

THE PROTECTION OF JOURNALISTIC PRIVACY AND MEDIA FREEDOMS FROM THE PERSPECTIVE OF THE COMMUNICATOR UNDER PALESTINIAN LAW

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Abstract

In the modern media practice, the issue of journalistic privacy has gained a crucial topic, especially with the accelerated technological advances, the growth of digital media sources, and the growing popularity of various surveillance technologies. These changes have had a major impact on the professional life of journalists as communicators, posing complicated legal issues of the privacy of journalism and how it correlates with the media freedoms. This paper discusses the privacy of journalism under the communicator as a Palestinian law with special priorities on the tension of protecting privacy and guaranteeing freedom of expression and press. It seeks to determine how far the constitutional and criminal laws on Palestine would go in ensuring the privacy of journalism and also regulate media practices. It also discusses how criminal processes, cybercrime laws and new technologies influence the professional freedom of the journalists and the confidentiality of the journalism comprising of sources, communications and digital content. The study utilizes an inductive-analytical approach, and the analysis of the pertinent legal documents and the judicial practice helps to identify where the journalistic privacy can be impacted, to consider the security or order-related considerations. The results show that there are significant loopholes in the legal safeguarding of journalism privacy whereby surveillance, communications interception, and the lack of explicit safeguarding of journalism sources on the digital platform are concerned. It is concluded that the existing legislation needs to be further advanced to promote the privacy of journalism and at the same time take a moderate stand to protect the media rights and address the valid interests of the society. In line with this, the research findings suggest that legislative and judicial protection should be reinforced to guarantee the successful protection of journalistic privacy in Palestine, according to international standards.

Keywords: Journalistic Privacy, Media Freedom, Criminal Law, Palestinian Law, Cybercrimes.

INTRODUCTION

Considering the fast development of technologies and increasing the number of digital communication platforms, the privacy of journalism has become one of the most important issues of the modern legal system. The growing dependence on electronic information, surveillance technology and use of digital media tools has had a profound impact on the professional environment of journalists as communicators posing the thorny and legal issues of the boundary of media freedom and the scope of privacy security as provided

by the law of a nation. Here, constitutional guarantees and criminal law provisions overlap to control the journalistic activity and to decide to what degree journalists can use their professional functions without the violation of law. The study will look at how journalistic privacy can be safeguarded under the Palestinian legal framework relative to the degree in which the constitutional and criminal acts help in protecting the privacy of journalists without limiting the effective utilization of media rights. The paper attempts to investigate how these legal mechanisms work together or whether tension exists between privacy protection and the regulatory aspects in media practices as stipulated by the international human rights requirements. Privacy as a principle of freedom has been viewed as an important value in legal and philosophical discourse. The profound feeling of secrecy and of modesty which, as Professor Henri Mazeaud has noted, suffuses the depths of every human being, demands the safeguarding of the secret of individual life, individual or family. Liberty would not exist without this secret (Najjar, 1997). This concept gains special importance in the journalistic environment where secrecy of sources, information, and professional documents is one of the key requirements of press independence. Any kind of unwarranted intrusion into this safeguarded realm is consequently, in theory, an illegal infringement of not only the rights of individual persons but also the media (Alwahidi, 2018). Under the Palestinian legal system, the jurisprudence of the Palestinian Constitutional Court has established the normative priority of international agreements, and it is believed that the agreements occupy the second place below the Basic Law and the first place above ordinary legislation (Decision, 2017). This stance highlights how the international human rights tools, specifically those on privacy and freedom of expression, are applicable in informing the interpretation of national law to influence journalistic practice. The right to privacy is a part of the overall system of human rights and freedoms, imposed by such international documents as the Universal Declaration of Human Rights of 10 December 1948. The 12th article of the Declaration specifically outlaws arbitrary intrusion to privacy, correspondence, and reputation, which gives normative basis to the safeguarding of journalistic communications and professional confidentiality. The majority of new constitutions in modern societies have acknowledged the right to correspondence, telephone, and the information sent via communication networks as being basic freedoms. In media-related matters, this protection is applied to the journalistic communications, online content, and protection of sources. Although a more limited concept of privacy used to be concerned with material aspects like the sacredness of the home and mails, the modern legal thought has realized that journalistic privacy is also subject to the more intangible dimensions including professional communications, online transactions, and the right to regulate distribution of images and information. According to Carbonnier, privacy was defined as the sanctuary area where an individual has a right to withdraw himself/herself against others and to be left in peace, an aspect that is still applicable in the application to the professional field of journalists (Carbonnier, 1969). More contemporary research stresses that privacy has become more fundamentally based on the immaterial aspects of human existence that include thoughts, feelings, and thinking, making the unauthorized surveillance or data gathering violate privacy (AlAshry, 2016). In this regard, journalistic privacy protection through the lens of the Palestinian law

should be viewed as the natural continuation of human dignity and personal liberties, in addition to a precondition of effective exercising of freedom in the media. The violation of journalistic privacy will not only weaken the individual rights, but it will also be a direct threat to the independence and credibility of the media. This paper thus finds journalistic privacy at the border of constitutional rights, criminal law, and media freedom, and attempts to appraise the sufficiency of the Palestinian legal system to meet modern issues of journalists in the digital era.

Theoretical Significance

The general theoretical importance of the work is that it would respond to one of the most pressing legal and intellectual dilemmas that are presented due to modern technological changes and their influence on the media practices. The study is involved in the philosophical and legal debate of two extreme positions: one position prioritizes the right of privacy of journalists as a necessary extension of personal rights, humanity and media rights, the other position is the safety of society and social order, and tends to restrict journalistic actions and secrecy in the name of a common good. This controversy is especially acute in the era of digital society, when more and more sophisticated communication media and monitoring systems undermine the privacy of journalism. This research adds to the enhancement of the legal theory by considering journalistic privacy as the right of the communicator rather than as an individual right. The study makes a contribution to the legal research because it will discuss the issue of whether a journalist must violate the privacy of his/her communications, sources, and professional materials so as to adapt to new media technologies or whether the privacy of his/her communications, correspondence, and the right to the image should be a constitutional right. By doing it, the study places journalistic privacy in the context of constitutional rights, criminal regulations, and media freedom, which leads to a subtle theoretical contribution to the current legal discourse.

