure the protection of confidentiality of data of women victims of trafficking. According to this report, the state party has to ensure that all those who are involved in the trafficking and sexual exploitation of women and girls are duly prosecuted and punished to the full extent of the law, while guaranteeing the victims' right to protection and confidentiality.<sup>39</sup> The Report of the Special Rapporteur on violence against women, its causes and consequences provided by Ms Coomaraswamy mentioned that

Rape victims must be assured a measure of privacy for recounting the incident without inhibition and police officers should be trained to deal with women victims in a sympathetic and confidence-building manner and provide relevant information for referrals, if necessary.

In addition, this report focused on the personality aspect of the right to privacy that states:

Other States have implemented laws that limit the number of people present during rape trials or during the testimony of the victim. Laws restricting the public release of the victim's identity provide a further mechanism for protecting the victim.<sup>40</sup>

The committee on the elimination of discrimination against women on its thirty-ninth session mentioned other aspects of the right to privacy of victims such as the prohibition to publish details of crimes etc. It says

Other legislative amendments in the interest of victims protection include the introduction of assistance to witnesses, which grants each witness contact

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<sup>38</sup> CAT/C/NET/CO/4, August 3, 2007.

<sup>39</sup> A/HRC/11/6/Add.4, May 8, 2009. Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences, Yakin Ertürk, Mission to the republic of Moldova. Pa 86(h).

<sup>40</sup> E/CN.4/1997/47, February 12, 1997, Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences, Ms. Radhika Coomaraswamy.

with a confidant, the protection of privacy through explicit confidentiality requirements and prohibitions of publication, a more detailed specification of the content of the official duty to report crimes, and special aid, instruction, and information requirements, such as the possibilities of informing victims and their relatives of a release of a suspect from pretrial detention. In addition, the legislative revision includes detailed provisions on the exclusion of the public and the inadmissibility of television, radio, film, and photographic recordings in court.<sup>41</sup>

The rules of the procedure of the Committee on the Elimination of Discrimination against Women mentioned that the consent of victims is very important to disclose their identities. For example, Rules 80 and 87 also mentioned the confidentiality of all documents and procedures of the committee including the process of giving testimony

Except in compliance with the obligations of the Committee under article 12 of the Optional Protocol, all documents and proceedings of the Committee relating to the conduct of the inquiry under article 8 of the Optional Protocol shall be confidential.

According to Rule 87:

Any person appearing before the designated members of the Committee for the purpose of giving testimony shall make a solemn declaration as to the veracity of her or his testimony and the confidentiality of the procedure.<sup>42</sup>

Therefore, mandatory testing may constitute a serious violation of the right to privacy, as well as the principles of medical confidentiality.<sup>43</sup>

According to international documents, it appears that although there is no particular definition of privacy, some important and different aspects are protected. It seems that the main reason for this is the definition of the right to privacy which is really linked with the culture of each context. This makes it more difficult to provide a coherent definition which is applicable in all countries. Another point is that there are no direct references to the right of privacy of victims of rape in international documents. On the other hand, European law is a much more developed legal system in order to protect victims and it provides a more comprehensive concept of the right to

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<sup>41</sup> Thirty-ninth session of the committee on the elimination of discrimination against women, Consideration of the 2nd and 3rd periodic report of Liechtenstein submitted under Article 18 of the convention on the elimination of all forms of discrimination against women, New York, July 26, 2007.

<sup>42</sup> Report of the Committee on the Elimination of Discrimination against Women on Its 24th Session, General Assembly Official Records Fifty-Sixth Session Supplement No. 38 (A/56/38) (January 15-February 2, 2001), <http://www.un.org/documents/ga/docs/56/a5638.pdf>.  
[http://www2.ohchr.org/english/bodies/cedaw/docs/CEDAW\\_Rules\\_en.pdf](http://www2.ohchr.org/english/bodies/cedaw/docs/CEDAW_Rules_en.pdf).

