

Legal considerations homes inspected according to Islamic lawAlireza Shakarbigi (M.A)¹, Piman Nmamian (M.A)², Ghobad Naderi (M.A)³ Mahshid Mahtabi⁴¹. Department of law, Payame noor University, IranEmail: Ali.shakarbaigi@gmail.com². Department of law, Kharazmi University, Tehran, Iran³. Department of law, Payame noor University, Iran⁴. Department of law, Payame noor University, IranEmail: MahshidMahtabi@yahoo.com

Abstract: God gave human rights, civil rights, innate human traits considered and no one can take it away, non-transferable, indivisible and interdependent and universal rights is necessary It is the inalienable right of every member of the human family and every person in every place and in every color, race, sex, language or religion deserve to be there Civil rights derived from the teachings of Islam and the concept has now gone global and spiritual value. They searched his home and the homes of dignity in line with police work is one of the most important issues as regards the police officer searched the homes of the judiciary plays an important role Sometimes flaws and ambiguities are not fully aware of the rules and regulations of the police led to the violation of legal norms and law enforcement officers involved in responding to the However, the rules in this regard may lead to confusion and failure timely to question the officer. The main source of laws, legal books, magazines and Internet sites are Ultimately due to the changing and the rapid advancement of society and the lack of updates, some laws require police duties and to be transparent And laws to be reformed so that it is free from any legal ambiguity So requires diligence and careful consideration and analysis to understand the legal nuances, the target legislator and police officer could not function efficiently without any concerns and do as well.

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1. Introduction

One of the problems facing police officers today is the lack of transparency and clarity, some regulations concerning the duties and powers of a police officer in a way that the lack of transparency of some duties of law do not doubts and confusion. Including rules relating to the discovery of the crime of arrest in order to inspect and maintain the signs and symptoms of crime Including rules relating to the discovery of the crime of arrest in order to inspect and maintain the signs and symptoms of crime But tacitly opposed to the concept of legal material or inferred from the general provisions of the Evidence Act can be concluded Crime evident that police officers have the right to consider the importance of this problem to the extent that there are opposing theories (Farmer, 208: 1376 Judicial Conference of the theory of minority: 264) It has been questioned by some police officers about Tshkyk and sometimes leads to numerous questions and inquiries on their behalf is This is while others are fully aware of the delicacy of the rights of police officers searched the homes, according to Visible Measures have to be guilty The case against them is leading to some authors limit their discussion

of an item (Assyrian, 1384: 145 and 130 migrant agriculture: 1383) Other than a few sentences and cited in footnotes to the right to have adequate Zabtan Justice and dark aspects of this issue have not This is probably due to the absence of prominent professors involved in the issue of human rights and lack of concern for the rights of police on the other hand, some authors are generally denied the existence of such a right to restraining And even obliged to believe in restraining crime investigation and inquiry, oral evidence and secret surveillance of persons suspected but do not have the right to enter someone's home and arrest people (farmers, 208: 1376) It is not known if they accept such a philosophy into a tangible and non-tangible crime What could be the problem continues Police suspect the cause of duty or because of timely and detailed venturing out to exceed the limits of the law and legal Hardworking police officer and served to create problems, especially if you are a beginner on the other hand may be a violation of their civil rights. In order to answer this research question investigating crime division of philosophy into tangible and non-tangible, non-legal and illegal entry into the home, are explained.

Chapter One: the legal requirements to enter the house and search it

First words: family security and privacy:

Maintain the security of the family environment and the need to maintain dignity and privacy of individuals and families that have been stressed by the amount of Quran That is why they have decided not to enter the house without permission to others:

O ye who believe! Enter not houses other than your own without first announcing your thereof . that is better for you, that ye may be heedful.

And if ye find no one there in , still enter not until permission hath been given and if it be said unto you : go away again , then go away , for it is purer for you Allah Knoweth what ye do .