Practical Significance

The practical relevance of the research lies in the low effectiveness of the current legal regulations to offer any comprehensive legal and judicial protection of the journalistic privacy by the Palestinian law. Though the threats of digitalization, cyber surveillance, and media which are data-driven, are becoming increasingly serious, no evident and sufficient solutions have been provided in the Palestinian legislation and judicial practice that specifically concern the protection of journalists as communicators. This gap is especially apparent in contrast with some other legal systems that operate in different countries that have worked out clear protection of journalistic sources, professional secrecy, and privacy in connection with the media. Based on this, this study aims to contribute to the filling of the gaps in the current legislative and interpretative literature by making a proposal of a more concrete legal interpretation of the journalistic privacy in the Palestinian case. The research results can guide judges and legal practitioners to interpret the criminal provisions regarding crime involving a privacy breach in a way that does not incur on media freedom but enforces justifiable interests of the people. In addition, the research is expected to increase awareness among news reporters, jurists,

and policymakers about the potential significance of protecting journalistic privacy in the digital world, which will facilitate the creation of more moderate legal regulations that will protect privacy and media freedom.

Research Objectives

- To interpret the constitutional and legal guarantees pertaining to journalistic privacy and study the degree to which the guarantees are embodied in the criminal legislations governing the media practices in respect to the Palestinian law and comparative legal systems.
- To investigate the modern issues of journalistic privacy in the digital era such as cybercrimes, digital surveillance, data gathering and trading, artificial intelligence application and their effects on the freedom of the media and professional journalistic work.
- To evaluate the success of the current legal frameworks to combat the emerging breaches of journalistic privacy, especially those in the confidentiality of sources and communications and digital data, as well as to determine the merits and limitations of the current legislative and judicial methods.
- To recommend viable legal and judicial suggestions to come up with Palestinian laws and safeguards in such a way that safeguards the privacy of the journalism, freedom of the press, and the needs of the society and order.
- To further sensitize legal knowledge of the importance and the boundaries of journalistic privacy, both in journalists as communicators, as well as in legal and institutional systems, given the accelerating technological changes and changing media conditions.

Research Objectives

- To examine the constitutional and legal guarantees concerning journalistic privacy and see how much these guarantees are embodied by the criminal legislations governing any media practice under the Palestinian law and in relation to the comparative legal systems.
- To scrutinize the modern-day threats to journalistic privacy in the digital era, such as cybercrimes, digital surveillance, data collection and trading, and the application of artificial intelligence, and their effects on media freedom and professional journalistic practice.
- To evaluate the efficiency of the current legal regulations in combating the emergent infringements of journalistic privacy, especially when it comes to confidentiality of sources, communications, and digital materials, as well as, discovering the resources and weaknesses of the existing legislative and judicial practices.
- To offer any viable legal and judicial suggestions to help formulate Palestinian legislations and protective tools in a form that will guarantee successful balance

between journalistic privacy, media freedom with regard to the needs of societal security and communal order.

- To raise awareness of legal understanding of the importance and boundaries of journalistic privacy, among journalists as communicators as well as in legal and institutional structures, in the context of fast technology advancement and media environment changes.

RESEARCH METHODOLOGY

The proposed research is based on a comparative inductive-analytical approach that relies on the analysis of the constitutional and criminal legal provisions of journalistic privacy in Palestinian law, based on the selected comparative legal systems. The methodology entails a systematic review of the pertinent legal documents, judicial rulings, and law literature to determine the effectiveness of the currently in place legal protections given to journalists as communicators especially in regard to both media freedom and professional confidentiality. More so, the research employs a knowledge and contextual approach to determine the current issues and demands of journalistic privacy in the online world such as cybercrimes, online surveillance, data violation and utilization of sophisticated communication technologies. This method is justified by the analysis of real-life examples, international law tools, and publications put forward by international associations of media freedom and digital rights. Moreover, an analytical approach to the critique is used to assess whether existing legal texts used by Palestinians are sufficient to handle technological advances and their influence on journalism. The research will attempt to highlight the gaps in the legislation and judicial systems, as well as offer viable legal solutions to address the flaws in the current state of media privacy protection and strike the right balance between the freedom of the press and the legitimate needs of the society and law and order.

Research Problem

The main issue of the proposed research is the efficiency of Palestinian constitutional and criminal laws in ensuring journalistic privacy in the context of the rapid technological change and the growing digital media space. On the one hand, the question concerns how wide and abstract the constitutional provisions, which are usually stated, can protect the privacy of the journalism and media freedom with respect to the digital surveillance, electronic monitoring, and the violation of journalistic work by means of technologies. However, the issue is also reaching the sufficiency of criminal laws to respond to current threats to journalistic privacy, such as interception and unauthorized access to electronic information, cybercrimes and the breach of the confidentiality of journalistic sources. The given dual challenge points to the conflict between the privacy of journalists as the essential element of the freedom of media and the growing need to rely on security-driven legal actions that should preserve the order in the society and ensure its safety. This is compounded by the fact that the Palestinian law does not explicitly and specifically provide legal provisions that govern the journalistic privacy and thus making the legal protection of journalists as communicators in the digital age effective.

The main research issue leads to the following sub-questions:

To what level do the constitutional guarantees of the Palestinian law offer sufficient safeguards of the journalistic privacy and freedom of the media when it comes to the contemporary challenges of digital and technological technologies?

The question is, what are the criminal legislations against the new forms of violating journalistic privacy, especially the ones regarding digital surveillance, data breach, cybercrimes, and confidentiality of journalistic communications and sources?

