

# SANCTITY OF HOME IN ISLAMIC LAW

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## ABSTRACT

*The place of dwelling enjoys a special status in terms of privacy & decorum, these terms are detailed in the Islamic law under the statement (sanctity of home). This statement entails protection of home from material & un material violation. Therefore, the current study aimed at investigating sanctity of home in Islamic law in terms of its connotations, necessity, privacy, & cases of forfeiture. This research used the inductive-analytical approach. This study showed that dwelling is a necessity of life, & it has garnered a special status in the Islam. Specific Islamic laws protect the sanctity of home and provide the dweller with quiet, stability and safety. However, when a home is used to inflict harm on others, there are other measures to tackle the case of abuse. This study concludes that: the home facilities are amenable to considerations of privacy; ownership of a home is ended only in a very limited number of cases; sanctity of home is totally or partially terminated only if that is in the public interest of the Muslim nation, e.g. if a particular dwelling becomes home for a crime affecting public security.*

**Keywords:** Sanctity of Home, Place of Dwelling, Connotations of Home, Sakan & Muskan, Housing in Islam

## INTRODUCTION

A Muslim is confident that Allah has honoured the human being in words & by harnessing things for man's benefit. He the Almighty says: "We have honoured the sons of Adam; provided them with transport on land and sea; given them for sustenance things good and pure; & conferred on them special favours, above a great part of our creation" [Al-Isra': 70]. God has also honoured human beings legislatively, as Islam includes the most accurate and protective provisions for human rights and gains, among which the sanctity of home, place of dwelling.

In a careful review of the jurisprudential sources, one can find considerable attention being paid to the sanctity of the home. Home is inviolable for the sake of its inhabitants, whether they are in the home or elsewhere. The provisions for protecting the sanctity of home are varied, including intangible & tangible inviolability. Creating balance is observed amidst all this: the individual has dignity and inviolability, but priority is given to the inviolability of the group over the individual. Individuals are legally protected & not exposed to harm in their homes, but if they make use of the home to hurt the society or the state, other provisions are implemented in this case.

The home as a matter of fact is the domain of a person's private life. It is the real world for individuals in terms of freedom of action and will, for hiding away from prying eyes, and for obtaining freedom from social restrictions on clothing, food, drink, sleep, waking up and so on – all of which are intrinsic needs for humans.

Through this research, it is worth clarifying the meanings and connotations of home, by investigating its linguistic origin & its idiomatic definition:

Home in its origin, as Ibn Faris said, has one origin indicating the opposite of commotion and movement (Ibn Faris, 1979). Taking into account this origin, the word (sakan) is used to denote several meanings, including: hearth, home, dwellers, meekness & dignity, settlement, & the rudder of a ship that enables the whole ship to manoeuvre (Al-Farahidi, 1983; Ibn Duraid, 1987).

This study is not confined to a specific idiomatic definition of home due to its clarity. However, all of the linguistic definitions can lead us to conclude an idiomatic concept of home: It is the place in which a person lives alone or with family where they reside & get stability &

tranquillity, as well as legal freedom that is understood from the Quranic verse: “We said: O Adam! Dwell thou & thy wife in the garden; and eat of the bountiful things therein as (where and when) ye will; but approach not this tree” [Al-Baqarah: 35].

As for sanctity, it means in its linguistic origin prevention & strictness (Ibn Faris, 1979, p. 45), & the overall uses of the word indicate: (1) prohibition by force & by law, (2) the man's women & what falls under the protection of men, (3) dignity, & (4) what is included in the house and is among its rights & facilities (Al-Azhari, 2001; Ibn Manzur, 1997; Al-Kafawi, 1993).

With all the linguistic connotations & the legal (Sharia) purposes, one can say that the sanctity of the home includes the home itself, its legal rights, & its recognized customary bounds.