O you who believe, you do not enter your home unless you introduce yourselves, lest ye enter your home unless you have someone to take And if you go above that it is good for you

Arabs were ignorant of the habits of the roofs of neighboring houses were the Qur'an and the Sunnah forbids says:

They are fixed seasons for mankind and for the pilgrimage . it is not righteousness that ye go to houses by the backs there of (as do the idolaters at certain seasons),but the righteous gates thereof,

Do not nick it from the rooftops into your home Rather, it is a good virtue to have when they enter the door to enter the house.

Quran immature children a place to rest and sleep even at the entry of parents stated that they would be allowed entry.

O you who believe slave girls and young children three times a day for sleeping and resting allows you to: Before the morning prayer, evening prayer, after which you get your clothes out of the body after the Isha prayer three private times for you.

Chapter Two: the legal requirements to enter the house and search it.

A permit law and judicial authorities:

One of the accepted principles of people's rights or the rights of citizenship, including the most important rights and individual freedom, inviolability of individual housing And rightly so, about 12 centuries before declaration of human rights, in numerous verses of the Muslim holy book stipulates that the immunity To follow the teachings of the scriptures, Article 22 of the constitution states that: ((housing persons are inviolable except in cases where the law is administered.)) So one of the legal conditions of entry into the house and searched it is not allowed by law; Despite the housing figures immunity from invasion, the constitution is only and exclusively to the representatives of the nation The

case law and the right to take away the benefit of the community. WHEREAS, the Legislature is hiding the person (Article 85 of constitution) can only represent people as legislators cases Issues and requirements of home inspections etc. for the defendant's arrest or the discovery of instruments of crime, and determined to Ahsa. That the legislature could not enact such a law whereby, in any place or restraining the discretion of Judge Justice was required to enter the house except for the discovery of the crime, The authorities have the right to enter your home, it should be about, regulating, and the inclusion of non-residence for Crime Detection Tool "to identify and implement best judgment and restraining Justice Act apply.

This philosophy is evident. MPs often the error sum of individual error, the judge or police officer is less. The Iranian lawmaker was the subject provided in Article 96 and 100 of the Criminal Procedure Code (Act 1378) and the explicit inclusion of other homes and buildings stated. Included in Article 96 of the Criminal Procedure Code states that((Audit and inspection of imports to come home ... (should be taken) which accounts surety for the accused or toys or tools to explore the reasons for the mass venue to be there.)

So if the law is permitted to inspect the house first, "- there is reason

Second - this is arguably good reasons that Braynkh A - charged at home there, b - toys, equipment and grounds are home to a crime. However, things were better legislator who by reason, the possibility of a strong suspicion of crime at home to permit the inspection of the said house.

Thus, two basic prerequisites (one of the other reasons caused by the reasons for suspicion vomit) just in case there is a possibility to enter the house and inspect it: In order to provide access to one of the other reasons for the offense charged. In other cases, even if the judicial authority to give orders not to enter the house, his act is a crime and held in terms of Article 570 of the Penal Code to deprive people of Article 580 of the Law set forth in the constitution of the law of ((Dyer the Login unauthorized housing)) can be prosecuted and punished Therefore warrant to enter a home and inspect it is not an enviable task, but it should only be legal in cases and manner provided by law, has to be done.

This is stated in Article 6 and 7, and a command of Imam Khomeini (RA) 09.25.1361 Section Eight Citizens Rights Directive and Article 8 of the single head of the Judiciary Act respecting the legitimate rights and protecting civil rights Act 16 / 2/1383 has been the Imam Khomeini (RA) in the latter part of paragraph 7 of Article eight of the decree stated: ((Not to the judge "to issue a decree by which enforcement officers are allowed to enter people's

homes or workplaces that are not safe, and neither the home team nor the location of the house plots against the Islamic Republic. Issued and implementation of this decree is legal prosecution.) The latter part of Article 24 of the Criminal Procedure Code ((searched homes, places , things and people attract other crimes evidence must allow for judicial authority , though generally the official investigating officer , is assigned .)) (Hodjati , 1385) , so we can not take arbitrary action by the judicial authorities to search homes or to issue an order to inspect the house , but must set forth in the context of action , they could not despite the presence of Justice restraining conditions (allowed by law) without other apparent criminal justice officials to enter homes or to inspect it .

