

(26)..... An investigation of the related edicts on espionage in positive jurisprudence and law

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في السنوات التي سبقت الثورة كان البحث في هذا المجال محظوراً تماماً. ومع النمو الحضري وظهور الدول والمدن، أدرك الحكام بأنهم لا يستطيعون مواصلة حكمهم بالقوة والسيف والنصر فقط في ساحات القتال بل إنهم حقا يحتاجون إلى منظمة أو جهاز يعدّ عينا بصيرا وأذنا سمعيا للحكام. تشير نتائج هذه الدراسة إلى أنه على الرغم من الاختلاف الموجود في العقاب عند المذاهب المختلفة وعند آراء الفقهاء الإمامية وعامة الناس، فإنهم يعتبرون جريمة التجسس خطيرة لأمن المجتمع ويعاقبون بأنفسهم.

الكلمات الرئيسية: التجسس، الإعدام، العقاب، أمن الدولة، دوافع التجسس

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penitence, and repentance have been predicted. However, as for crimes threatening the territorial integrity of the country or the basis of Islam and the Islamic government, the punishment will be aggravated, and depending on the conditions of the crime and the criminal character of its perpetrator(s), proper punishment will be enforced at different levels.

### دراسة في أحكام التجسس في الفقه والشريعة

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### الملخص:

تعد الجرائم ضد الأمن القومي بما في ذلك التجسس، أكبر تهديد للأمن واستقلال الدول وعدم الاهتمام اليها يجعل الأمن واستقلال الدول في خطر وأحياناً يؤدي إلى انهيار الحكومات وتخطيطها وتحطيم السلامة الإقليمية، في هذا المقال، الهدف الرئيسي هو التعبير عن الأحكام الفقهية والحقوقية المترتبة على التجسس والقوانين المرتبطة بهذه ويعد التجسس ضد الدول الإسلامية ولصالح الآخرين، المسألة ونطاق التجسس وحدودها من وجهة نظر التجريم حراماً وجرمياً. وهل يستحق (التجسس) للدعم المادي والروحي؟ يمكن أن يعد التجسس لصالح الدولة الإسلامية في ظل ظروف معينة بل إنه واجب لصيانة النظام والمجتمع الإسلامي. فهم أبعاده ومكوناته أمر لا مفر منه وما يضيف اليوم إلى نطاق هذه الحاجة أنه

unfavorable (not desired and vilified). The main difference between these two kinds of espionage is that conducting espionage for the disbelievers will result in strengthening and developing heresy, infidelity, and corruption and is not allowed. However, collecting confidential information from the infidels for the Muslims will result in strengthening right and justice and it is obligatory. Thus, the evil of conducting espionage against the Muslims needs to be removed, and the goodness of conducting espionage in favor of the Muslims needs to be strengthened. The history of Islam indicates numerous damages and harms arising from conducting espionage against the Muslims especially in battlefields where the Muslims are fighting against the disbelievers as well as in which the Islamic government is involved with tyrannical and despotic systems. Thus, true wisdom indicates that a wise ruler is required to be fully alert and well-prepared about the enemy's espionage. The very word of Allah is about the presence of this fifth column. In verse 60 of Al-Anfal, God orders the Muslims to get ready against the enemy. It is then stated that the Prophet's decision about Hatib (forgiving him) does not denote the prohibition of execution punishment for a Muslim spy; the Prophet's decision confirm the execution of a Muslim spy instead. The main reasons behind mitigating his punishment and finally forgiving him were his proper records in the Battle of Badr, his repentance, the conditions of committing the crime, the failure of his espionage, and the discretion of the ruler. This is just an example of the cases occurred in early Islam. If one analyzes their legal points accurately, there are numerous delicate points that are worth being discussed in the modern legal system. These points include the vain crimes and the proper way to deal with them, the examples of the mitigating qualities and their effects, repentance and its role, private forgiveness and its uses, discretionary punishment and its levels, the record of the defendant, the authorities of the judge in discretionary punishment and the necessity of applying them, the punishment of the crime in the Hereafter, etc. In the Islamic legal system, given the sacred nature of the Islamic system and the Islamic government as the main tool of realizing the Islamic orders, the crimes against the system and the country's security are of great significance for the lawmaker. The punishment of such crimes are well-regulated and many former kinds of severe punishments have been banned and mitigating as well as exempting excuses such as withdrawal,

not killed, and it has been rejected in *Forough* as well, and this is correct (*Al-Insaf*, vol. 10, p. 249-250).

5. In terms of conducting Hodud, Ahmad ibn-Yahya has stated that "It is merely in the discretion of the Imam, and the same is true for killing a spy" (*Oyun al-Azhar*, p. 121).