In order for the topic of the study to be investigated and established, the researcher adopted the inductive-analytical approach, because it is the most closely relevant research method to the topic. Though it should be noted that studies have been conducted on housing and its provisions, this research differs in its gear towards establishing the Islamic roots of this topic on the one hand and taking into account the modern updates on the topic on the other hand.

### Connotations of Housing in the Holy Qur'an

Home and housing (sakan & muskan) are mentioned in the holy Qur'an in a number of places, & each of them has an explicit meaning or a meaning defined by the context. Following is an explanation of some of these indications.

First, Allah Almighty says: “To Him belongeth all that dwelleth in the night and the day, and He is the Hearing, the Knowing.” [Al-An'am: 13]. Scholars explained the meaning of the “dwelleth” as follows:

- 1- In the sense of residential, which refers to the meaning of settlement (Al-Jawzi, 2000, p. 2; Ibn Juzayy, 1995). The meaning also imparts the sense of “rest after movement”, indicating stability and settlement. Therefore, the meaning here is an indication of what rests and what moves. Ibn Juzayy favoured this meaning because it indicates that everything belongs to God Almighty (Ibn Juzayy, 1995).
- 2- Meaning quiet that opposes movement, as referred to by Muqatil & others (Ibn Atiyah, 2001; Al-Jawzi, 2000).
- 3- Meaning creation. Al-Qurtubi selected this meaning as an indication of the inclusion of all creation, considering it the best meaning that can be obtained. From Al-Qurtubi's point of view, “creation” includes everything that is static and moving (Al-Qurtubi, 1964).

It appears that the majority of scholars agree on the meaning of stability and settlement, which is consistent with the linguistic meaning, while the meaning of creation is a great diversion.

Ibn Ashur opted for the meaning of quiet as opposed to movement because it denotes invisibility while mentioning the explicit meaning. When Allah announced that He owns what is in the heavens and the earth, He added that he owns what dwelleth in the night & the day. This is a way of moving from general to special to emphasize God's absolute ownership of what is visible and what is not (Ibn Ashur, 1984). This meaning is in line with the linguistic meaning and the overall context in the Qur'an verse, with a gentle reference to invisibility.

Second, Allah Almighty says: “Pray for them; surely your prayer is a relief (sakan) to them” [Al-Tawbah: 103]. In the interpretation of sakan in the verse, scholars say that it revolves around stabilization, tranquillity, mercy, dignity, togetherness, purification, & safety (Al-Wahidi, 2009; Al-Jawzi, 2000; Al-Qurtubi, 1964; Ibn Qutaibah, 1958). However, many scholars have found in the context of this noble verse evidence of specificity relative to Prophet Muhammad (PBUH): it is restricted by conditions that do not exist in anyone but the Prophet. This is because no one has the ability to purify and pray for charity givers save for the Prophet (PBUH) (Al-Nawawi, 1972; Ibn al-Arabi, 1992).

Third, Allah Almighty says: “Then, Allah caused His tranquillity (sakinah) to descend upon His Messenger and the believers; He sent legions you did not see.” [Al-Tawbah: 26]. Tranquillity (sakinah), in terms of its origin, indicates the meaning of mercy, serenity, and dignity (Al-Mawardi, 2006). However, its occurrence in this context and its link with the events of the Battle of Hunayn prompted Ibn Atiyah to interpret it as the victory that the inner self and the state dwelt in (Ibn Atiyah, 2001). According to Al-Razi, it is a metaphor for safety because if a person fears something, he will flee and his heart pounds, but if he is safe, he dwells and calms down (Al-Razi, 1934).