In which aspects does the Palestinian law converge and diverge with the constitutional provisions and criminal law in regulating and protecting the privacy of the press?

To which extent are the Palestinian legislations effective in maintaining a compromise between the security and freedom of media and journalistic privacy of Palestinians and the needs of society and order?

What are the most effective legal and judicial solutions to enhance the practical implementation of legal frameworks of journalistic privacy in the digital media domain?

In this light, one can argue that journalistic privacy is implicitly acknowledged in constitutional rights as established in the provision of rights and freedoms (Section One), though under criminal legislations, it is given some protection through criminalizing particular acts that violate journalistic communications and confidentiality (Section Two). Nevertheless, the validity and consistency of this protection is open to critical legal analysis.

Part I: Non-Express Enshrinement of Journalistic Privacy to the Constitution.

Constitutional protection of privacy is one of the key cornerstones of the rule of law because it protects the rights of people, maintains human dignity, and provides the successful implementation of the civil liberties, especially the freedom of expression and press. In the modern media setting, the dynamism of technology and society has brought fresh issues to the safeguarding of journalistic privacy, in particular, regarding the matters of digital communication channels, surveillance standards, and media operation based on data collection (AlAashry, 2022). It follows that this section will discuss the constitutional provisions of journalistic privacy in Palestinian law by evaluating both theoretical and practical provisions of the same. It starts with constitutional principles that implicitly and expressly safeguard journalistic privacy (Subsection One) and ends with an evaluation of the gaps in the constitutional regulation in this area (Subsection Two).

Subsection One: Enshrinement at the Level of Constitutional Provisions

The constitutional principles safeguard the privacy of the journalism either by express or implied constitutional provisions assuring the inviolability of the privacy of the personal life and the unlawful interference of the communications and professional confidentiality (Branch One), or the unlawful interference of the freedom of the expression, freedom of the press, confidentiality of the correspondence and protection against any arbitrary

interference (Branch Two). Collectively, these tenets represent the integrative character of the constitutional system of protection of human dignity and media freedom.

Branch One: Constitutional Provisions Protecting Journalistic Privacy

The idea of journalistic privacy is based on the greater understanding of privacy as an inalienable and human right that arises out of personal freedom and human dignity. In the professional environment of journalism, this right has a number of crucial aspects, such as the secrecy of journalistic sources, personal communications, professional messages, and computer files, as well as the photographs taken or created in the context of journalistic activity (Al-Assar, 2024, p. 42). These components cannot be guarded without the independence of the journalists as communicators and the credibility of the media.

Most constitutions contain direct clauses which protect privacy by either expressly declaring the sanctity of the private life, or by including it within a wider set of general rights, including individual security, privacy of communications, and the right not to be spied upon. Such protections are constitutional provisions in the journalism profession to ensure the confidentiality of professional communication and media related data. In most instances, any such restriction of such guarantees is normally under stringent legal terms which include written and rational judicial approval which identifies the competent authority, the identity of the subject matter, the legal basis, the nature of the purported crime, and the time and space limits of the action. This set of requirements is a constitutional foundation of restricting journalistic privacy under extraordinary situations. Effective judicial control of the constitutional provisions of journalistic privacy should also be strengthened by the desire of the legislator to uphold the basic rights and freedoms. Judiciary has been established as the main protector of constitutional rights such as privacy and media freedom. In this regard, the release of permits that allow surveillance, searches, or interception of communications is under the responsibility of effective judicial authorities, and is often performed by the Public Prosecution which is entrusted with the responsibility of determining the necessity and proportionality of such actions as per the law. Most of the personal freedoms and the sanctity of private life is covered by the Amended Palestinian Basic Law of 2003 that gives a general constitutional defense. Article 32 expressly forbids the violation of personal rights or individual life and defines such violation as a crime, there is no statute of limitations on the civil and criminal claims on the basis of such violation. This clause lays a solid constitutional ground on protecting the privacy of journalism and obliges the Palestinian Authority to pay reasonable damages to victimized parties. The Basic Law also protects some elements of the privacy that are pertinent to the journalistic activity, including bodily and spatial privacy, e.g. the inviolability of the home (Hazboun, 2019). Article 11 forbids the search of any individual without a judicial order that is issued based on the legal procedures, and article 16 forbids subjecting individuals to any medical or treatment procedure without their consent. Regarding the matter of spatial privacy, Article 17 outlaws the surveillance, entry, or search of homes without a reasonable judicial order and proclaims any such ensuing evidence as worthless. All these provisions are strengthening the constitutional defense of journalism work that is done in personal areas or in the workplace, and ensures the

right to compensation due to illegal searches or surveillance. In the majority of legal systems, privacy is a constitutional right, frequently expressed in general terms which leave more specific guidance to normal legislation. Nonetheless, other constitutions do not give specific constitutional instructions on how privacy should be regulated but leave it mostly to statutory law (Nossek, 2003,). Article 22 of Decree-Law No. 10 of 2018 on Cybercrime in the Palestinian scenario bans the unlawful or arbitrary intrusion to the privacy of a person, family, home, or correspondence, which extends constitutional coverage to the domain of digital and media content. On the same note, Cabinet Decision No. 3 of 2019 on the protection of personal data does not allow companies and service providers to access, and use the personal data, either direct or indirect, without the prior consent of the data subject, with legal responsibility. These legal provisions will supplement constitutional values with extra protective measures regarding journalistic information, electronic communications, and professional records in the changing media environment.