### **The viewpoints of Shiite jurists about Musta'man and Mu'ahad spies**

1. Shaykh Tusi: Musta'man and Mu'ahad are almost the same; non-Muslim temporarily living in Muslim lands through a peace agreement. Thus, they are not allowed to live in Muslim lands without paying Jizya (per capita yearly tax) for more than one year. However, they can live in Muslim lands with or without paying Jizya for less than one year (depending on Imam's discretion). If Imam is afraid of their betrayal, he is allowed to break the covenant, and they are forced to return to their previous lands (*Ma'alim al Sinan*, vol. 2, p. 274).
2. Allamah al-Hilli: When the truce treaty is broken, one needs to pay due attention to the causes of the violation. Thus, if the spy has not conducted anything wrong (such as providing a shelter for the enemy, informing the enemies about the Muslims, or disclosing their secrets), he will be forced to return to his previous lands, and there is punishment against him (ibid).
3. Kaschif al-Ghita: If their (Mua'hadin) messenger comes to Muslim lands, and it is found out that he attempts to know about the conditions of the Muslims, so that he will let the disbelievers know about this (or they are afraid that he will do so), the Muslims are allowed to stop him from returning (ibid).

### **Conclusion**

Espionage is one of the most significant problems and challenges commonly used against the Islamic country by both domestic and foreign enemies attempting to penetrate the associations, organizations, army, decision-making centers, and the states so that they are able to achieve the information needed and know about the weak points. However, it is worth noting that, given the present article, espionage is of two kinds: favorable (desired) and

### **The viewpoints of other sects towards the spy's non-imprisonment**

1. Basti: Awza'i has stated that if the spy is a Muslim, Imam will punish him through a prohibitive punishment, and he is sent on exile. If he is a Dhimmi, his covenant is broken. Malik stated that he had not heard anything about this, and the Imam needs to conduct Ijtihad on this matter. Shafi'i has stated: If a well-respected man conducts espionage by ignorance (as Hatib did so by ignorance), I would like to forgive him. However, if it is conducted by someone not respected, the Imam can punish him by discretion (*Ma'alim al-Sinan*, vol. 2, p.274).
2. Horrani: If someone attempts to conduct espionage for several times, he must be killed (*Ekhtiarat al-Elmiat (Fatawi al-Kobra)*, vol. 4, p. 601).
3. Qurtabi: Sahnun has stated that that when a Muslim writes to the disbelievers fighting with the Muslims (Warring disbelievers), he must be killed, and his repentance is not accepted, and his properties belong to his heirs. According to another jurist, such a Muslim spy must be severely lashed, he must be imprisoned for long terms, and he must be sent on exile to somewhere near the Muslims (*Aqziat al-Rasoul Allah*, p. 80).

It has been stated in *Mostakhraja* that according to Ibn Al-Qasim states a spy must be killed and his repentance is not accepted. He is treated like a Zandiq (individuals who are considered to hold views or follow practices that are contrary to central Islamic dogmas). It is stated in Quran that "there are spies among you that are conducting activities to the benefit of the enemy..." (4) (al-Tawba, verse 47). Such a person is a spy.

Sahnun's quote seems to be more accurate (*Aqziat al-Rasoul Allah*, p. 80).

4. Mardawi: Ibn-Aqil has ordered to kill the Muslims spying for the disbelievers. Ibn al-Jawzi has added: If there is a fear of conducting espionage again, the spy must be killed. However, Ahmad has avoided to do so. In *Kashf al-Moshkel*, Ibn al-Jawzi has stated that, Hatib's story indicates that the Muslim spy is

have broken their alliance, and it doesn't matter if it is stipulated in Dhimma contract or not; one of the conditions of Dhimma (covenant) is that they need to be secure from the Muslims and so do the Muslims. Moreover, what brings harm to the Muslims include six items: they mustn't make the roads safe for the Muslims; they mustn't inform the infidels about the Muslims' shortages; they mustn't inform the warring enemy about the Muslims' news and secrets through writing letters or in some other ways to weaken the Muslims.

2. Ali Ibn-Hamza: The disbelievers are of two types: one group (Jews, Christians, and Zoroastrians) is allowed to stay in his religions on two conditions; they have to agree to pay Jizya (a per capita yearly tax), and they have to adapt themselves with the Islamic orders and do not conduct forbidden acts and taboos.
3. Ibn-Zuhra: The conditions of paying Jizya is that the non-Muslims must not express their disbelief and they must not help the Muslims' enemies. If non-Muslims fail to fulfill either of these conditions, they are allowed to be killed, and their properties will be Muslims' spoils (*Ghaniat al-Nozou'*, p. 203).
4. Ibn Idris: The conditions of Dhimma include: non-Muslims must not pretend to eat pork among the Muslims; they must not protect the enemy's spy; and they must not investigate against the Muslims. If they violate any of these conditions, they are out of Dhimma contract, and they are treated as warring disbelievers (Saraer, vol. 2, p.6).
5. Mohaqqiq al-Hilli: Dhimma has six conditions ... the third is that they mustn't harm the Muslims through having Zina (sexual intercourse) with Muslim women, protecting the infidels (through providing shelter for them), and conducting espionage to their advantage. If they attempt to conduct any of the above (as stipulated in the covenant letter), they have violated the contract. However, if they are not stipulated in the contract, they are still in agreement with the Muslims, and they must be punished depending on their crimes; that is either *Had* is conducted or they are punished by discretion (*Sharaye' al-Islam*, vol. 1, p.329).