The point here is important cause to doubt that the legislator has stated (... searching houses, places, things and attract people with the permission of crimes of non-visible judicial authority)) Valipour expressly sentence has expressed concern about the apparent crime. Restraining the Justice Department about whether or not they are authorized to inspect the houses in obvious crimes, opinions differ. Although the advisory opinion of the Legal Department of the judiciary are often not explicit, tangible and non-tangible crime debate without resolution states: ((Inspection of homes and property should be explicitly and directly under the orders of the competent judicial authorities.)) (City, admired and Jahromi, 1377: 71), but the latest theory is that the department ((inspection of homes in order to access the crimes charged in the visible, Chnachh comply with the provisions of rule 96 of the Code of Criminal Procedure 1378 should be done with the permission of the landlord or the tenant house, unless there is dread Frarmthm will inevitably restraining order to prevent the escape of the accused house in which is hidden. As can be seen. It is unclear why the legal department of the judiciary only to prevent escape of the accused is allowed to enter the house, other than the obvious crimes. While in some cases to maintain balance, prevent the escape of the accused is important because, for example, if a spy, saboteur or terrorist after fleeing the scene of the crime, entered the home of the toys to the strong suspicion reason, and the reasons for the crime and the dread of destroying official statement by the accused to get there, but the dread accused of fleeing the siege location does not exist(The substance in accordance with Article 96 of the Criminal Procedure Code of the home inspection is legally licensed and eliminate the consequences of delay caused offense, which would arguably) Mstda part of the recent to Article 18 of the Article 24 of the Law on Criminal Procedure part of the recent opposite in this case the Court restraining the right to enter the home and it will be inspected.

Denote the Judicial Commission on Minorities theories Leakage is:

((The apparent crime also requires judicial authorization is necessary because the sanctity of the home and when you are chasing the offender entered the home Agents need to have permission to monitor your home and then they can go home.))

In addition to the idea that the public opposed the recent past, Article 18, Article 24 Criminal law is the concept of the rule (Alzrvrat Tbyh Almhzvrat) and Ohm's law enforcement and crime division of philosophy is in violation of tangible and non-obvious. Commission members approved the idea is that the majority opinion:

If the object is visible in the circumstances mentioned in Article 21 of the Criminal Procedure Code, the accused officers continue to pursue and prosecute the offenders entered the home without the permission of the official entered the home can be entering the home of the chase are Accessories because the crime occurred and there is no doubt it is visible. Thus, if the defendant flees brief cease to be home. Therefore this position requires the permission of the judiciary is not. Of course, the offense must be proven to be the time the entry guards immediately.

Considering the time delay caused the disappearance of evidence of offense, and the accused fled the crime is evident, can you according to the opposite of Justice current restraining of Kbfry Procedures twenty-four Article 18 of the same law part of the recent or public virtue, without official permission, to do the home inspection or not?

In response to the Court restraining the opposite side of the latter can rely on Article 24 of the Criminal Procedure Code and the Criminal evident with respect Slyrtrybat legitimate, non-judicial action their homes to search objects to Persons aiming

Thus, the reference to Article 18 of the Criminal Procedure Code according to which ((restraining the Justice Department's apparent crimes can take all necessary measures in order to maintain machinery, equipment, works for preventing escape and concealment of the offense charged or his collusion are common.)) That the expression ((all necessary measures)) is a general term in the law that no allocation has been transferred to the court restraining devices, and take any action to protect the guilty and prevent the escape of the accused Vakhtfay know they can do. So if you enter the home to prevent the escape of the accused is Essential, restraining the Justice Department could comply with other legal arrangements mentioned in articles 97 and 100 of the Criminal Procedure Code to take action Otherwise official who has attempted to chasing a dangerous criminal and Johnny Upon arrival to your home or work Semi someone else wants to put up with getting

him Dstgrynmayd warrant, discovered a mass murderer of remains Maktoum, escape be.

It is based on Article 97 of the Criminal Procedure Code, the police are authorized to inspect another house, another house arrest, accused of defamation is more important. It should be noted that another main home is not always respected, but entering another house fire rescue lives or arresting dangerous criminals, saboteurs, spies and ... In line with the implementation of Ohm's law and Ohm's law does not conflict with legal requirements.