Fourth, God Almighty says: “There was indeed a sign for Seba in their dwelling-place: Two gardens on the right hand and the left (as who should say): Eat of the provision of your Lord and render thanks to Him. A fair land & an indulgent Lord!” [Seba: 15]. The scholars have two opinions about what is meant by their dwelling-place; some say it is the individual dwellings in the city (Al-Zamakhshari, 1986). Others posit that what is meant is all their dwellings (Al-Zamakhshari, 1986, p. 575) that make up (the friendly town), which is the city of Sana'a or Ma'rib (Al-Mawardi, 2006; Al-Khazin, 2004). In the context of the verse, there is an indication for the individuality of the dwelling, as it is attributed to its owners. It also indicates that the word “dwelling” includes what surrounds it. Therefore, the scholars interpreted the verse by stating that every dwelling has two gardens (Ibn Ashur, 1984).

From these holy Qur'anic excerpts, we can clarify the general concept of home in Islamic law (Sharia) as follows:

Home is the place of stability and settlement.  
Tranquillity and safety are essential for the home.  
The home is for its owner.  
The home harem is part of it.

In the next sections, the study will discuss the impact of these concepts on the laws and provisions related to housing.

### **The Necessity of Dwelling and Evidence for its Sanctity in Islamic Law**

Dwelling is an integral part of human life and one of man's basic needs. It seems that dwellings for people during the time of the Prophet (PBUH) & the days of the Rightly Guided Caliphs were easily available due to the vast expanses of unowned lands & their affordability even for the poor. Therefore, we find in past-time stories a very poor man who owns a house, as in the hadith of the man who had sex with his wife while he was fasting, & said when the Prophet gave him something to give in charity: “Should I give it to a person poorer than I? By Allah, there is no family between its (*i.e.*, Medina's) two mountains who are poorer than I” (Al-Bukhari, 1996).

With the passage of time, home construction & land ownership expanded. As a result, scholars were alerted to the necessity of housing, & took the initiative to stipulate housing. For example, Al-Juwayni states: As for the dwelling place, I see it is man's most pressing need; it is indispensable shelter for him & his dependents (Al-Juwayni, 1979). Other scholars addressed the importance of dwelling & ways to make it available. For instance, Ibn Hazm says, “it is the duty of the rich in every region to take care of the poor. If the zakat & general welfare funds are insufficient, the ruler has the right to impose taxes on the rich in addition to zakat in order to provide the basic needs of the poor, including food, clothing for summer and winter, and shelter that protects from the sun, the rain and the eyes of passers-by” (Ibn Hazm, n.d.).

Several scholars have drawn attention to the necessity of housing the needy. Ibn Taymiyah states that if people were forced to live in a person's house, for they could not find a place to live in except for that house, then the owner of the house should accommodate them (Ibn Taymiyah, 1900). Ibn Taymiyah is more likely to support not asking the compelled person to pay the rent, if the owner of the house was not in bad need of the rent (Ibn Taymiyah, 1900).

He inferred that from the Almighty's saying: "Woe to those who pray, who are heedless of their prayers (delaying them from their prescribed times), those who make show (of their deeds), and prevent the utensils of assistance" [Al-Ma'un: 4–7].

In parallel with the legal connotations quoted from the noble Qur'an which emphasize the necessity of housing, there is a set of Islamic rules that are concerned with the organization of the lives of individuals in their homes and giving them the sanctity to which they are entitled according to Islamic law, including:

First, the most comprehensive & prominent rule in which scholars have found indications of sanctity of housing in Islamic law is the saying of the Prophet (PBUH): "There should be neither harming (darar) nor reciprocating harm (dirar), for a man to place a peg in the wall of his neighbour's house, & seven cubits should be left as a clear public way"<sup>1</sup> Whether "darar"

"dirar" harm have the same meaning for emphasis, or whether the first is harm for the benefit of oneself, and the second is sheer harm for its own sake (Al-Wahrani, 2012), they both entail harm. In any case, harm is forbidden in Islamic law, and this prohibition is drawn from this hadith & many other texts.