4. Hilli has also stated that: If one of the Muslims writes to the infidels about Imam's decisions and news and informs about the decisions and news, it is not permitted to kill him; since it has been narrated that Hatib ibn Abi Balta'ah was not killed. However, when it is proved that someone has conducted espionage to the advantage of the disbelievers, the Imam can punish him by discretion depending on his conditions. He will not receive any spoil unless he repents. If he repents, he will receive some spoil (*Montahi al-Matlab*, vol. 2, p.959; maxims of *Montahi al-Matlab*, p. 939).

#### **The viewpoints of Sunni jurisprudence about the imprisonment punishment of a spy**

1. Abu-Yousef: Oh Commander of the Believers (the then Caliph is addressed), try to find out whether the spy is a warring non-Muslim, a Dhimmi (protected non-Muslims) non-Muslim, or a Muslim. If they are warring or Dhimmi (Jewish, Christian, or Zoroastrian non-Muslims paying Jizya (a per capita yearly tax)), behead them, and if they are recognized to be Muslims, punish them and imprison them for a long term so that they will repent (Kharaj, p. 190).
2. Al-Basti: The story of Hatib ibn Abi Balta'ah is a main reason that a Muslim spy is not permitted to be killed. However, there is no agreement over the kind of punishment. Some experts maintain that "if a Muslim writes to the enemy and discloses Muslims' secrets, he will be severely punished and imprisoned for a long term" (Ma'alim Sinan, vol. 2, p. 274).
3. Al-Ayni: Davoodi has stated that spy must be killed. Hatib was not killed since the Prophet was well aware of his condition. In Shafi'i, the Muslim spy is punished by discretion, and he is not permitted to be killed. If someone is well-respected he must be forgiven. It is quoted from Abu Hanifa and Awza'i that "the Muslim spy needs to be severely punished and imprisoned for long terms" (Umdat al-Qari, vol. 14, p. 256).

#### **Shiite Jurisprudents' viewpoints about a Dhimmi's espionage (a non-Muslims living in an Islamic state with legal protection)**

1. Shaykh Tusi: If Dhimmis conduct an activity that is against security, such as gathering to fight against the Muslims, they



to pay attention and monitor the status so that such a sedition is not formed. Protecting the lives of the Muslims is of the highest significance. Moreover, protecting the Islam itself is more important than the protection of the Muslims' lives.

### **Espionage in Imam Khamenei's perspective**

Imam Khamenei states that "one of the significant features of college students is that they must monitor the conditions with utmost attention; they are required to monitor the environment of their own college, the country, the region, and the world. I have frequently stated that "identification" is one of the most effective and significant elements of any given war. If a force does not have an identification power and does not know how to identify the enemies and risks, it will deal with unusual problems and challenges.

### **The viewpoint of Shiite jurists about the discretionary order of espionage**

1. Shaykh Tusi: If a Muslim conducts espionage for a the warring disbeliever and gives them information about the Muslims, his murder is not permitted, as Hatib ibn Abi Balta'ah wrote to those living in Mecca and gave the information and news about the Muslims, but his murder was not allowed and permitted by the Prophet of Islam. As the Prophet forgave Hatib, the Imam can forgive him/her. The betrayer can be punished by discretion (*Al-Mabsut*, vol. 2, 15).
2. Qazi Ibn Barraj Traboulsi: When someone conducts espionage for the warring disbeliever and gives them news and information about the Muslims, is he allowed to be murdered or not?

Answer : No. Hatib ibn Abi Balta'ah wrote to those living in Mecca and gave them news and information about the Muslims, but the Prophet of Islam believed that he was not allowed to be killed. However, the Imam is likely to punish him by discretion, and he can forgive him as well (*Jawaher al-Feghh*, 15).

3. Allamah al-Hilli: If a Muslim conducts espionage for the warring disbelievers and let them know about the Muslims' secrets and news, it is not permitted to kill him. However, the Imam can punish him by discretion (*Qawa'id al-Ahkam*, vol. 1, 111).

(History of the Prophets and Kings known as Tarikh-i Tabari, volume 3, 42).