<sup>43</sup> South African law commission, Project 107, Sexual offences, Issue paper 19, Sexual offences: Adult prostitution, ISBN: 0-62133159-7, July 12, 2002, at 179.

privacy and its different aspects. It appears that the reason for this is that European law coordinates law amongst member states of the European Union, which are more and less similar in terms of law and culture. These aspects facilitate the provision of a more integrated and comprehensive framework of the right to privacy. However, it should be noted that international documents and treaties oblige states to legislate specific and particular regulations in their domestic law. Therefore, states are obligated to provide a specific and comprehensive definition of this right, particularly in accordance with characteristics of their context and culture.

### III. THE RIGHT TO PRIVACY UNDER THE IRANIAN LEGAL SYSTEM

Since the Iranian legal system is based on Islamic law, this is crucial to know how Islamic law has protected the right to privacy. According to the 167th principle of the Iranian constitutional law and article 220 of the Iranian criminal law as well as article 3 of Iranian civil procedure code judges must make use of “*Islamic sources of law making and...Fatwas*” in matters where the Iranian law is silent. Although Iranian law protects the right to privacy under different categories, judges can also protect this right and issue relevant sentences if the law is silent.

First of all, it should be noted that the notion of justice is inherent in Islamic law and can be considered as potential to support the right to privacy. The fact that different Quranic verses and the tradition of prophet have emphasized privacy, dignity, justice and honor for humankind and specifically victims can be a factor for legalizing the right to privacy. In addition, considerable advice can be found in Quranic verses, Hadiths (traditions of prophet) as well as in the speeches of religious leaders that have strictly prevented people from violating the privacy of others. However, the term “privacy” has not been used explicitly in Islamic verses and Hadiths, mainly because Islamic values such as the right to privacy have been represented in a content-based approach; in other words, there is a type of support for the essence of privacy without mentioning its term in the source of law making in Islamic law. For instance, privacy has been supported in the form of referring to other rights and freedoms such as the right of property, the right of liberation of conducting searches, the Acquittal principle, the right of being secured and the rights related to personality. The sources of law making in Islamic law protect the right to privacy from different aspects such as privacy of homes, communications, private affairs, and personal ideas and beliefs. Some examples below will clarify how the Islamic sources of law making protect different aspects of

this right. For example, the Quran and Hadith state the following: “do not spy and do not seek or do not inspect”. In some cases, the sources do not provide such specific wording, but their rules can be extracted from more general principles. The principles of the “dominancy of people on their properties and themselves”<sup>44</sup>, prohibition of oppression, prohibition of inspection<sup>45</sup>, prohibition of entering houses without permission<sup>46</sup>, covering defects and prohibition of revealing sins of the others are some examples that help Islamic legislators to recognize and protect this right. According to the above-mentioned principles, the right to privacy has been supported under Islamic law and it is not permitted to violate it unless it comes against the right of other people or public order.

The Iranian legal system protects the right to privacy under different categories of law including the constitution, Iranian criminal code, Iranian civil procedure code, the rules related to postal, phone and Internet communications. However, it does not dedicate a specific chapter in particular to the right of privacy.

#### *A. The Right to Privacy and the Iranian Constitutional Law*

According to the 22th principle of constitution of the Islamic Republic of Iran, “The dignity, life, property, rights, residence, and occupation of the individual are inviolate, except in cases determined by law”. This principle only observes the privacy in the property; therefore, the privacy of the place of work is neglected unless the job is defined extensively. The bodily privacy has not been referred to explicitly in this principle and it can be defined by interpreting the terms of dignity and soul by which the constitution advocates it. The principle is subjective and can be susceptible to interpretation. The freedom of information is reflected implicitly in the 24th principle of the Iranian constitution. It states that

Publications and the press have freedom of expression except when it is detrimental to the fundamental principles of Islam or the rights of the public. The

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<sup>44</sup> The principle of “Dominancy on belongings or property” has been assumed as a definite principle of jurisprudence. It is clear that the dominance of human over the self is prior to that over property. (Sayyed Mohammad Kazem Mostafavi, *Mea't Ghaeda Al Feghhia*, at 141—341). If the occupation without his or her consent in properties is a taboo, it means that detention, imprisonment etc. that is regarded as the occupation of his or her body or soul will be absolutely forbidden as well.

<sup>45</sup> Bagher Ansari, *Privacy in Islamic Law and Iranian Law*, 66 LAW AND POLITICAL SCIENCE (Tehran University 2004).