The interconnection between "neither harming nor reciprocating harm" & the sanctity of the home is evident through several things, most notably:

a) Harm to housing as a result of industries. It is prohibited to set up bakeries, restaurants, tanning & blacksmithing stores or bleach stores<sup>2</sup> in the neighbourhoods if they are harmful to neighbours by smoke & odour or harmful to the safety of the dwellings (Al-Banna, 2017; Ibn Qudamah, 1968). It is prohibited to set up such stores because they impact sanctity & safety of homes & the health of the inhabitants. This applies in the present time to factories or industries that depend on pounding & vibration, which may affect the walls and cause cracking in them over time. The same goes for building up institutions attended by a large number of beneficiaries, such as schools, because they may hinder residents from accessing their homes & cause other obvious types of harm to them.

b) Harm of preventing benefits to neighbours' houses, for example raising buildings in such a way that they prevent the wind from blowing or block the sunlight, or they cut off the way that leads to the neighbour's house. Such practices are deemed an infringement of sanctity of housing, and they are an injustice that must be eliminated no matter how long this infringement has been in existence (Al-Baji, 1999; Al-Banna, 2017).

c) Harm to the sanctity of neighbours' homes by setting up a tall building that exposes the sanctity of the home's inhabitants, the courtyard, etc. That must be prevented from occurring, or eliminated if it's already occurred. The foundation for this is the hadiths of permission, including the hadith narrated by Thawban, that the Prophet (PBUH) said: "It is not lawful for a Muslim to look inside a house until he has been given permission" (Bukhari, 2011).

Second, Islam urges to honour the sanctity of the neighbourhood, & threatens the aggressor. This is evident in the hadith of Abdullah bin Masoud who said: "I asked the Messenger of Allah: Which sin is the most serious?" He replied: "Attribute a partner to Allah, though He alone has created you...I asked: What next?" He said: "To commit adultery with your neighbour's wife" (Muslim, 1996). The Messenger especially attributed to committing adultery with a neighbour's wife all this ugliness because the adulterer has not respected the right of his neighbour, violated his sanctity, spoiled his wife, and betrayed him (Ibn Battal, 2003; Ibn al-Jawzi, 1997). The neighbour is commanded to do good to his neighbour, cover his flaws, and defend him. In addition to that, the word adultery (tazani) indicates the meaning that this will happen frequently and easily if the fear of Allah Almighty is absent, whether that is made under coercion or consent. What makes the matter worse is that the neighbour is usually in a place of trust by his neighbour.

Third, the right of pre-emption (shuf'ah). The right of pre-emption for the neighbour has been proven by a group of scholars, including Ibn Shabrama, Sufyan al-Thawri & Al-Hasan Ibn Hayy. In addition, the Hanafi School of thought made the right of pre-emption in order of

priority: “business partner, then the asset (like a passage) partner, and finally the neighbour who has an adjacent property or lives in a same lane” (Al-Tahawi, 1996). Scholars were guided by the saying of the Prophet (PBUH): “The neighbour of a home has more right to the home than another” (Ibn Hanbal, 1999). Also, his saying (PBUH): “The neighbour has more right to pre-emption. He is to be waited for even if he is absent, when their paths are the same” (Al-Tirmidhi, 1999).

Scholars have inferred that neighbouring is in the sense of partnership because the property of one neighbour is eternally connected to the property of his neighbour, & the possible harm in the event of the partnership is also expected in the event of the neighbourhood. Therefore, the right of pre-emption to the neighbour is established to avoid causing harm to him, as is the case in partnership (The Kuwaiti Fiqh Encyclopedia).

Fourth, keeping the dwelling for its owner for as long as possible when he is compelled to sell it. Scholars have paid attention to this aspect because a person may go through difficult financial conditions and times of hardship. Accordingly, scholars have different sayings in relation to these circumstances:

According to most scholars, if a person is poor or owes expiation, he is eligible for charity & should not be forced to sell his house, because it is one of his basic needs (Al-Mawardi, 1999; Al-Haskafi, 2002; Al-Sarkhasi, 1993).