2. In Moghazi's book, it has been quoted that the Prophet dispatched a group to Mecca to collect information and news about the status of Mecca and its forces (Maghazi Waqidi, Book of History and Campaigns, 354).
3. In Islamic history books, it has been quoted that the Prophet rewards the individuals in charge of intelligence responsibilities whenever they fulfilled these responsibilities in the best way possible (Al-Kharaj, 72).
4. It has been quoted from Imam Reza that the Prophet method and style was such that whenever an army was dispatched for a war and a commander was appointed, he send one of his trusted companions to accompany the army and let the prophet know about the information and news needed (Bihar al-Anwar, vol. 100, 61).
5. In the history of Islam, one can see that the intelligence agents reported the Prophet that a group of the hypocrites had gathered in Swailam's house (who was a Jew) plotting to avoid the Muslims to prepare for the Expedition to Tabouk. The Prophet dispatched a group led by Talhah ibn Ubaydullah and ordered them to burn that house to destruction (As-Sirah an-Nabawiyah, Ibn Hisham, vol. 4, 11). This indicates that the Prophet had a strong and efficient intelligence system.

### **Espionage in Imam Khomeini's perspective**

On the significance of collecting information and providing them for the authorities, the great leader of the Iranian Revolution and Marja' of the Islamic World (source to imitate/follow or religious reference), Imam Khomeini states "Islam should be protected by everyone; even the women are obliged to protect it. We are all required to pay attention and inform the officials if a plot is observed or a suspicious commuting is seen. The orders stipulated in Islam is to the expediency of everyone, the expediency of Islam. If we see Islam at risk, we should all die to protect it. If the life of the Muslims are at risk, if we see that a group is plotting to kill a bunch of innocent people, we are all required to conduct espionage. We are all required

trust is betraying God, His Messenger, and the believers. A believer conducting such a betrayal has betrayed not only God and His Messenger but also his Muslim brothers and himself; no sane human conducts betrayal against himself, as every wise human understands the hideousness of betrayal, and through having this God's gift (wisdom) who attempts to conduct betrayal against himself? Thus, it was made clear that by "don't betray your trusts while you know" (God is wiser than you are) is that through betraying God and His Messenger you are actually betraying your own trusts though you know the trusts of God and His Messenger are actually your own trusts; no wise human attempts to betray himself and conduct actions resulting in his own harms and evils. Thus, by "while you know" after prohibiting betrayal it is mainly intended to excite the Muslims' natural inclination and tendency toward this prohibition and awaken their true nature in this judgment. It is not merely intended to stipulate one of the conditions of such assignment. Thus, it was made clear that some Muslims disclosed the secret political decisions made by the Prophet with the infidels; God acknowledges this act as betrayal and strongly prohibits it, as it is regarded as betraying God, the Messenger, and other believers. This is confirmed by this verse "And know that your properties and your children are but a trial" that follows the aforementioned verse. As the wording and the style of this verse indicates that it is connected to the verse earlier discussed and does not stand on its own. However, it can be easily understood that admonishing the believers about their properties and children (though prohibiting them from betraying the trusts of God and His Messenger) was for this very reason that the betrayer reported the secret decisions of God's Messenger to the infidels to attract their sympathy and kindness, so that his properties and children in Mecca are kept immune. To cut a long story short, that betrayer intended to protect his properties and children. The same story happened for Abu Lubaba; he disclosed the Messenger's secrets for Banu Qurayza tribe (Tabataba'i, 1985, vol. 9, 69).

### **Espionage in the infallibles' conducts and narrations**

1. The Prophet Mohammad told Zayd Ibn Thabit to learn the language of the Jews as well as their writing system so that he will be able to collect information and news about them

him/her” and “I betrayed his/her trust” meaning that you have violated the covenant you had with someone. The 27<sup>th</sup> verse of Al-Anfal has the same meaning: “do not betray Allah and the Messenger or betray your trusts while you know [the consequence]”. Moreover, the sentence “betray your trusts” implies “do not” (as it was stated in the first sentence”; this means “do not betray your trusts”. Thus, it has the same consequence as the first part of the sentence. Thus “while you know” refers to both parts of the sentence i.e. betraying the Messenger and Allah as well as betraying trusts. Furthermore, “while you know” is of great significance for the first part. Betraying is forbidden and haram when the prohibition is lawful and known for the individuals. When the individual is ignorant of betraying and its edicts and consequences, he/she is not subject to the consequences. Thus, knowledge is one of the general conditions of every assignment without which no assignment is assumed to be accomplished. Otherwise, there was no need to mention “while you know” and the consequences; there is definitely a point worth including. The knowledge implied in “while you know” is that the individual is well aware that this act is betrayal. Thus, this knowledge does not refer to the evils of betrayal and its consequences and God’s edict for its prohibition; neither the wording nor the content of the verse refer to the aforementioned implications. Therefore, the very essence of the sentence is “Don’t betray your trusts”. Thus both “don’t betray God and His Messenger” and “don’t betray your trusts” denote the same prohibition that refer to one single betrayal, that is betraying the trusts of God and His Messenger equal to the believers’ trusts. Some of the trusts are exclusively God’s trusts with people such as God’s orders, and some have to do with the Prophet Mohammad’s trusts including the proper conducts and instructions of Mohammad. Some of these trusts are the people’s own trust with one another such as the properties and secrets they hand in one another. Moreover, some of these trusts are those involving God, the Prophet, and the believers themselves including affairs ordered by God, followed by the Prophet, resulting in numerous advantages for the public such as the political orders as well as orders that have to do with Jihad and war secrets the disclosure of which result in the failure of the religious expectations and wishes and the Islamic government’s efforts, and the right of God and His Messenger is violated and bring about harms for the believers as well. Thus, betraying the latter form of