<sup>46</sup> Surah of Noor, 27th verse. According to the Quran and Sunnah, it is prohibited to enter the house of persons without “Stinas and Stizan”. “Stinas” means introducing oneself before entering the house so that the owner of the house opens the door willingly. “Stizan” means the style of the permission to enter the house from the owner of the house.

details of this exception will be specified by law.

One of its exceptions is non-interference in public rights and the violation of privacy is one of the forms of violating public rights.

The 25th principle of the constitution refers to exceptions of this freedom and the privacy of communications has been supported in relation to the most current communicative means. This principle is regarded as one of the most important principles of the constitution. It clearly and explicitly supports the privacy of communications and states that

The inspection of letters and the failure to deliver them, the recording and disclosure of telephone conversations, the disclosure of telegraphic and telex communications, censorship, or the willful failure to transmit them, eavesdropping, and all forms of covert investigation are forbidden, except as provided by law.

The protection of privacy of personal data has not been independently and clearly considered in the principles of the Iranian constitution.

On the basis of the 39th principle of the Iranian constitution,

All affronts to the dignity and repute of persons arrested, detained, imprisoned, or banished in accordance with the law, whatever form they may take, are forbidden and liable to punishment.

The 14th and 20th principles of the constitution have emphasized observing human rights. The right to privacy is very closely related to the dignity and integrity of people and is regarded as one of the most important rights.

Although the Iranian constitution has not explicitly mentioned privacy, the wording of the above-mentioned related principles is susceptible to interpretation and the details of this right have been submitted to the ordinary law. Therefore, it is necessary to refer to the ordinary law to see whether the constitutional principles have been translated into ordinary laws or not or whether these rules have supported privacy or not. The following sections will examine ordinary law in Iran.

### *B. Protection of Privacy under the Iranian Criminal Law*

Some articles of criminal law have implicitly protected this right; however, the words and phrases of these rules are general and open to interpretation. Some others have explicitly recognized it and determined punishments for those who violate this right. In addition, the Iranian legislator system has recognized the main four categories of the right to privacy, which have been mentioned in the first section.

Article 802 recognizes personal freedom as one of the aspects of right to privacy;

Any official who deprives personal freedom of people or deprives them from the determined rights in the law shall be sentenced to six months or three years of imprisonment in addition to deprivation of three to five years from governmental jobs.

According to interpretations of constitutional principles, privacy is included in personal freedoms of people. Freedom from the interference of others in personal life is one of personal freedoms which has been considered in the 9th principle of the constitution.

Article 812 recognizes the privacy of houses stating,

Any judiciary or non-judiciary official or someone who has been referred governmental service enters the houses of people without their permission or consent shall be sentenced from one month to one year of imprisonment unless he or she proves that he or she has done it based on one of his or her superior who has been qualified to this order and has made to obey this order which in this case, the punishments shall be performed for anyone who has ordered and if he or she commits other crime, he or she shall be punished for it and if this action has been happened at night, anyone who has committed or ordered shall be sentenced to maximum punishment.

The 694th article and 691th and 692th articles of criminal law is also about the privacy of houses.

Article 814 is about the privacy of communications stating,

Any official which opens the letters of people, and wire-tap communications or phone dialogues of people without their permission or disclose their topics without their permission, shall be sentenced one year to three years of imprisonment or cash punishment of six to eighteen million Rials.

The 918th article states,

Anyone who enters the house of people by forcing or threatening shall be sentenced to six months to three years of imprisonment and if the number of those who commit a crime is two or more and one of them at least has a gun, shall be sentenced to one to six years of imprisonment.

The 836th and 872th articles consider the privacy of communications and protection of confidentiality of documents and determine imprisonment for those who violate them. The 836th article mention that

Any state official including judiciary and administrative officials which has destroyed or concealed written documents and papers submitted to them or gives them to someone who should not legally have them, shall be sentenced from three months to one year of imprisonment in addition to compensate the damages.

According to the 448th article,

Doctors, surgeries, midwives and those who sell drugs which should maintain the secrets of people, if they disclose them, shall be sentenced to three months or three years of imprisonment or cash payment of one million and five hundred thousands to six million Rials.