With respect to a bankrupt person or a debtor, scholars differed regarding the status of his home. Abu Hanifa, Ahmed bin Hanbal, and Ishaq bin Mansour said that home should be kept, and that it is not permissible to sell it (Al-Ramliyy, 1983; Al-Mardawi, 2000). Those scholars are guided by the hadith of Abu Aseib in which he said: Umar took a bunch of dates and struck the earth with them until the seeds were scattered before the Prophet (PBUH), then he said: “O Messenger of God, are we responsible for this on the Day of Resurrection?” He said: “Yes, except from three: a rag with which a man covered his genital organs, a crumb with which he stops his hunger, or a hole to protect him from heat and cold” (Ibn Hanbal, 1999). The term hole (jahr) refers to the small and narrow room, and its presence in this context indicates that the house is the third most important necessity for a person, and one must have it even if it is similar to a hole.

Malik, Al-Shafi'i & others support the possibility of selling the house or taking it from the debtor if this is all he owns. However, the scholars did not leave the matter absolute. Rather, they set conditions for that, including: that a good house be sold & another house bought for the debtor, and the debt be paid off from the price difference between them. If the house is not of sufficient value, it is taken or sold, and another house is rented for him to live in (Al-Mawardi, 1999; Ibn Nujaim, n.d.; Al-Mardawi, 2000; Ibn Qudamah, 1968).

It follows from all the above that housing is necessary. Either by keeping the same house to its owner, or by finding an alternative house (by purchase or rent). Since contemporary life and its requirements witness a great difference in the availability of houses, their costs, and the financial means of people, contemporary scholars have made inferences from these Islamic law (Sharia) provisions and through discretion (Ijtihad). The scholars employed the rules of Islamic law to search for possible ways to provide housing. One of the most prominent of these methods was linking housing provision to the state through one of three strategies (Uthmani, 2003):

- 1- The state helps the needy in buying a house through the Zakat if they are entitled to Zakat.
- 2- The state can sell a house to the needy person at cost price without profits.
- 3- The state may choose to provide the needy person with an interest-free loan to buy a house, and he then pays back the loan in easy instalments that do not impact his needs.

The researcher adds to the third strategy: it is necessary for the state to interfere for the sake of the needy person in the event of insolvency if it can be proved that the person was disciplined and committed in paying out the prior instalments, but that something happened to him that made him unable to pay, such as illness or loss of money.

## Obtaining Permission before Entering a Dwelling Place

Stemming from Islamic law, getting permission before entering a dwelling place is considered the basis for many of the judicial and penal legislations. Hence, it is important to clarify those legal rulings and applications germane to permission, which are as follows:

First, Islamic law has determined the privacy that every person who lives in his house should enjoy. Evidence for this is the saying of the Prophet (PBUH), “Asking permission has been ordained so that one may not look unlawfully (into people's houses)” (Al-Mawardi, 1999, p. 328; Al-Haskafi, 2002; Al-Sarkhasi, 1993). The hadith, as Ibn Battal says (Ibn Battal, 2003), has connotations of meanings that are related to the prohibition of looking unlawfully into the houses of others. Hence, these connotations expand to include preserving the dignity of the household & their privacy. Although some of these meanings are mentioned in the noble hadiths, the safeguarding of the interior of the house as a whole is stipulated in the hadith of Thawban (Bukhari, 2011), which applies to the occupants of the house and their circumstances, which is at the heart of home sanctity, and it also applies to the house itself and its contents, as it is a privacy that cannot be watched without the permission of its owner.