knowledge about the issues that are of great significance for the public.

### Espionage in Holy Quran

1. In the 10<sup>th</sup> verse of Tahrim Surah (chapter), God talks about the wives of Noah and Lot. Their wives provided information for their infidel and villain enemies and let the enemies know about these prophets' secrets (Majma' al-Bayan, vol. 9-10, p. 479).
2. At the time of the holy prophet of Islam some of the Muslims (al-Anfal, verse: 27; al-Mumtahina, verse: 1) and hypocrites (al-Baqara, verses 8-9; al-Imran, verse: 28; al-Anfal, verse: 27; At-Twaba, verses 45 and 47) conducted espionage for the infidel disbelievers and reported information about the status and conditions of the Muslims.
3. In the 20<sup>th</sup> of al-Qasas Surah, God talks about Mum'in Al-pharaoh (Ezekiel) who conducted espionage to the advantage of Moses. It is stated that through attending among the pharaohs, adopting *Taqiya* (a precautionary dissimulation or denial of religious belief and practice in the face of persecution) and hiding his religion, he was able to know about their plots against Moses. He let Moses know about the plots of the pharaohs to kill him.
4. Eurasian hoopoe was appointed by Solomon to conduct espionage about the Queen of Sheba and other courtiers and collect accurate information about their positions and viewpoints towards Solomon (An-Naml, verse 28).
5. Some of the Jews living among the Muslims started to spy to the advantage of other Jews living in the oasis of Khaybar and other castles (Al-Ma'ida, verse 41).

### Discussion and Interpretation

Betrayal means violating trust, and trust means that the security of a right is protected through a covenant or a will. In his *Mufradat*, Raghib maintains that betrayal and hypocrisy (*nifaa*) are the same. However, betrayal refers to the validity of a covenant and trust, and hypocrisy refers to the validity of religion. Thus, both terms are used in both senses. Betrayal means a hidden disagreement with a right and breaking its covenant. For example, it is said that "I betrayed

becomes international. Thus, in terms of its scope, espionage can be divided into domestic (internal) and foreign.

### **1. Domestic espionage**

Domestic espionage is sometimes conducted for identifying the opponents of the political system ruling the country. It is also conducted to monitor the behaviors and ideas of authorities and governmental officials. In his order to Malik al-Ashtar, Imam Ali asked him to appoint trusted spies on his governmental officials (Nahj al-Balagha, letter 52). Moreover, to monitor the governmental authorities, Amir Kabir appointed spies as well and supervised their activities completely.

### **2. Foreign espionage**

This kind of espionage is conducted for collecting information about the political, military, scientific-industrial, and economic secrets of other countries. In this kind of espionage, the governments commonly take advantage of diplomats, merchants, important figures, military experts and commanders, and electronic and telecommunication devices. Foreign espionage is of great significance in the modern world. In intelligent organizations, most of the espionage activities are conducted through foreign espionage (Richelson, 1999: 382).

A spy's purposes generally include the following:

1. Collecting information about the domestic policies of different countries and acquiring accurate knowledge about the political parties and attitudes of the leaders and politicians.
2. Acquiring accurate information about the system's opposition parties and groups that are opposing and fighting the system either covertly or overtly.
3. Collecting information about the foreign policies of other countries as well as the positions, negotiations, behind-the-scene activities of the states in the international arena.
4. Collecting information about the espionage activities of other countries, especially those conducted in disguises of merchants, diplomats, etc.
5. Knowing about the public opinion and ideological and political attitudes prevalent among the public, and acquiring accurate