Phone disturbance is one instance of violating privacy which has been recognized under the 868th article of the Iranian criminal code. According to this article,

Whenever anyone makes disturbance for others by phone or other communicative means, shall be sentenced from one month to six months of imprisonment in addition to exercising the specific rules of Telecommunication Company. According to article 893, any kind of threat to disclose the private information is also a crime, Whenever anyone threatens someone to murder, physical, prestigious or financial losses or threatens someone to disclose the secrets of him or her or his or her relatives considering that he or she has demanded some money or some acts or leaving some acts or not, shall be sentenced to two months to two years of imprisonment.

Despite the laws protecting different aspects of the right to privacy, both at the constitutional level and ordinary laws, victims of rape still suffer the lack of proper law protecting their right at a procedural level including court and police investigation. The following sections will discuss how the right to privacy is crucial to victims and how the Iranian procedural law ensures this right.

### *C. Protection of the Right to Privacy under the Iranian Criminal Procedure*

The law of criminal procedure has a more significant impact compared with the other rules because it limits the power of interference of government and state officials and guarantees the right of people. The criminal procedural rules are those which can ensure exercising rights of people including victims by the employees of criminal justice institutions, lawyers and forensic medicine, etc. The rules should guarantee that an unauthorized person cannot use and possess private information during the process of investigation, for example, collect and store personal and private data and both victims and offenders have to be subjected to legal regulations in criminal justice institutions. The most important issue in this part has been allocated to procedural aspects of the protection of victims of sexual violence during police and judicial mechanisms. While some aspects of the right to privacy have been protected in the law of criminal procedure and it

proves that the legislator had the intention to protect the right to privacy, substantial research shows that some of these articles actually work against victims.

### 1. Courts Investigation and Right to Privacy

Article 102 of the code of criminal procedure states:

Research in Sexual Offences is prohibited unless in cases which the crime is in public or have a private complainant performed directly by the judge or by the staff of judges.

It can be argued that the legislator has protected the privacy of victims, their personal and familial dignity and this is why the legislator has prohibited inspection and investigation in sexual offences. Investigation of sexual offences can be defined as any judiciary action for discovering crime and proving or attributing it to a person or a group of persons.<sup>47</sup> In fact, this article emphasizes the prohibition of any effort to discover or prove crime. This means that when there is no private complainant or the crime does not happen in public, the inspector should not issue an order for discovering crime. The prosecutor does not have any obligation to follow crime. While sexual relation out of marriage or Zina is a crime under Iranian law if it has committed in a private place and both sides of crime are wise, mature and willing to do it and have not any private complainant, it is prohibited to investigate it and no one, even the prosecutor or judge is allowed to inspect it. According to Islamic law in these cases, any inspection symbolises spreading “Fahsha”, meaning “crimes and sins” and because of the prohibition of any inspection in this regard, trial and punishment are no longer considered. The prohibition of disclosing the sexual crime is based on the policy of “*forgiveness and protection of reputation and dignity in sexual crimes*” which have been emphasized in Islam. However, in some cases in which sexual crimes violate individual and private rights and where there is a private complainant, investigation is allowed in these cases. It is done directly by the judge of a competent court and the file is sent directly to the competent court in these cases.

Some scholars argue that despite the purpose of having a legislator, whose work is to protect the privacy of victims, this should not be lead to violating the other rights of victims and offenders. In other words, it is believed that investigation into these kinds of crimes should be done by a

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<sup>47</sup> Mahmoud Akhundi, Code of Criminal Procedure, Fifth Edition, vol. 5, *Family Violence Prevention Fund*, at 14 (Tehran: Majd Publication, 2006).

separate institution such as the public prosecutor rather than the court itself as it lengthens the procedure and causes carelessness in the issue of sentence. The draft of the code of a criminal procedure that still passing legislation steps generally refers to support the privacy of women victims. Articles 13-123 of the draft state that

Research is prohibited in Sexual Offences unless some cases which the crime is in public or there is a private complainant performed by a judicial authority.