Branch Two: Constitutional Principles Safeguarding the Components of Journalistic Privacy

Other than express constitution clauses, journalistic privacy is also safeguarded in most constitutional systems by a collection of unspoken constitutional principles, such as human dignity, freedom of expression, freedom of the press, and personal security. Even though the right to privacy is not explicitly mentioned in these principles, the constitutional interpretation comes to appreciate that these principles involve safeguarding the personal and professional information, protecting the confidentiality of the journalistic correspondence, and the confidentiality of communications required to conduct journalistic activity. States and regulatory bodies at the international and regional levels have tried to strengthen the security of privacy by adopting laws that address the digital transformation and the emerging issues concerning digital surveillance, data processing, and electronic communication. This tendency has included either the integration of new laws or the revision of the current legal and procedural principles to provide the efficient legal protection of privacy in the digital era (AlAshry et al., 2021). Such developments are especially applicable in the context of the media where the professional activities of the journalists are becoming more and more dependent on the digital platforms and electronic communication networks. Although there is no direct and detailed legislative tool governing the journalistic privacy, such right is implicitly safeguarded in the Amended Palestinian Basic Law of 2003. Article 11 states that personal freedom is a natural right and it must be ensured and must not be infringed, hence this is used as a basis by the constitution to protect the privacy as an element of personal freedom. This provision, when applied together with freedoms of expression and press, such as the guarantee of their professional privacy and autonomy further broadens constitutional protection to journalists. Such constitutional principles cause strict requirements to governmental authorities to remain within the boundaries of the law and constitutional regulations in the process of limiting journalistic privacy. Practically this would assume procedural interception of information that could interfere with journalistic communication, like telephone monitoring, electronic communications interception or searching and opening

of correspondence, would have to be granted in advance by a court. Article 17 of the Amended Palestinian Basic Law of 2003 is specifically dedicated to the right to spatial privacy, it states that, homes are sacrosanct and may not be spied on, intruded or searched without a judicially rational decision as per the law. The article also says that any action, which is violated by it, is ineffective and sure of fair compensation of victimized persons in unlawful interference.

Article 17 covers the sanctity of the home but implicitly its protection extends to the rest of the protection of privacy and areas of journalism work and professional work. Therefore, journalistic privacy is automatically protected under this constitutional system and as a result, journalists, as communicators are not subjected to arbitrary or unlawful interference that is likely to compromise the individual right of journalists along with the effective exercise of media freedom.

Subsection Two: Deficiencies in Constitutional Protection of Journalistic Privacy

The constitutional framework is still unsuccessful in ensuring overall and effective protection of journalistic privacy despite the fact that Palestine has signed numerous international human rights treaties and conventions, especially those that concerned the right to privacy, considering the context of digital information and advanced communication systems. Lack of a dedicated constitutional or legislative framework on journalistic privacy has led to a piecemeal protection that cannot entirely protect professional communications, sources, and digital materials of journalists. Legislative and constitutional building, in turn, is an urgent necessity to keep track of the violations, create a sense of accountability, and criminalize any type of interference with journalistic privacy in the public, civil, and personal spheres (AlAshry, 2023). The privacy of journalism as well as the constitutional protection is plagued with a number of structural problems. The most prominent fact is that constitutional writings do not provide a clear and definite meaning of the right to privacy in the context of journalistic work (Branch One). Such ambiguity in underlying concepts allows uneven interpretations undermining the protection of law. Moreover, the provisions of the constitution provide some procedural protection that can avert or cure the abuses of journalistic privacy in an actual state (Branch Two). All these deficiencies highlight the necessity to consider a full-scale legislative and constitutional review to promote the transparency, consistency, and efficiency of the Palestinian legal system in ensuring the privacy of journalism.

Branch One: Ambiguity of the Concept of Journalistic Privacy in Constitutional Texts

A serious conceptual vagueness of constitutional regulation of the privacy is caused by the lack of the clear definition of right to privacy and its professional aspects. This is because of the uncertainties of the law and doctrine surrounding the question of whether privacy is to be considered a separate constitutional right or a secondary notion within more comprehensive guarantees. In most constitutional regimes, privacy is defined in relative, versatile, and changing terms that change depending on cultural, social, and political environments (Schwalbe, 2024). This variability is especially problematic in terms

of journalism, where professional confidentiality and freedom of information need to be legally defined, and their legal standards should be clear and consistent. Constitutional documents do not usually express a specific right to privacy, but incorporate it within larger concepts, like the sanctity of domestic life, the sacredness of the home, the secrecy of the correspondence, or human dignity. The lack of specificity of journalistic privacy in the context of its absence in the constitution poses a legal and political quandary, particularly in the age of fast-paced technological progress and growing surveillance of the digital realm. This has created a divergent interpretation of privacy by the judiciary which has brought inconsistent cases and dissimilar protection of the professional rights of journalists. Practically, journalistic privacy is usually regulated either by mere legislation or judicial discretion, neither of which may be adequate in terms of protection. Moreover, the constitutional privacy protection is often subject to the exceptions which are explained by the reasons of national safety, order in the state, or national interest. In a certain case under extraordinary conditions, the freedom to exercise basic rights, which covers newspaper privacy, may be limited, e.g., by an emergency. According to article 111 of the Amended Palestinian Basic Law, the limitation of rights and freedoms in case of state of emergency should only be as much as it is necessary to reach the stated goal. States of emergency are exceptional legal regimes which have been implemented to deal with major threats to national security or to stability in the country. Governments can implement policies that have severe implications on rights and freedoms, depending on the character of the threat. In these cases, governments tend to address the restriction of journalistic privacy by the reasons of security, whether they claim it is necessary to provide more surveillance and monitoring. As a result, journalistic privacy is one of the most endangered rights in an emergency situation since the activities of the state are often directed at its fundamental elements, such as the privacy of journalistic correspondence, telephone and electronic communication, and the rights to images. This fact demonstrates how weak constitutional guarantees of journalistic privacy are and how we need more explicit constitutional guarantees that provide restrictions on discretionary intrusion even in extraordinary situations.