The positions of scholars varied regarding the issue of stabbing the eye of the person who peeps into the homes of others, based on two considerations. The first is the state of the house & whoever lives in it. The second is infringement of the home by looking (Al-Mawardi, 1999; Ibn Daqiq, 1990). The scholars who consider the problem of infringement of the home by looking have legalized the intention of the eye of the beholder with something that harms it only even without a rebuke and without going beyond the eye. The scholars who based their ruling on the state of the house did not permit the intention of the eye of the beholder except after he is rebuked. This also has specific regulations, namely:

- 1- The inside of the dwelling should be concealed from prying eyes. Illegal peeping here can happen only deliberately, such as through a small hole, or through crevices in doors & windows, & so on. However, if there is negligence from the owner by leaving the door open or by widening the windows in such a way that it is easy to gaze into the inside the house, then the owner of the house is not permitted to hold the beholder culpable.
- 2- The beholder does not have mahram (like wife, sister, or daughter), or belongings in the house. Some of the scholars stressed that there should be the beholder's mahram only inside the home; otherwise it is permissible to stab his eye.
- 3- That the owner of the house is partly or completely naked.

It should be noted that all scholars agreed that the one who peeps in homes of others is in any case sinful.

Second, Islamic law commanded people to seek permission even among the same occupants of a household. In the verse Allah Almighty says, “O ye who believe! Let those whom your right hands possess, and the (children) among you who have not come of age ask your permission (before they come to your presence), on three occasions: before morning prayer; the while ye doff your clothes for the noonday heat; & after the late-night prayer: these are your three times of undress: outside those times it is not wrong for you or for them to move about attending to each other: Thus does Allah make clear the Signs to you: for Allah is full of knowledge and wisdom” [Al-Nur: 58-59].

It is important to note that if the Islamic Sharia provisions of seeking permission before entering the dwelling prove its general privacy, then the necessity of seeking permission among the household members confirms a more special privacy, which preserves the dignity of those in the house, specifically one's spouse.

The position of the scholars concerning those seeking permission is in disagreement, but as Al-Tabari said (Al-Tabari, 2001), it is more appropriate to seek permission in general. Accordingly, those seeking permission are of two types.

The servants, women and men, and children who have not yet reached puberty but have reached the age of discernment and are able to describe what they see, should seek permission at

three times: after the evening prayer, before dawn, and during the noon siesta (Al-Mawardi, 2006; Ibn Abi Zamanayn, 2002; Al-Baghawi, 1997).

Free men and women who have reached puberty must seek permission at all times (Ibn Atiyah, 2001; Al-Jawzi, 2000; Al-Baghawi, 1997).

Third, Islamic law enjoined seeking permission before entering an inhabited house, & this is evident from the verse: “Believers, do not enter houses other than your houses until you first ask permission and greet with peace the people thereof; that is better for you in order that you remember \* And if you do not find anyone there, do not enter it until permission is given to you” [Al-Nur: 27-28]. Houses, whether they are owned or rented, are places of protection for their inhabitants; they cover their private aspects, for they wear less clothes inside their homes and practice their private lives. Therefore, permission is required to enter homes, which proves the sanctity of the dweller and the home as well. Also, in order to provide an opportunity for the homeowner to be able to prepare and hide what he likes to hide and does not wish the visitor to see (Ibn Al Arabi, 2003).

The word (tasta'nisoo) in the Quranic verse means seeking permission, as Abdullah bin Abbas even read the verse, “Until you first ask permission (tasta'thinoo)” (Al-Tabari, 2001; Al-Taḥawi, 1987). Also, seeking permission does not mean only informing; rather the permission of the dwellers of the house is necessary. If the dwellers do not give permission, one must return and not enter. Hence, in the description of the way of seeking permission, one says: Peace be upon you! May I enter? (Al-Tabari, 2001; Al-Jawzi, 2000).

Furthermore, in the above Qur'anic verse “That is better for you”, there are indications of the benefits of seeking permission. It is better because if a person enters after getting permission of the dwellers of the house, he may find what may please him, and if he enters without their permission, he may find what he dislikes. Al-Baihaqi says that it is possible that the meaning of (tastanisoo) is gaining insight, that is, your entry is on the basis of insight, so your entry into the house does not coincide with what the owner hates for you to see (Al-Baihaqi, 2003). It is also better because seeking permission is obedience to the commands of God Almighty. Besides, seeking permission is better for the integrity of the inner self, which prevents resentment or suspicion that may occur if one enters without permission.