Judicial authority at the end of article has removed the problem of separating the research and investigation institutions. According to articles 14-121, officials are obliged to observe privacy and refuse disclosing information related to identity and the address of victims and witness, except in cases determined by law.

## 2. Holding Closed Courts and Prohibition of Media Publication

Another aspect of protection of victims' privacy is the closed trial in particular crimes such as sexual offences cases. Open courts is one of the important ways to guarantee the rights of the accused. This principle enables the monitoring of proceedings by public opinion. However, in cases of sexual crimes, when the honor, dignity and privacy of victims will be seen at a higher risk, the court may hold a closed trial. This exception is recognized in the international instruments of human rights. For example, article 14 (sub-section 1) of The International Covenant on Civil and Political Rights states that

...The press and the public may be excluded from all or part of a trial for reasons of morals, public order or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

In order to protect the right to privacy of people including victims and the accused, the Iranian law has legislated some rules for the protection of victims. For example, article 352 of the code of criminal procedure has prohibited the publication of the proceedings, which include the person's name, identity, work-related function and social conditions. According to this article, in specific crimes such as sexual crimes, the general attorney may decide whether the courts can be open and public or not.

Article 111-4 of the draft, which has not been ratified yet, states:

The principle is acquittal. Therefore, any limiting actions, divesting freedom, and entering privacy of persons is not lawful, unless by the law, observing

regulations and under the supervision of judicial authority. Anyway, these actions should not be exercised which damage the dignity and generosity of people.

The restriction of the principle of open courts when the victims' privacy is at risk can be sought in a comparable legal system. For example, in accordance with Article 2 Section 3 of England criminal justice code 1991, the court has to be open in some crimes. Article 2 Section 3 indicates that

(3) Where the court passes a custodial sentence for a term longer than is commensurate with the seriousness of the offence, or the combination of the offence and other offences associated with it, the court shall (a) state in open court that it is of the opinion that subsection (2b) above applies and why it is of that opinion; and (b) explain to the offender in open court and in ordinary language why the sentence is for such a term.<sup>48</sup>

On the other hand, Article 11 of Contempt of Court Act 1981 indicates that:

In any case where a court (having power to do so) allows a name or other matter to be withheld from the public in proceedings before the court, the court may give such directions prohibiting the publication of that name or matter in connection with the proceedings as appear to the court to be necessary for the purpose for which it was so withheld.

The information about the private life of victims and their victimization can be included in this article.<sup>49</sup>

In the Italian criminal procedure system, it is not possible to publish the name and identity of rape victims and journalists cannot provide details that lead to identification of the name of these victims.<sup>50</sup>

Under article 201 of the German criminal code, recording the information of other people is forbidden.<sup>51</sup>

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<sup>48</sup> <http://www.legislation.gov.uk/ukpga/1991/53/part/I/enacted>.

<sup>49</sup> <http://www.legislation.gov.uk/ukpga/1981/49/body>.

<sup>50</sup> <http://italy.usembassy.gov/acs/emergency/emergency-crime.html>.

<sup>51</sup> [http://www.gesetze-im-internet.de/englisch\\_stgb/englisch\\_stgb.html](http://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html). This article indicates that "(1) whosoever unlawfully makes an audio recording of the privately spoken words of another; or uses, or makes a recording thus produced accessible to a third party, shall be liable to imprisonment of not more than three years or a fine. (2) Whosoever unlawfully overhears with an eavesdropping device the privately spoken words of another not intended for his attention; or publicly communicates, verbatim or the essential content of, the privately spoken words of another recorded pursuant to subsection (1) No 1 above or overheard pursuant to subsection (2) No 1 above shall incur the same penalty. The offence under the 1st sentence No 2 above shall only entail liability if the public communication may interfere with the legitimate interests of another. It is not unlawful if the public communication was made for the purpose of safeguarding overriding public interests. (3) Whosoever, as a public official or a person entrusted with special public service functions violates the privacy of the spoken word (subsections (1) and (2) above) shall be liable to imprisonment of not more than five years or a fine. (4) The attempt shall be punishable. (5) The audio recording media and eavesdropping devices which the principal or secondary participant used may be subject to a deprivation order. Section 74a shall apply."