### **Definition of espionage in legal terms**

Spy is referred to someone that attempts to collect information or objects to the advantage of the enemy (Garo, 1985, vol. 3, p. 694). It has been stated elsewhere that “a spy is someone that collects information and news from the political or military systems of a country with false and unreal titles and hand them to the other party” (Shamiani, 1997: 101). Another definitions states that spy is referred to someone that attempts to investigate and spy about the secrets and collect information, objects, and documents related to the military, economic, and cultural capabilities of a country and hand them to the enemy through using fraudulent and covert methods (Validi, 1996). In terms of international law, a spy is referred to someone that attempts to collect information about the plans and capabilities of a country to the advantage of an enemy either secretly or through using improper and false titles. According to another definition, a spy is referred to someone that secretly attempts to collect information in the operational area of the enemy through using a false identity and title, and his main purpose is handing the information to the enemy. However, it is worth stating that espionage in peacetime is not subject to the international law and depends on the domestic law of the states (Bledsoe, 1996: 61).

Moreover, one of the jurists has defined espionage as such “A spy is referred to someone that attempts to investigate and spy about the secrets and collect information, objects, and documents related to the military, economic, and cultural capabilities of a country and hand them to the enemy through using fraudulent and covert methods (Validi, 1999: 112-113). In the international law, a spy is referred to someone that attempts to collect information about the plans and capabilities of a party to their enemy through using false titles (Jafari Langeroodi, 1986: 189).

In article 191 of the “Spy Resolution of Brussels”, spy has been defined as such “A spy is someone that collects information either secretly or under false excuses and conducts spying activities in the areas occupied by the enemy so that he can hand it to the other party”.

### **The scope and aims of espionage**

Espionage is sometimes conducted within the borders of one country, and it sometimes goes beyond the borders of a country and



### **Theoretical concepts and principles**

The words espionage and spy have their root in the French word “*espionnage*”. This word was first used in late 18<sup>th</sup> century in France. Its root dates back to the word “*espion*” in Middle French (the language used by the French from 14<sup>th</sup> to 16<sup>th</sup> centuries) that is very close to the word spy ([www.dictionary.com](http://www.dictionary.com)).

In defining espionage Dehkhoda states “Spy: news searcher for evil reasons. Spy refers to someone reporting news from one land to another. When succeeded to kingdom, Solomon first attempted to assign birds as his spies” (Dehkhoda, vol. 5, p. 6458). Thus, in terms of terminology, espionage means inquiring, investigating, collecting information, collecting news from people’s affairs (affairs they wish to remain secret) (Sarikhani, 2000: 7).

### **The definition of *Tahassus* (searching for news through using one’s senses)**

The Arabic root “*Jasseh*” (espionage) was primarily “*Hasseh*” (human’s five senses). Thus, “*Tajassus*” (espionage) and “*Tahassus*” are from the same root; they have the same meaning (knowing and collecting the news) (Mohammad Bagher Mohaghegh, 1986, vol. 5, pp. 166-167). It has been quoted from Khalil that senses are the same as human’s feelings also called “*Jawas*” (spying) (Al-Azhari, 2001, vol. 10, 448). *Tahassus* (searching for news through using one’s senses) and *Tajassus* have the same meaning; *Tahassus* is about collecting the news of the hidden issues and *Tajassus* (espionage) is collecting news and discussing the same affairs (Mohammad Bagher Mohaghegh, 1986, vol. 5, pp. 166-167).

### **The definition of espionage in jurisprudence**

In Jurisprudence books, the word *eyn* (spy) has been commonly used instead of spy. It is a neutral word; it has neither a negative connotation (as spy does) nor a sympathetic connotation (as *Tahassus* does). Thus, it can be observed that in jurisprudence books, *eyn* and spy are used interchangeably. “Spy denotes fame and it is associated with *eyn* which means a competitor; these two words are commonly used interchangeably and cannot be distinguished from one another (Musavi Bojnurdi, 2004, vol. 10, p. 401). In his book *Mesbah al-Monir*, Fiomi maintains that *eyn* is the same as spy “*Al-eyn: Spy*” (Fiomi, undated, vol. 1, p. 101).



2013 by Nasrollah Shameli, Ali Akbar Babukani, and Mohammad Hassan Haeri, and it was published by Imam Sadiq University. In this book, the writers have defined espionage in terms of the conventional usage and etymology. Then, they attempt to explain the criteria and concept of privacy in Shiite Jurisprudential system, and they have provided the reasons of Islam for recognizing espionage as a criminal act. Then, they analyze cases where espionage is allowed and investigate issues such as espionage against the Islamic government and its reasons, privacy, privacy protection in Shiite law and jurisprudence, and espionage edicts. This book has also investigated privacy in jurisprudence and law and the principles of its protection in Ja'fari jurisprudence.