The rule of seeking permission includes the homes of relatives and non-relatives. Even to enter the mother's house, permission should be sought. A man asked the Messenger (PBUH), “Oh Messenger of God, do I ask permission to enter my mother's house?” He said: “Yes.” The man said: “I live with her in one house,” so the Messenger of Allah said: “Ask her permission to enter the house.” The man said: “I am her servant.” The Messenger of Allah confirmed again: Ask her permission to enter the house,” and added “would you like to see her naked?” The man said: “No.” the Prophet again said: “Then ask for permission to enter” (Malik ibn Anas, 1989; Abu Dawud, 2001).

Therefore, Muslims must not be lenient with regard to seeking permission. The Prophet (PBUH) even permits us to rebuff those who do not ask permission and said: Do not give permission (to enter) to those who do not start by greeting (asking permission) (Abi Yaala, 1984).

### **Cases in Which Sanctity of the Home is Forfeited**

Islamic law tends to make a balance between individual interest and the collective interest. In the case of housing, one can find that Islamic law takes into account the interest of the individual by establishing laws that protect his home and protect him from harassment inside his home. Islamic law also does not allow spying on people in their homes. This is true unless the issue is related to the public interest of the society, even if that leads to the person forfeit his home. Among the most prominent cases in which sanctity of the home is forfeited are the following:

## First, Evidence of Committing Sinful Acts in the Home

In Islamic law, the basic foundation is that whoever conceals sinful acts in his home, & there is no apparent evidence of such acts being committed, then it is not permissible to spy on him or to assault his house. Evidence for this is what Abdul Rahman bin Auf has narrated: I was guarding the city at night with Umar ibn al-Khattab when suddenly a shimmer of light appeared to us. We walked towards it until we ended up at a home with a closed door. From behind the door came a loud hubbub; people were yelling and revelling, it seemed. Umar said: Do you know whose house this is? I said: I don't. He said: This is the house of Rabia bin Umayya bin Khalaf, and they are now drunk, so what do you see? I said: I see that we are doing what God forbade us to do; Allah Almighty says: "Do not spy" and we have spied on them. Then Umar returned and left them (Ibn Shabba, 1996; Al-Khara'iti, 1998). What appears from the story is that Umar ibn al-Khattab and Abd al-Rahman bin Auf did not find compelling evidence indicating drinking wine, and none of the neighbours witnessed Rabia or his companions drinking. Rather, Umar expected that from the situation of Rabia's house. Then he, however, considered that spying and an infringement of the sanctity of homes and people.

However, if signs of sinful acts are proven in a house, such as the smell of wine or the smell of smoking hashish, from the outside of the house without trying too hard to investigate that, or if an immoral gathering in the house is too obvious, the sanctity of the house and its inhabitants is forfeited. As priority should be given to the interest of the community, the house can be stormed without permission from its inhabitants, and the perpetrators of the sinful act should be punished according to the type of their sin.

With regard to the house that is used to commit sins, its sanctity is forfeited and it should be burnt down or evacuated from the perpetrators of the sinful act. Ibrahim bin Abdul Rahman bin Auf narrated that Umar bin Al-Khattab burned down the house of Ruwaishid Al-Thaqafi, who made his house a wine shop (Zanjawayh, 1986). In another narration: I saw it (the house) dripping wine from its sides (Ibn Shabba, 1996). This narration has two indications. The first is the outrageous appearance of sinful act (wine dripping). The second is that the place of the dwelling has not been taken away from Ruwaishid, but the goal is to tighten the punishment to the extent that it prevents the sinner from re-offending. With regard to expelling the owner, Imam Malik has two views. First, either the owner of the house should move out and rent it; second, or he should move out and sell the house (Ibn Farhun, 1986).