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

Constitutions are developed to accept the individual rights and freedoms and such role can be performed only in case of the power of the leading and binding constitutional norms. The conversion of constitutions into the instruments of consolidation of political power, in which they can and to which they are likely to be interpreted or otherwise modified by the ruling authorities, deprives them of all normative power and their capacity to restrain political power. These are undemocratic habits of practices that may ultimately expose constitutional regimes to dictatorship. In this case, journalistic privacy, in particular is likely to be interfered with regarding political and security issues especially the right to privacy. The rights and freedoms can bear a concrete sense only when they are guaranteed by an independent higher authority, i.e. constitutional/supreme courts, which carry out fruitful checks, and ensure that the guarantees of the constitution are not neglected. It is thus very necessary to facilitate the constitutional courts to balance the actions of the legislative arm, the executive arm to ensure that their actions are not

unconstitutional as well as to ensure that the actions of the legislative and the executive arm do not infringe on the rights and freedoms of individuals including the right to privacy on unreasonable grounds. This type of constitutional control strengthens the popular sovereignty by availing citizens an opportunity to indirectly exercise control on political force through free judicial and regulatory organizations. As Amin (2002) explains, judicial constitutional review states that the people are directly involved in the government and justice is enhanced. Whether the legislation act which is subject to review by the courts as being constitutional or not, and whether the constitutional court has the power to ex officio take action should a unconstitutional variant be found, is a key safeguard of fundamental rights. Through this, individuals are able to seek the repeal or alteration of the unconstitutional acts or can be compensated of the acts of the government that violate the constitutional values. The constitutional judge plays a great role in the protection of the right to privacy by considering whether the laws and regulations are constitutional and whether they are making undue and unreasonable demands on rights and freedoms. Other legal systems oblige the constitutional courts by legislation to take into account the constitutionality of legal provisions in relation to the issues that they are resolving. The law of the Palestine Constitutional Court No. 3 of 2006 under article 27(4) states that when deciding a case, the court may review any unconstitutional provision of law which appears to the court to be of direct bearing on the case even though it is not brought to the attention of any of the parties to the case but that review must be material to the case. Even though this is a formal provision, the Palestinian constitutional judiciary is bedeviled with the issues of having the right to privacy highly secured. One of the most nontrivial obstacles is likely to be the absence of a detailed systematic legislative framework that regulates the issue of privacy as a constitutional right that is unique. Although Amended Palestinian Basic Law of 2003, particularly, Article 32, generally, contains the prohibition of the violations of personal freedoms and the sanctity of the personal life, the issues are formulated quite generally and do not offer any particular provisions according to which the given right to privacy can be defined. This confusion is especially troublesome in the conditions of the contemporary digital problem, such as information and data leaks, cyber-spying, AI programs, and surveillance and monitoring of journalists, activists, and political dissidents. Besides, the Palestinian Constitutional Court established in 2016 has just begun its stages of development in terms of the establishment of the institution and, therefore, the constitutional jurisprudence on privacy protection is not yet present. The independent oversight mechanism remains poor, and despite having the official designation, the limits to the independence and efficacy of the mechanism are overloaded particularly in the situation when the legislative body is not operating in its full capacity (Hamdy, 2002). These constraints restrain the capacity of the court to control and respond to the invasion of privacy that take place by the security agencies or any other governmental body. Additionally, the stipulations of some of the already existing laws, in particular, the Cybercrime Law, contain novel and generalized words and phrases, which give way to the breach of privacy in the name of national security. Such actions provide broad discretions to security agencies to influence communications and acquire personal data without sufficient checks of the courts, a factor that exposes the potential of misuse

and infringement of constitutional privacy provisions. Other issues that negatively affect the practical impacts of constitutional judicial protection in Palestine include procedural barriers and prolonged litigation processes besides general failure of the people to comprehend the constitutional implication of the right to privacy. These considerations cause people not to utilize the judicial system to compensate their privacy violation. Therefore, violations such as digital surveillance or unauthorized gathering of information remain not challenged because we do not have much trust in the judicial system or fear any form of security repercussions. In addition, the absence of the constitutional precedents that are properly developed in terms of protecting the privacy does not precondition the unwillingness of the court to present the aggressive decisions with the intention of empowering this right (Hamdy, 2009). Therefore, individuals, particularly journalists and media practitioners are still ill prepared to resist the growing privacy invasion in the digital age which is prevailing over the political and security interests taking precedence over constitutional requirements to human rights and freedom of the press in the international eye.

Article Two: Recognition of Criminal Protections to Journalistic Privacy. The violation of journalistic privacy may be of different forms, including the presence of pictures of journalists in their personal or professional surroundings without consent, publishing pictures and videos in such a manner that undermines the dignity of their profession, duplication and usage of journalistic messages and materials, as well as utilizing the name, image, and voice of a journalist to earn commercial and political profits and advantages. Such violations are also related to the illegal transmission or publication of information of personal or professional life of journalists to other purposes other than the motives that caused the acquisition of the information. In addition, the publishing of information about personal life of journalists, such as health condition, sexual life, or things that he/she does in non-residential areas is a grave breach of privacy and independence as a journalist. It can be argued therefore that the Palestinian legislator has been partially agreeing with the layering of the journalistic privacy by criminalizing and punishing some of the activities that infringe the right (Subsection One). However, this identification is yet to be completed due to the inefficiencies of the procedures laws and implementation policies that fail to provide complete and effective protection to the journalists against privacy breach (Subsection Two).

Subsection One: Legislative Acknowledgement of Criminal Protection for Journalistic Privacy

In accordance with Article 32 of the Amended Palestinian Basic Law of 2003, which appears on the conclusion of the Title Two on Public Rights and Freedoms, it is given that: Any violation of the personal freedoms, the sanctity of the personal life, or other essential rights and freedoms guaranteed by the Basic Law or any legislation will be a criminal or a civil offense and to such a criminal or civil action, no statute of limitations will apply. The Palestinian National Authority will make sure that he or she compensates the injured person in equal measure. Through this provision, there is a constitutional ground on the matter of criminal protection of journalistic privacy in the classification of any

violation of personal life and individual liberty as a crime. It is in this respect that criminal law, which is the coercive power of the state, intervenes to criminalize and punish whatever infringes on the privacy of journalism and the constitutional interests it embodies particularly the equality before the law and the protection of fundamental rights. Nevertheless, despite the fact that criminal protection exists in certain types of legislation, it continues to be insufficient in regards to its degree and success in providing complete coverage to the contemporary issues that journalists need to deal with.