4. A book entitled The Individuals' Privacy in Ja'fari Jurisprudence has been written by Ali Akbari Babukani and was published by Imam Sadiq University in 2013. In this book, the writer has discussed the principles and reasons of espionage privacy and the scope of this reason as well as the legitimate instances and cases of espionage and their principles according to Ja'fari Jurisprudence and examples that are excluded from the reasons of privacy either by expertise of allocation. In addition to explaining the scope of legitimate and illegitimate instances of espionage in Ja'fari jurisprudence, this book has also discussed privacy in jurisprudence and the protection principles of privacy in Ja'fari jurisprudence. The edicts related to espionage and spying in Islam (such as punishing the spy) has been also discussed according to Ja'fari jurisprudence.
5. An analytical study has been conducted on the jurisprudential edict of espionage by Seyyed Mohsen Kharrazi in 2010 in the Journal of Ahl al-Bayt (in Persian). In this article, it has been attempted to investigate the issue of espionage.
6. Another study has been conducted by Zahra Qudsi entitled as "the jurisprudential principles of espionage". It was published in journal of Jurisprudential Principles of Islamic Law (issue 11) in 2014.

An overview of the cuneiform script letter of law indicates that this crime has had severe punishments; betraying one's country was considered a private crime against the king affecting the public and had numerous examples including espionage against one's own country and government. Some examples of such punishments include burning around 8,000 women (1560-1600) in Scotland, burning the convicts alive, and taking out their viscera in front of people (ibid, pp: 289-311). Given the sacred nature of the Islamic legal system and the formation of the government as the basis for the realization of Islamic edicts, the crimes against the system and its security have been given due attention by the lawmaker. The punishment of such crimes are well-regulated and many former kinds of severe punishments have been banned and mitigating as well as exempting excuses such as withdrawal, penitence, and repentance have been predicted. However, as for crimes threatening the territorial integrity of the country or the basis of Islam and the Islamic government, the punishment will be aggravated and depending on the conditions of the crime and the criminal character of its perpetrator(s), proper punishment will be enforced at different levels (Salari, 2009: 39).

1. A book entitled Espionage and Spying in Jurisprudence has been written by Ayatollah Najm al-Din Tabasi in 2014. It was then republished as The Jurisprudential Principles of Espionage and Counter-Espionage. This book includes the collection of his Hawza (Islamic seminary) writings for his students on the related edicts of espionage (Muslim, Musta'man (non-Muslims with a peace agreement permitting them to enter and stay temporarily in a Muslim country), Mu'ahad (non-Muslims having a truce with Muslim lands) and non-Muslims). He has reviewed the viewpoints of the Shiite jurists and Sunni jurists. However, he has ignored counter-espionage.
2. A book entitled as Espionage and Counter-Espionage Jean Pierre Alem was translated by Abul-Hassan Sarv Moghadam, published by Astan Quds Razavi Publication in 1999. It has not been republished so far.
3. Another book entitled Espionage from the series of the fundamental concepts of Islamic humanities was written in

significance whenever needed (Hayati, 2010: 11). Nowadays, with the ever-increasing development of new technologies and the risks threatening the states and the national and international security, everyone is attempting to acquire a stable security while receiving the modern information; this is not possible unless the intelligence authorities and public are well aware of this important issue. The authorities and people need to have a deep understanding of the espionage and counterespionage components. According to Quran, Islamic jurisprudence, and political law, espionage refers to an activity conducted by someone either secretly or in disguise to collect information to the advantage of the enemy. In books such as Al-Mabsut (Shaykh Tusi), Jawaher al-feghh (Ibn Borraj), Qawa'id al-Ahkam (Al-Hilli), Jam'e al-Maqasid, Tahrir al-Ahkam, Jwaher al-Kalam, Al-Rawda al-Bahiyya fi sharh al-Lum'a al-Dimashqiya (al-Shahid al-Thani), and Al-Dorus al-Shar'ia (al-Shahid al-Awal), a person with the conditions stipulated in both law and jurisprudence is a criminal, and depending on his activities, he is bound to receive severe sentences. Espionage can be divided into various types including political, military, scientific, industrial, and economic. The significance of this issue can be well understood by considering its widespread practice and the attempts made by the foreigners to collect information. According to the reports released, as many as 50,000 American CIA espionage agents are active in both the United States and abroad. Moreover, Mossad (National Intelligence Agency of Israel) has as many as 900 secret agents in Arabic countries. Other intelligent organizations including the Secret Intelligence Service (SIS) of the UK (conducting espionage activities for more than four centuries) and France's General Directorate for External Security (French intelligence agency with a very complicated structure) dispatch numerous agents to other foreign countries (Rezvan Talab, 2008: 21).