Unfortunately, the legislature did not provide any clear criteria for the diagnosis of Ohm's law is not clear how important Mamvrplys of entering the house, except for reasons of rape Hrt house arrest supplying non-recognize. It is said that wherever the discovery or inspection of the house arrest that he committed a penalty greater than the penalty for the crime of entering the house except, in this case the inspection, the home desecration nonstero IMPORTANT OF, and conversely. It is important legislator subsequent amendments criteria for recognition of the right to a home inspection, home to people from trespassing on offer.

The Philosophy of crime offenses classified as tangible and non-tangible necessity of restraining the action of licensed home inspectors in Criminal Justice than evident implies. In terms of countries, some of which point to explore the place of crime, criminals are called visible and legislative, judicial, police or restraining the prerogative of Justice recognized the Vzabtan deputy judge (prosecutor's investigation and prosecutors) to be s all measures that are urgent, they have been assigned.

Crime division of philosophy into tangible and non-tangible has happened in Iran , although no Mjvzqanvny into another home, and he is forbidden , but in line with the principle of judicial jurisprudence ((Alzrvrat Tbyh Almhrat)) requirements, the ban is lawful , in crimes tangible , immediate access to the judicial authority may , if something is not done or accused of a crime will be revealed Maktoum , Frarmy , the necessity of restraining the judiciary requires that searches all the necessary steps , such as houses, places , things and draw people to Judicial officials do otherwise achieve tangible and non tangible crimes division, would be vain and useless.

(B) if the proprietor or senior in home inspection:

Another requirement is that the practice of home inspection in the presence and absence of research Vshhd legal proprietor proprietor, in the presence of the senior comes into action. (Article 98 BC. A.. D.. K.) This condition is mainly because the reasons for the proprietor or senior crime to deny discovery and subsequent retention of the House if the

judicial authorities assertion that the police for him Vine sewn footgear Turning for home, he discovered that have not be ruled out. However, if the inspection is to be urgent, the authorities can authorize the immediate control of the House next higher judicial authorities ordered the place to open.

(C) the need to conduct searches per day

Another requirement of legal searched the homes of the action must be taken to cause fear and panic in people living at home and harassed the people accused of families and children shall or Delinquent. If necessity demands, the home inspection is carried out at night and judicial authorities should take the necessary dimensional control by the judiciary, the parliament Knndta stated above exist. In addition to the conditions for the legal entry and search of the residence, citizenship rights, the judiciary according to Article 8 of Directive Paragraph eight single article of the law as well as respect for the legitimate freedoms and the rights of citizenship:

((Check local examination to arrest the fugitive or mass detection devices, and caution should be taken according to the provisions of law without an absolute nuisance and trespass to the documents and objects related to massless Or does not belong to the accused and to disclose the content of the letters, family photos, family videos and recordings they should not be infinite.))

Above this, one of the top eight provisions of Article 7 of Decree Imam Khomeini (ra) is:

((If an error or a mistake in your own home or office movie Officers who arrived there with the penis consider the pastime of gambling, prostitution, drug dealing and other ways, such deviations were not authorized to disclose it before, It is the greatest sin of promoting prostitution and no one has the right to disrespect Muslims and abuses the rules Shryh And just have the task of denying sins in a way that is prescribed in Islam to practice And to attract and arrest or beating the house and its inhabitants have been injustice and oppression of God)).

Seems to to be that discovery of the offense by reason of such non-religious verdict and entering wrong home arbitrary or non-factor in terms of the presence knowingly and deliberately Brmjazat, cause it is the reason the validity. Besides the guilty punished just like the tortured confessions, according to Article 38 of the constitution of such confessional is lacking credibility.

Chapter Two: Research the legal requirements offense of unauthorized entry into a person's home

The first speech: there are legal elements of crime, physical and spiritual formation

A: There is a legal element of the crime**According to article 580 of the Penal Code:**

((Azmstkhdmn any judicial or non-judicial and public service or who he referred to someone's house without permission and consent, without any legal way to enter the home, shall be sentenced to the custody of months to a year, unless you have fixed it has to be one of their chiefs, who had the authority to sentence Mkrh to obey his command has been acting In which case the punishment shall not be administered in the office, and if you commit another offense or contingency is caused and the punishment will be the night of this act Vchnanchh committed or ordered to a maximum of the death penalty prescribed.))