### 3. Confidentiality of the Victim's Documents and Records

The privacy of information of victims, their documents and records is a fundamental principle when discussing victims of sexual crimes who may often feel ashamed because of the nature of crime. The confidentiality of personal information and security of records is a central point to treating victims with dignity and respect. Accessing and disclosing information have to be limited to people who are directly related to the case in question and have to be based on legal requirements.<sup>52</sup> The police and prosecutors should not be allowed to disclose information about the identity of victims to organizations and institutions outside the criminal justice system. Sometimes, victims' information including their identities is disclosed through the police, courts staff and doctors to the media and this results in invasion of the privacy of victims and loss of their honor and dignity. Many scholars believe that police and courts should avoid publishing the name of victims in rape cases and suggest the identity of victims and their address may be kept confidential during criminal procedures in order to protect them from further embarrassment.<sup>53</sup> Another important principle that should be considered during police investigation is that no individual and no official investigator can collect more information than is necessary for investigation. Police departments should explain the reasons and the aims of collecting information to victims and inform them about who will receive their information, why and how and for what they will use them. Respect to the privacy of victims during gathering important information and evidence is required and should be ensured by following the conditions below:

- 1) The purposes of gathering information have to be precisely determined.
- 2) Only the required questions have to be asked of victims.
- 3) Only required data has to be collected and recorded.
- 4) Victims have to be informed of how they use information.
- 5) Confidentiality has to be preserved according to law.
- 6) The information has to be used only in order to pursue the purpose

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<sup>52</sup> Response to sexual assault Interagency guidelines for responding to adult victims of sexual assault, November 2001, These guidelines have been developed by an interagency group including representatives from Queensland Health, the Queensland Police Service, Office of the Director of Public Prosecutions, Department of Families, Office for Women, Department of Aboriginal and Torres Strait Islander Policy, Office of the Adult Guardian and Legal Aid Queensland., (Dr) R L Stable Director-General Queensland Health November 2001 Mr R Atkinson Commissioner of Police Queensland Police Service Mrs L J Clare Director of Public Prosecutions Office of the Director of Public Prosecutions.

<sup>53</sup> Elaine Pearson, *Human Traffic, Human Rights: Redefining Victim Protection* (Anti-Slavery International, 2002).

for which it is collected.

In addition, respect to the privacy of victims requires that their addresses, telephone numbers and their personal contacts are considered as private data in police investigation. Preparing guide principles books in police training units about how to treat victims has an important role in promoting the privacy of victims during the process of police investigation. The more police know about the effects of crimes such as sexual violence victimization and the importance of the privacy, dignity and honor of victims, the more promptness and willingness there will be to report crimes. With respect to Iranian law, as it has been referred in the discussion of substantive law, article 648 of the Islamic criminal code of Iran has generally mentioned the issue of protecting professional secrets. On the basis on Articles 12-121 of the aforementioned draft, in order to observe privacy, the officials are obliged to refuse disclosure of information related to identity, address of victims and witnesses unless the law allows otherwise. Articles 11-123 of the draft state that in cases in which the access to personal information such as the victim's name and surname, address and phone number jeopardizes the physical integrity and dignity of the victim, the inspector is obliged to prepare necessary actions in order to prevent this access.

In addition to the necessity of criminalization of the violations of the right to privacy, judges have to apply their legal authority to respect the privacy of victims and witnesses during the trial. For instance, one of the aspects of the protection of privacy of victims during court investigation is not disclosing information about victims' previous sexual offences? In some hearings, lawyers of the accused tried to undermine the situation of victims by disclosing the victim's information and her/his previous sexual relationship. This point is more important when the victims of crimes such as rape may be subject to other charges despite of their victimization. In some cases, even the clothing of victims and their private relationship with the accused, such as their letters and photographs have been considered as the woman's consent to have sex. According to comparable legal systems, many of procedural systems have not recognized the victim's previous sexual relationship. For example, in the case of *Wayman v Wilinsky* in 1997 in New Jersey, the applicant protested the disclosure of sexual history of her murdered son to the police. In this case, the court accepted the claim of applicant. In the opinion of the court, previous sexual relationships and personal data are private. The only thing that can justify the disclosure of these records is public interest or a legal obligation and in this case, there

was no interest or public obligation.<sup>54</sup>

Furthermore, sometimes questions proposed by the court are not relevant to the case and victims have felt shame and embarrassment because of telling everything before the court. Some judges have raised questions in the process of inquiry, which shall not only help the process of discovering truth, but also provide space of distrust and doubt to victims and expose them to the risk of secondary victimization. For that reason, the statements of victims and presented information must remain confidential. In many countries, victims can request not to disclose information and the judge will issue immunity order after obtaining the direct relation between confidential information and fair trial.<sup>55</sup>