### Review of the related literature

This crime enjoys a very long history. According to some quotes, the Chinese were the first nation that not only developed espionage but also fought with espionage with a special knowledge and expertise. In order to maintain their silk production monopoly, the ancient Chinese punished espionage on silk production by execution (Jafari Langeroodi, 1986: 189).

competitions. This indicates the complexity and the extended scope of espionage. In the current status, espionage has extended beyond the geographical boundaries and it has become international. Intelligent services and espionage networks have applied the newest scientific achievements for achieving their goals, and no single country can claim that it has been immune from the continuous attacks made by the espionage organizations (Ashrafi, 2002: 13). It is estimated that only in the United States 6 billion dollars are spent yearly on economic espionage. By including the costs of military espionage, this amount reaches 16 billion dollars in the US and 5 billion dollars in Europe. However, no accurate statistics are available on the budget spent by the developing countries for collecting confidential political and military information from the Western countries (Latifian, 1998: 170-171). The great jurisprudents have not defined espionage, and this is possibly owing to the fact it was taken for granted by most of them. In jurisprudence discussions, it has been ignored as well. Espionage has been discussed shortly in different sources. In jurisprudence books, espionage has been discussed through using terms such as "spy" and "spies" (Sarikhani, 2000: 10). The jurisprudents have generally introduced some questions such as: Does conducting espionage by a Muslim spy result in his exit from Islam and apostasy? In this regard, most of the jurisprudents maintain that the Muslim spy will remain a Muslim and has not committed apostasy. They have also stated that if such a spy conducts espionage for a material reason and financial greed and no his beliefs are not harmed, he should not be accounted as apostate (Velayati et al, 2016, the website for the legal article of the Islamic Consultative Assembly). In the present study, it has been attempted to highlight the significance of espionage through introducing it as one of the effective elements of efficiency in intelligence and security organizations. Then, the necessity of espionage is discussed in the country's security and its legal and jurisprudential edicts are analyzed through investigating Quran verses and hadiths. Ignoring espionage results in insecurity in the Islamic community.

### **Statement and significance of the problem**

The main philosophy of conducting espionage in any given organization is acquiring information and offering this information to the decision makers of the country's security issues, and it is of great

and forbidden before the Iranian Revolution (1979). As urbanization and states developed, the rulers found out that they are not capable of continuing and strengthening their ruling only through force and violence and winning battlefields, and they are greatly in need of organizations and systems that function as rulers' eyes and ears. The findings obtained in the present study indicate that despite the disagreements over the penalties determined for espionage in different sects, most of Shiite and Sunni Jurisprudents have acknowledged that espionage is a serious threat for the security of the country and they call for severe punishments.

**Key words:** espionage, edicts, punishment, security of the government and the country, penetration, espionage motives

### Introduction

Espionage crime is included as the first class of the crimes against public security and welfare; espionage threatens the country's independence, security, territorial integrity, and the base of the government, and it reveals the secrets and information as well (Lashjudeh: 2010, p. 12). Thus, all countries are seriously dealing with espionage. In Iran, based on articles 501, 502, and 510 of the Islamic Penal Code as well as article 24 of the Penal Code of the Armed Forces Crimes, any action against the national security will be strongly punished. In the domestic law of some countries, punishments such as execution and long imprisonment have been considered for spying to the advantage of hostile states, especially when espionage is conducted at the time of war. However, espionage has turned out to be an effective tool in the international arena. According to Sun Tzu, the great Chinese philosopher, a military strategist and an intelligence officer "Proper espionage is an introduction to victory. No country has ever won a battle honorably without applying strong and proper espionage and intelligence services (de Marenches and Andleman, 2008: 162). Although espionage was specific to its military type in the past and winning in this area was a great success. However, today's conditions are different from those of the past, and winning is likely to be guaranteed by a lawful political success without applying violence and force tools and taking advantage of political, economic, cultural, and diplomatic opportunities. In the modern world, economic espionage has turned out to be one of the key elements in war

# **An investigation of the related edicts on espionage in positive jurisprudence and law**

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## **Abstract:-**

Crimes against the national security including espionage are regarded as the most important threats for the nations' security and independence. Ignoring these crimes will put the countries security and independence in danger, and in some cases, it will result in the collapse of governments as well as weakening of governments and their territorial integrity. The present study mainly deals with the jurisprudential and legal edicts related to espionage, the related rules of this issue, the scope of espionage, and the status of espionage in terms of criminalization. Moreover, the present study aims to find out whether espionage against the Islamic country to the advantage of foreigners should be regarded as a Haram (forbidden and unlawful) and crime or not, and whether it should receive financial and spiritual support or not. Espionage to the advantage of an Islamic country is primarily Mubah (allowed and permissible) in some conditions, and it even obligatory in terms of obligatory preliminary and preserving the Islamic government and society. The understanding of its aspects and elements are included as unavoidable needs and necessities. What makes this ever-increasing need and necessity more important is the fact that conducting studies on this issue was completely illegal