(B) the perpetrator's behavior and material properties:

Material behavior committed this crime, affirmative action material ((entered Privacy passing from house to house non-or else)) is open and does not care Yabsth ever, there is a door or fence or the other. Thus only be accomplished with the action and the criminal offense of simple and immediate fulfillment bind to the log entries, or by a criminal act not specified Therefore, entry doors, windows, walls or through tunnels o Hely helicopter judgment is entered. In terms of crime, the law is limited to the circle of our Mstkh judicial and non-judicial state, including those of public service is referred to. Government employees are public servants, whether formal - or informal test - definitive treaty, convention, shopping service, or day laborers, and so on. But the expression ((anybody that public service is Avarja)) who are not government servants, but public service is referred to, such as the Basij, which is evident crime, the general absence or lack of action, restraining, public service delivery and restraining the doing of justice is referred to. Thus, ordinary people, are not covered by this article. So if people other than public servants and public service referred to by those attempting illegal entry into the home than they do, Be prosecuted and punished under Article 580 of the penal code, but if there are no conditions should be punished according to Article 694 of the Penal Code.

(C) the subject property:

The subject of the offense, other than home and wherever the location, living and resting human subjects, their home is like a home, apartment, residential boat trailers attached to vehicles located on the water, Hotel room, dormitory, residence tin or tents etc... It is a legal relationship, such as ownership, lease, mortgage, loan etc and structures such as concrete, brick, Vgly and ... The amount of fixed and mobile area, temporary absence workability, to enable the homeowner or tenant resides, provided this is where versatility workability, to enable settlement in its

current condition is a common and specific cause of the decline is however not at home. (Mr. Proto , 1385: 190)

D: The need for public Svnyt:

In terms of spiritual and psychological elements should have committed a criminal act is committed Svnyt generally means you're going to ask the other person freely and knowingly entered not be home. If a person has no knowledge or belief mistakenly entered the home except with the consent of the landlord honestly think that his true calling is in the home, while the other home is not an offense committed before illegal entry. In terms of spiritual and psychological elements should have committed a criminal act is committed Svnyt generally means you're going to ask the other person freely and knowingly entered not be home. If a person has no knowledge or belief mistakenly entered the home except with the consent of the landlord honestly think that his true calling is in the home, while the other home is not an offense committed before illegal entry. The general intent to commit a criminal act if there is malicious intent, whether the person has a specific intention to harm the financial or spiritual or not, is considered a crime. The motivation plays no role in the realization of this crime, the motive of the officer or police officer to community service and discovers the crime, without regard for the legal arrangements entered another house, another house has committed the crime of illegal entry or the motives of honor evil role in the realization of not guilty. Having honorable motives may invoke Article 22 of the Penal Code, as Azkyfyat extenuating circumstances, result in the discount rate should be punished.

Chapter Two: requirements for achieving mass

A: non-compliance with legal arrangements:

To fulfill this charge, entering the home should be without legal arrangements and legal arrangements are as mentioned

One. Allowed by law: In accordance with Article 96 of the Criminal Procedure Code in two ways: ((A - There are good reasons to suspect B - Create a strong suspicion that the accused and there toys, tools and evidence of crime at home)) inspecting homes and permissible 's.

Two. Authorized official (the so-called judicial decree): The last part of Article 24 of the Criminal Procedure Code Inspections of houses, buildings and other tangible objects in the crime with special permission judicial authority (prosecutor, magistrate, Prosecutors investigating, etc) that the apparent crime of obtaining such permission is required.

Three. In accordance with Article 98 of the Criminal Procedure Code have searched the homes of the legal possessor of such owner or lessee or holder or

beneficial right to act in its absence is the presence of the senior And the necessity and urgency of a home inspection done without them, and the necessity and urgency MUST be incorporated in Parliament until after the judgment or restraining control function to be there.