Therefore, sanctity of the home and sanctity of the person are forfeited when the sinful act has been committed overtly without latency. It was narrated that the Messenger of Allah (PBUH) said: "Avoid these filthy practices which Allah the Almighty has prohibited. He who commits any of these should conceal with Allah's Most High Veil (*i.e.*, should not speak about it), and should turn to Allah, the Most High, in repentance, for if anyone divulges his own sins (to us), we shall inflict on him the punishment prescribed by Allah the Al-Mighty" (Al-Hakim 1990).

## Second, Using the Home for Committing a Clandestine Sin that cannot be Easily Discovered

Examples of this include using the home as a cover up for committing adultery, murder or rape. In cases like this, sanctity of the home is forfeited, and it is permissible for a whistleblower or muhtasib (a religious ombudsman) to spy on the house and keep it under surveillance, to avoid the occurrence of a crime that cannot be later rectified or undone (Al-Mawardi, 2006).

This type of sin is detected *via* a credible witness or direct witness from the muhtasib supported by evidence. Al-Mawardi issued an edict that permits the muhtasib to uncover and search. Al-Mawardi based his edict on the story of the woman who was said to be frequenting the home of Mogheera bin Sho'ba. Omar bin Al-Khattab did not deny the muhtasibs their espionage on the home where the suspicious activities were going on, but he rather flogged them for the lack of adequate testimony (Al-Mawardi, 2006).



In light of the above discussion, it can be posited that contemporary developments can be likewise monitored because they are no less dangerous than before. For example, a house that is used as a venue for drug trafficking or to house spies or terrorists has undoubtedly lost its sanctity. In fact, it has to be one of the priorities of the police and the people of Hisbah if they know anything of this to take the initiative and storm the house after getting permission from the imam or his representative, to prevent public nuisance affecting the security of society and the state.

### **Third, Deterring the Public Interest of the Muslim Nation**

This is evidenced in the story of Omar bin Al-Khattab's burning down of the palace of Saad bin Abi Waqqas when Saad was isolated in his palace from his people and was ruling them from home without direct contact with them (Al-Tarablusi, n.d; Al-Suyuti, 1995).

Another example of this is when the authorities decide in the case of a fire to demolish a house if this demolition happens during the attempt to extinguish the fire for the purpose of preventing further spread to other houses. For the general good of the public, the demolition is carried out if permission is granted by the imam/ruler, even if the owner of the house has not granted this permission (Burhanpuri, 1892; Afandi 1991).

### **Fourth, Retribution (Qisas) (Punishment for a Crime in the Form of Tit For Tat)**

This is evidenced in the story recounted by Ibn Sa'd: Saeed bin Hashim burned the home of Hashim bin Otba bin Abi Waqqas and beat him. The matter was referred to Othman bin Affan, who said: Saeed for Hashim! Beat him like he beat Hashim. His home for Hashim's home! Burn his home like he burned Hashim's home (Ibn Sa'd, 1986).

## **CONCLUSIONS**

Following are the most important findings of this study:

1. Sanctity of home involves both the physical building and its occupants, as it is the place of quiet and safety for the owner and owner's family.
2. The term home encompasses all its parts and facilities, including those outside of it.
3. Islamic law protects the safety of home under normal circumstances; violation of home in any way is strictly forbidden.
4. Sharia stresses the sanctity of neighbourhood, and considers assaulting it a major sin.
5. The dweller of a home does not lose ownership of his home except in a very limited number of exceptional cases.
6. The sanctity of home is partially or completely forfeited when that is in the public interest or if a dwelling becomes a place for criminal activity. In this case, prevention of crime cannot be performed unless sanctity of home is made null and void.

## **RECOMMENDATIONS FOR FUTURE RESEARCH**

More in-depth investigation is needed of the comprehensiveness & perfection of the Sharia rulings, especially with regards to respect for human dignity and protection of individuals & their property. There is also a need for study of the aesthetics of the systemic applications emanating from Islamic law in terms of justice, protection, etc.

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