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

The right of the people to information, and the concept of transparency in criminal proceedings, is bound to receive an inevitable complement in the area of journalistic privacy protection. In as much as transparency is meant to fulfill the interests of justice, it must not be done at the expense of personal communication and professional privacy of the journalists (Badran, 2017). The privacy of the correspondence and the telephone conversations is considered as the most basic human right that is taken into consideration within the international community, as the security of the privacy of the said elements is the primary elements of privacy, given the rapid technological changes and their consequent impact on the media activity. In the European Convention on human rights, article 8 it is said that: All people have the right to privacy of his personal and family life, his household and his mail, yet it is constrained to the instances of legality, necessity and reasonableness within the national security or the safety of the people. The specified standard can be applied particularly to the journalistic communications, which need protection most of all because the former are closely connected with the freedom of speech and the freedom of press. Some procedural and substantive regulations protect journalistic privacy, in part, in the Palestinian criminal law. Any news, which borders on the privacy of persons (including journalists) is likely to be severely limited according to the law to ensure it is not disclosed at arbitrariness levels (Horoub, 2023). The lawmaker targets to maintain the privacy of this kind of information in the best interest of the citizens in which such information might expose sensitive professional or personal data. According to this the Palestinian Criminal Procedure Law prohibits the investigating authorities to open up documents or search articles, which are not related to the criminal being investigated. In article 50(3), it goes on to state that sealed papers and envelopes is not to be opened and that they are to be seized and handed over to the competent authority. It is this protection that is extended further to apply to the journalistic materials known to be in the confiscation of which either the unpublished documents or the confidential mail may be confiscated but not inspected randomly. Article 50(4) further provides that any search activities must be reported in an official analogous report by the conducting officer and the items that were confiscated must be enumerated and the name of the performing officer in the search and the names of those who witnessed the search must sign the report. The advantage of this procedural problem is that it enhances accountability and eliminates discretion regarding the manipulation of journalistic material. Article 51 of the Criminal Procedure Law authorizes the Attorney General or one of his assistants to intercept letters, printed materials, packages and telegrams involving

a crime and the person who committed the crime, in postal and telegraph offices in connection with correspondence. According to this provision, any hindrance in correspondence like in journalistic communications is subject to judicial supervision, which is supervised by the Public Prosecution. In telephone surveillance, Article 51(2) only permits monitoring of a wired and wireless conversation or recording on the issuance of a warrant, which is issued by a magistrate judge, and only when necessary to ascertain the veracity of a felony or misdemeanor that is punishable by a jail sentence of not less than one year. This kind of authorization must be explained and should be restricted not beyond fifteen days and must not be extended. All these circumstances suggest that the lawmaker is aware of the fact that tapping the telephone is one of the most serious encroaching the privacy, namely, its impact on the secrecy of communication. In the digital field, the Decree-Law No. 10 of 2018 on Cybercrimes criminalizes numerous forms of violations of journalistic privacy, including unauthorized access to computer systems or personal data, unlawful acquisition or use of data (Article 4(1)), electronic interception or monitoring of communications (Article 7), or unauthorized access to personal data or networks (Article 12). The law imposes more severe penalties on the violators and the importance of data confidentiality and privacy. It also encourages the integration of technical and administrative policies to protect the personal information and gives a person, like a person in the media, a right to obtain access to, correct or disapprove the usage of his personal information.

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

Although the Palestinian legislator has provided some procedural safeguard to be sure that the right to privacy is not violated by the judicial system, the existing legal norms turned out to be rather poor at discouraging the violation of the right by the individuals and the rest of the population. These breaches have been further encouraged in the journalism field because of the unethical release, editing, and modulation of images and audiovisual information on the social media. The personal discussions and working messages of the journalists, their online profiles, etc. are usually prone to unauthorized intrusion, particularly by the individuals of high technical competency or professional hackers. Moreover, the digital platforms and social media giants have become highly authoritative of the content of the stream of personal communications, and in the vast majority of scenarios, engage in surveillance operations on the basis of algorithmic data analysis. Special advertising systems tend to be founded on surveillance depending on the key words, which will cause intrusive data collection infringing on the privacy of journalism without their approval. It is on this platform that the legislative intervention is very much needed to attract working protection of the accounts, the communications, correspondence, and the professional pictures of journalists in the digital platform.

Traditional techniques of violating privacy are now duplicated via the influence of the new technologies, in particular, online sexual crimes, online blackmail, and abuse of the technologies of artificial intelligence. Most frequently such transgressions have been poured on journalists and more so female journalists and media activists whose personal photographs, personal discussions and secret letters have been used to humiliate, close