So if the judge or police officer does not comply with any of the aforementioned legal arrangements and legal arrangements to enter the home without a search of their persons and if any other circumstances, the home non-illegal entry realization if the.

B - Non-home owner's consent:

Not have to enter your home without the consent of the home. Thus, persons with permission to enter their home is permissible in all cases due to non-fulfillment of illegal entry into the home is not. . But lawmakers in paragraph 5 of Article 21 of the Criminal Procedure Code only known case of an evident crime, the owner of the house immediately after the crime, restraining entry into his home requires, it demands only that case, the police, and if the action homeowners may request immediately after the crime, Police did not act right. Such an approach does not seem correct and the stated terms in the paragraph immediately lost because the sentence of verse 27 of Surah Noor Islamic jurisprudence rule Tslyt (Al Naas Msltvn Ali Amvalhm) Whenever the owner of the house restraining entering the home, when requested, restraining without warrant entry and can take action to check and adjust if parliament. Police did not act right. Such an approach does not seem correct and the stated terms in the paragraph immediately lost because the sentence of verse 27 of Surah Noor Islamic jurisprudence rule Tslyt (Al Naas Msltvn Ali Amvalhm) Whenever the owner of the house restraining entering the home, when requested, restraining without warrant entry and can take action to check and adjust if parliament. The permit must be real, so if anyone is reluctant to work or sleeping or unconscious natural or restraining entry into your home, restraining demand and quality of these to make And also because of that person's ignorance of their rights (including the right to a home invasion) towards restraining demand, unlike the propensity to give permission to enter the house, so let's not true, and the proof of this, crime of unauthorized entry to the home is not fulfilled. However, if the officer honestly believed to be the home owner happy, and this belief was reasonable and valid claims are likely to cause damage in the mental element of crime officer to pursue and punish would not be.

C - not necessary for the realization of losses:

Crime of unauthorized entry to the home, non-absolute and realization of a crime or behavior needed to achieve a particular result is not harmful. So the debate continues causation relationship between the

perpetrator and thus damaging the material behavior is ruled out.

However illegal entry into the house of a non-violent crime that psychological trauma and victimization Brsaknan imports causing mental distress and fear in people is because they exceed the person is the privacy of most private. However, realizing the need to prove such a result is not only detrimental to the privacy of home and other unauthorized entry, causing some object to be achieved.

Conclusion

One. The latter part of Article 24 of the Law of Criminal Procedure and the general public against the latter part of Article 18 of the Criminal Procedure Code, the Criminal Justice restraining apart and inspect it felt right to enter the home to arrest and reflection, the has

However, the other compounds mentioned in items 97 to 100 of the Criminal Procedure Law to observe the defendant's arrest and delivery to do when the desecration of is more important than another home. Are recommended:

A - legislation explicitly mention the right material in the Criminal Procedure Code to require the making or use of the word is not publicly known; This is because ijtihad, carefully consider and discuss the legal nuances and principles requires the officer to be Plysh out. May have missed the most important recommendations of the police and the legal department ill contractors fit the bill proposed action or plan as the duties and powers of the judicial police (waste Btan Dadgstrs) to the judiciary or Parliament, are still too Where the functions and powers of the judiciary restraining transparent and predictable as possible scientific concepts clear and understandable to be a police officer, police served Tamamvran do better in the self-help tasks They involve certain complexities and nuances during the tasks fails because even if a police officer is a prominent lawyer and should not be possible to think about the law not to indirect inferential.

Two. The allowance provided for in Article 580 of the Penal Code and Article 694 of the Penal Code, the same material that does not fit. Because of similar criminal conduct by police officers and ordinary people is far worse and more reprehensible acts committed by police officers and the general powers and forces, creating a sense of pessimism is the other Khdvm recommended the establishment of the proportion of the penalty for the same offense, the legislature intended to be and punish acts committed by officials or public servants more than the average person, the penalty shall be determined.

Correspondence to:

Alireza Shakarbigi (M.A)

Department of law, Payame noor University, Iran

Email: Ali.shakarbaigi@gmail.com**References**

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