Another important aspect of protection of victims is confidentiality of information, healthcare and counseling documents and records of victims of sexual offences. Confidentiality is extremely important for obtaining the trust of patients and is closely related to the right to privacy. However, sometimes the discovery of truth requires disclosure of truth about that. From the viewpoint of court, in some cases the contents of dialogues, special records and documents between two persons must be disclosed in civil or criminal trial. It is the duty of the court to make a balance between preserving healthcare, counseling confidentiality and the right of the accused to fair trial. For example, the supreme court of Canada in determining whether communication in particular proceeding is privilege adopted a balancing approach to the competing rights protected by the Canadian charter of rights and freedom: in each case the trial judge weights the right of privacy of victims of sexual assault against the right of the accused to fair trial. In balancing these two rights, the following factors must be considered: (1) the necessity of the publicizing of the record for the rights of accused to formulate a full answer and defend himself/herself; (2) the probative value of record; (3) the nature and the extent of exception of privacy in the record; (4) whether production of record would be premised on any discriminatory belief or bias; (5) and the potential prejudice to the complainer's dignity, privacy and security of the person that would be occasioned by production of the record.<sup>56</sup>

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<sup>54</sup> Case number No. 99-1768, Court of Appeals for the Third Circuit, available at <http://bertonepiccini.com/home/wp-content/uploads/2011/10/Garbar-1.28.13.pdf>.

<sup>55</sup> Victims Services Section Department of Criminal Justice Services, A Summary of Victim's Crime Victim and Witness Rights Act Your Rights and Responsibilities, at 2 (December 2008).

<sup>56</sup> M JACKSON AND M MACCRIMMON, RESEARCH CONFIDENTIALITY AND ACADEMIC PRIVILEGE: A LEGAL OPINION, at 33 (Report commissioned by the SFU Task Force on Research Ethics, 1999). Online at <http://www.sfu.ca/~palys/JackMacOpinion.pdf>.

## CONCLUSION

Due to the nature of rape crimes, victims feel more shame and embarrassment and the protection of their privacy is more crucial than in other crimes. Although there are some documents and judgments related to different aspects of this right, there is no comprehensive definition of the right to privacy. The first step to this end, in the context of international law, is providing an appropriate definition of this right in relative or independent international documents. This definition will be very helpful for determining what privacy means for victims of rape crimes and what the different aspects of this right are. These documents should include the definition of this right, its aspects and the duty of the legislative and judicial system to protect this right. In this way, specific and concrete protection for vulnerable victims such as victims of sexual crimes would be ensured. These kinds of documents can create a responsibility for state parties and also be used as a model for domestic legal systems in order to define this crime with regard to their culture.

In the context of the Iranian legal system which is based on Islamic law, it can be said that the effect of violating privacy of the victims of sexual crimes is more important than in other crimes because these kinds of crimes are a taboo in Islamic society. Therefore, the effects of such disclosures are not only problematic for victims, but also for their partners, families and especially children. Considering the fundamental principles of Islam, the privacy of people should be protected at a domestic level of Islamic countries as well, and neither people nor state officials should violate it unless it is in contrast with public interest or the rights of other people.

In this context, it can be noticed that despite this right is inferred from Islamic principles, it is necessary that a clear definition of this right, its different aspects and the punishment of violating this right be submitted in the Iranian legal system. Although the Iranian legislative system, as mentioned in the text, took an approach to protect this right, proper measures are needed to protect and monitor the implementation of the privacy of victims of rape and other sexual crimes. Therefore, the improvement in the substantive law of the Iranian legal system should consist of training judicial and police staff in order to ensure that this right is implemented properly.