down or defame them. Empirical evidence suggests that sexual content is one of the most accessed contents of the internet and what is sent in terms of images and messages by other individuals is commonly used to participate in illegal practices. The word, sex, it is said, is among the most frequently searched words in the internet and the internet comprises a significant part of its contents as pornographic (Jamal, 2000). This fact raises much apprehension of the question of the effectiveness of criminal legal protection measures in countering the invasion of privacy in the cyber space. The European governments have come to appreciate the fact that the cyberspace has resulted in new and devastating criminal acts like cybercrime, breaches of privacy that are digitally mediated. They are usually transnational, committed remotely, and that is why it is particularly hard to trace and allocate them. The cyberattacks can be easily carried out by the use of botnets or proxy network, and it implies that the people who commit the crime can do it at a low cost and low personal risk (diplomatie.gouv.fr). The latter characteristics add to the disincentivizing effect of the criminal law in the country and place journalists in the even more vulnerable position. Online sexual crimes have affected both adults and minors in which they are victimized through being exposed to explicit material or abusing their images in a digital sexual market. Despite the fact that Decree-Law No. 10 of 2018 on Cybercrime considers the exploitation of children, including the production, storing or distribution of pornographic materials, an offense, the impact of such a criminal act is insignificant. The crimes continue to proliferate and permeate the personal and professional worlds and cannot always deliver justice to the victims. Similarly, the Jordanian Penal Code, which is in force in Palestine, is employed to criminalize the crimes against the morals of the state under Articles 319 and 320; however, the penalties of one to five years in prison or minor fines are obviously scanty in comparison with the current digital privacy crimes. This difference is particularly striking in case of instances where there is exploitation of personal images or communications because the damage incurred is severe and long lasting. The law of protection of journalistic privacy is not a commitment power or a proportional commitment that is expressed in the Palestinian Cybercrime Law itself. The relatively lenient character of the punishments that are administered, in most instances only one year in jail, raises a significant concern of their deterring capacity and their competence with the punishments that are executed (Duffy, 2009). When all the mental and professional harm that such crimes inflict is taken into account, one gets a feeling that the existing sanctions that are being applied are not sufficient to ensure justice and preventive measures. The continued ineffectiveness of the criminal provisions is indicative of bigger failure with the criminal system to act in response to the invasion of privacy. The breaches involving explicit and intimate content are still among the most serious dangers to personal dignity, the freedom of media, and social order. Technological advancement has increased the circulation and demand of such illicit material exponentially, which has become a very profitable business in the billions of dollars (Krabej, 2021). This is as Robert, Lambert and Berger (2013,) argue. 10) observe, the malevolence acts cannot be impuned by the society since the moral and law responsibility will assist in diminishing social order and encouraging more

crimes. In this respect, the inefficiency of criminal punitive actions in the instances of the invasion of privacy is a clear danger to the journalistic freedom and the democracy

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

The criminal procedure laws themselves are political and this is because they are a portrayal of the way political and constitutional system is hence the way it applies them. Procedural laws refer to laws that confer powers to institutions to abrogate the freedom of individuals in the name of criminal justice (as a tool of state power). Journalistic privacy is both weak in substance and moral integrity, and there is usually a preference in efficiency over fairness in process, so no violation of privacy is typical of the criminal procedure (Branch One), and especially fragile in the presence of poor procedural safeguards (Branch Two).

Branch One: Violation of Journalistic Privacy under Criminal Procedures

According to the Palestinian Criminal Procedure Law, which is No. 3 of 2001, Article 39, search and seizure of homes is an act of investigation and is only done under a warrant of the Public Prosecution due to any reasonable suspicion of a felony or misdemeanor or presence of the object or objects of the crime. The warrant ought to be practical and has to be determined upon one or more of the judicial officers. Such circumstances can make criminal investigations encroaches on the sphere of personal and professional lives, which is not to be disclosed. In case of the journalists, this intrusion may be searches of personal homes, seizure of work-related property, search of confidential letters, and hearing of conversations which are deemed to be pertinent to the investigation. Thus, investigative files may contain much personal and professional data, including family life secrets, financial and journalism expertise in most cases. When the records created in the process of conducting investigations get to third parties, the privacy of the information is violated, which also contributes to significant violations of privacy and the presumption of guilt. It is therefore not only the principle of investigative secrecy, which is essential in the protection of the privacy, but also in the preservation of the integrity of the criminal justice process. As a consequence of this interdependence, the lawmaker in France combined both the investigative secrecy and presumption of innocence in one law of legal provision by implicating that the two concepts do not have to be violated to the contentment of the popular interest (Abdel Moneim, 1997, p. 518). Crime is definitely a grave threat to rights and freedoms and the procedure of its investigation might demand certain limitations of individual freedoms. One of the rights that are in the most frequent violations is the right to privacy. The legislator needs to accomplish the appropriate equilibrium between the rights of the person and the common good, the rights of the person and the common good, which is one of the primary elements of the general theory of liberties. Criminal procedure is the other half of the liberty, like Pradel (2000) calls it. That home is nevertheless influenced by the Decree-Law No. 10 of 2018 on Cybercrime that provides broad authority in the investigations. Article 32 allows the Public Prosecution or any other appropriate judicial representatives to search individuals, locations, and information technology devices and stands a high possibility of doing the same more than

once. The law does not even assume the prior examination of the necessity of the presence of evidence, or restrict these powers to the authority of the court. By delegating in this way, procedural guarantees are significantly compromised and it is easy to violate journalistic privacy without proper judicial oversight. It is thus significant that only judicial powers should be restricted to powers which will violate privacy i.e. the power to search, spy and gain access to digital information as they are the primary suppliers of rights and freedoms. Only a stringent judicial control could serve to protect the right of journalistic privacy in the criminal proceedings process.

Branch Two: Weak Procedural Safeguards for the Protection of Journalistic Privacy

