

## **The sanctity of the dwelling (legal jurisprudence study)**

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### **Abstract**

This study deals with the comparative legal jurisprudence by examining one of the most important and most important elements of the right to inviolability of the private life of human being and his personal attachment to it: the sanctity of the house. It is one of the rights given by the Islamic Shari'a and the national and local legislations to protect and preserve it. This is in view of the great importance of this right in the lives of every individual.

The study aims at shedding light on the compatibility of the protection provided by positive law through the national legal rules, such as the Palestinian legislations and laws, and those still in force in Palestine, specifically in the West Bank to this day, with the Islamic jurisprudence on the subject of sanctity of the house from the inception of this principle, and even the modernity of the present, which is witnessing remarkable scientific and technological progress and development, contributed to the development of technologies that culminated in placing the sanctity of the house in the danger zone in its presence.

In order to achieve the goals of the study, the researcher spoke about the house and its sanctity. She indicated that the house is the place of Sharia and legal protection in terms of its concept, housing rights and the conditions of the protected housing. Then, she spoke about the sanctity of the house , in terms of its concept, Legitimacy and legal rooting, the basis of legitimate protection for the sanctity of the house. The researcher also revealed the relation between the sanctity of the house and the purposes of Islamic law. she also talked about the violation of the sanctity of the house: its images and the restrictions on it. She spoke at first about the violation of the sanctity of the house by illegal entry or stay, whether by an ordinary person or a public employee , and the exceptions thereto. Next, she talked about the violation of sanctity of the house by spying on it, and the exceptions contained on it.

In this study, the researcher followed several approaches in order to reach the desired results of the thesis: the descriptive approach by presenting the sayings of Islamic jurisprudents and the legal articles, the analytical method by analyzing the statements of Islamic jurisprudents and the legal texts in the subject , then

the comparative approach by comparing the provisions of the Islamic jurisprudence with the provisions of the positive law of the legal texts on the subject of the sanctity of the house ; in order to show their compatibility with the provisions of Islamic jurisprudence.

The study concluded with a number of conclusions and recommendations. One of the most important findings of the study is that the house has sanctity and is protected by legitimacy and law. It must be protected and respected by all. Any violation of this sanctity is a violation of a legitimate and legal purpose and constitutes a criminal activity that must be prohibited and punished. The Islamic law has reached a great amount regarding to the protection of the sanctity of the house since thousands of years.

In legal terms, the study showed that the protection granted by the positive law of the sanctity of the house is inadequate and insufficient in terms of procedural or substantive, the night period during which a house inspection is prohibited in the Code of Criminal Procedure, and the house control procedure provided for in the Basic Law is not regulated by the provisions of the Code of Criminal Procedure, the lack of protection in terms of objectivity is also evident through the Penal Code, which is enforced in several ways, including: failure to provide legal protection for housing accessories unless they are directly connected to the dwelling or surrounded by a single wall, and not to punish the commission of the crime of inviolability And not to criminalize the survival of an ordinary person or a public employee in the dwelling of an individual based on the authority of his job, without the consent of the owner of the dwelling, and other than in the cases permitted by law, and not to give the owner of the dwelling the right to defend the sanctity of his residence towards Inside during the daytime , and the decriminalization of incident spying on housing, either through natural senses or through the use of modern technology devices. The study also found that the sanctity of the house is not absolute, but restricted in the public interest of the community.

The most important recommendations of the study were the need to add or amend some legal articles, whether in the Code of Criminal Procedure or Penalties, in order to extend the protection of the inviolability of the house.