Since more and more laws on communication technologies and digital environments are embraced, the criminal procedural systems have become increasingly complex, exposing significant flaws in the procedures. As a result, the measures of protecting journalistic privacy are weak and largely useless in most of the systems of law, not to mention the Palestinian one. This is particularly evident when there is no particular legislative regulation to the complaint mechanism, oversight processes, and remedies, to check the realistic enforceability of the privacy rules and places the journalists at the mercy of violations when there is no robust deterrence or an easy redress system. The criminal procedure laws must not meddle with the requirements of journalistic privacy especially when it comes to the suspect journalists, witnesses or objects of investigation. This security ought to be backed by principle of presumption of innocence, the dignity of the individual liberty, human dignity and hence this will result to the fulfillment of right to fair trial. This principle has been established by the constitutional jurisprudence, as was recognised in the decision of the Egyptian Constitutional Court of 15 June 1996, which said that the place of the legislator in the equilibrium between the rights of individuals and the common good was amongst the principles of the general theory of liberties. The doctrine of law describes criminal procedure as the brother of liberty (*Droit constitutionnel et droit penal*, 2000). Even though such does not exclude the validity of the power of the state to investigate crimes and punishments in the name of the common good, criminal procedures remain a faithful reflection of the degree of freedom that a state is willing to give its citizens even in the press (Massol, 1996). Nevertheless, the current procedural systems are not able to create a balanced and rights-based criminal justice system. The large appeal to the sense of the common good is one of the most drastic impairments of journalistic privacy which is most often defended to legitimize the intrusion of personal and professional space. In certain cases, the exposure of information about the topics of the population, her image, biography, or the status of affluence can be justified to give the population control and responsibility (Ben Haida, 2010). However, it is the absence of procedural guidelines, which would allow distinguishing between the legitimate public interest and unreasonable intrusion, which creates the aspect of uncertainty and allows oversized disruption of the journalism privacy. All these problems directly affect the regulatory framework of the protection of privacy. The break-down of the relevant law is one of the structural weaknesses, in which the individual laws can provide only partial protection on their own and do not have sufficient coordination and coherence. Such

contradiction in the law prejudices enforcement clauses and cannot permit developing a general procedure to provide a general procedural protection of journalistic privacy. There is also the fact that the procedural protection is also somewhat deficient in the regulation of the general powers granted to authority, in particular, the powers in the area of surveillance, data gathering, and surveillance of behavior. Legislation analysis reveals the obvious imbalance the provisions on criminalization and punishments are often written with precision, and the protective provisions are vague and imprecise. The procedural laws are in most cases silent of providing compensation or the effective redress to the journalists who suffer due to invasion of privacy. This compels the victims to resort to the traditional litigation procedures which are lengthy, costly and tried in general courts. These suits, in most instances, entail complex professional evidence to demonstrate damages and can need several years before redress of any sort is received (King, 2021). Although in some situations it might be imperative that extraordinary investigative authority is required, it must be closely guided by legal courts so that it is not abused. The methods of arresting and searching or inspecting communication equipment, particularly the equipment that the journalists are utilizing should be widely limited and subject to what is enshrined in a court order. Without these prohibitions, the criminal procedures will become the means of violating the journalistic privacy rather than protecting the societal order (Masar, 2021). Internationally, Article 17 of the International Covenant of Civil and Political Rights (ICCPR) Paragraph 2 gives that everyone has a right to a legal protection against unjust or unlawful intrusion on the privacy of others. The law protection condition requires that there are the effective procedures safeguards, in the institutional arrangements based on enough resources and independent watchdog installations. However, the inability to administer good supervision practices is still an atmosphere of impunity on arbitrary or illegal intrusion of privacy. This deficiency of accountability is among the biggest problems in the implementation of the right to the privacy in the digital age according to the United Nations General Assembly (2014), p. 16), particularly to journalists that operate in the sensitive and political and security situations.

CONCLUSION

It was revealed in this paper that journalistic privacy is one of the most pressing legal problems in the contemporary jurisdiction, and particularly within the Palestinian one. It was revealed in the discussion that there was an extensive gap between the constitutional promises which were ideal and the practicality of criminal and procedure law protections. Despite the constitutional texts which believe in the sacredness of privacy and the associated freedom, the existing criminal and procedural statutes have become insufficient in addressing the emerging privacy violations in the form of digital/media frame. It was also disclosed that not all criminal provisions are always in pace with the technological progress, including digital surveillance, cybercrime, application of artificial intelligence and misuse of online resources that pose a direct threat to professional confidentiality and media freedom of journalists. Procedural safeguards remain fragile, fragmented, and poorly performed, allowing the factors of security and social order to override the rights of the basic ones not through the implementation of proper judicial

monitoring. With this, the paper propose that integrated process of legislation must be introduced that strengthens the protection of the journalistic privacy with a harmonization of constitutional assurances, criminal regulations and protection of the procedure. This action should not cause any imbalance between ensuring the privacy of journalism and the needs of the legitimate community security and enhance judicial checks and balances. The other issue which is brought out in the study is the necessity of updating the criminal and procedural laws in order to keep pace with the technological concerns, to improve the effective collaboration among the international community in addressing the cyber related privacy breach, and to render the law familiar to the journalists, legal practitioners and the general populations. Lastly, journalistic privacy is not only a right that belongs to an individual, but is a right that is necessitated by the nature of the protection of media freedom, democratic responsibility, and rule of law in the digital age.

Findings and Recommendations

It was revealed that there exists a clear gap between the constitutional rights and the criminal law provisions in the regulation of the protection of journalistic privacy because the constitutional rights are largely abstract and the criminal provisions in the same regard, cannot offer efficient and comprehensive solutions to current infractions of the journalists and media practitioners, particularly during a high rate of digital and technological change. It revealed also that the legislative domain of addressing the issue of the electronic surveillance, unauthorized access to the journalistic information, malicious use of digital materials and violation of the privacy of the journalistic communications and sources of the information is also gapped and seriously flawed in the areas of criminality of gathering, processing and admissibility of the digital evidence in the manner that will not interfere with the privacy of the journalistic communications and sources. The findings also revealed that, the protection of journalistic privacy and freedom of the media on the one hand and the aspect of public security and national interest on the other, were not in equilibrium and the elements of security control were usually predominant in the case where there were no clear legal regulations, and legislative and judicial control of investigative and surveillance procedures which contravene the freedom of journalistic privacy. Based on such conclusions, the paper identifies the necessity to enact a specific and comprehensive act of parliament devoted to the safety of journalism information and e-privacy, explicitly recognizing journalism privacy as an inseparable aspect of the media freedom under the Palestinian law, updating the criminal legislations to include all the contemporary forms of infringement and to come up with a clear sense of the extent and limits of acceptable exceptions, to restructure special investigative and prosecutorial divisions of journalism and electronic privacy offenses, to adhere to uniform and more current methods of collecting and preserving digital proofs, to intensify

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