

Inhabitation, Privacy and its Jurisprudential Rules An Applied Reading in the Islamic West

Dr. Abderrahmane Korib¹, Dr. Abdelkader Touileb²

¹University Ibn Khaldoun of Tiaret, Algeria. E-mail: abderrahmane.korib@univ-tiaret.dz

²University Ibn Khaldoun of Tiaret, Algeria. E-mail: abdelkader.touileb@univ-tiaret.dz

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Abstract:

This article examines two closely related fundamental issues: Residential privacy and its jurisprudential rules, through a practical, applied study based on the case law (nawazil) collections of Islamic jurisprudence in the Maghreb (the Islamic West).

Regarding the first issue, residential privacy, considered an essential urban value in residential and urban planning in the Islamic West, the article investigates its concept, types — visual, auditory and olfactory — levels and terminological significance as understood by Maliki jurists. Regarding the second issue, the jurisprudential rules that govern residential privacy, the study highlights their importance in the legal framework aimed at protecting and safeguarding privacy against any encroachment or breach. Jurists in the Islamic West relied on these rules to derive and apply practical Sharia rulings that address matters such as neighbours' relations, housing disputes, and urban harm. This is reflected in nawāzil texts such as the rulings of Ibn Sahl, the criterion of al-Wancharisi, the nawāzil of Ibn al-Hajj, the fatwas of al-Barzali, and others.

Keywords: residential privacy, jurisprudential rules, the Islamic West, nawazil, jurists.

Introduction:

'Residential privacy' occupies a central position among the values on which the design of housing in Islamic architecture was founded. It became one of the most distinctive features of this architectural tradition in comparison with others. In Islamic thought, the dwelling is not just a shelter for the body, but also a safeguard for the family, protecting their inviolable boundaries. For this reason, privacy became a top priority in residential planning, influencing the distribution of internal spaces, the height of walls, the placement of doors and windows, and the design of entrances. Thus, Islamic construction can only be realised through careful attention to this civilisational dimension.

This care for residential privacy was not solely a matter of architectural taste or social custom. Instead, it was the subject of intensive legal attention, particularly among Maliki scholars in Andalusia and the Maghreb. These jurists created a system of detailed legal rulings surrounding this urban and social value, addressing issues of adjacency, building and oversight. They then invoked overarching juristic maxims to frame and regulate these rulings, such as the universal maxim, 'No harm and no reciprocating harm', and its derivatives. In this way, the protection of residential privacy was transformed from a series of disparate, partial rules into an integrated legal framework. This confirms a fundamental characteristic that distinguishes Maliki jurisprudence in Morocco and al-Andalus: its clear tendency towards codification and foundational theorisation.

These principles become particularly apparent when applied to the urban fabric in the real and lived domain of jurisprudence of incidents (*fiqh al-nawazil*). This body of legal work kept pace with urban growth and the dense concentration of dwellings in the urban centres of al-Andalus and the Maghrib. We identified their practical applications in the doctrinal compilations based on incidents that we relied on for this study, including: ‘The Declarations Concerning the Rulings of Building’ by Ibn al-Rami, ‘Informing of the Incidents of Legal Rulings’ by Ibn Sahl, ‘Incidents (Nawazil)’ by Ibn al-Hajj al-Andalusi, ‘Legal Opinions’ by Ibn Rushd al-Jadd, ‘The Excellent Criterion’ by al-Wancharisi, and ‘Legal Opinions (Fatawa)’ by al-Barzali.

This research is significant because it approaches the theme of residential privacy from two angles. The first angle highlights its status as an essential feature of medieval Islamic architecture, one that was prioritised in residential planning and held great ethical and social value, as recognised by Maliki jurists of the Islamic West (*al-gharbi al-islami*) in rulings related to the built environment.

The second angle reveals the juristic rules that underpin this principle, considering both the theoretical perspective and the practical application. This is achieved by examining how these rules were applied to real-life incidents and cases where this right was violated. By surveying and analysing the texts contained in incident-based compendia (*nawazil*), this approach enables us to interpret the urban landscape of the medieval Islamic West, and to develop an accurate and realistic understanding of its evolution, including its growth and decline, and the issues it generated. In this way, the study acquires depth and temporal and spatial specificity, exceeding the level of generalisation that often characterises broad-scope research.

From this standpoint, the research problem is defined by the following question: What juristic rules did the jurists of the Islamic West rely on to regulate and protect residential privacy? And how did these rules manifest in practice through the jurisprudence of incidents (*nawazil*)?

2. Residential privacy: Concept and Significance

A. The concept of residential privacy

Residential privacy is a composite concept formed from two terms: Privacy and residential (dwelling) privacy.

1. Privacy

Linguistically, privacy (*خصوصية*) refers to something’s “particularity” or association with the private/individual sphere (*خاصة*), in contrast to the public sphere (*أمة*). It conveys the meaning of selfhood and distinctness — that is, the opposite of generality or unrestrictedness. It points to what pertains specifically to a thing or person, not to others. In other words, it is what you have set apart for yourself¹.

Terminologically, privacy is first and foremost an innate human phenomenon tied to the way people live. It means preserving personal and family life while remaining away from exposure or sudden intrusion by others without consent. It reflects individuals’² need to carry out their activities without surveillance or prying eyes, thereby enabling them to experience comfort and enjoyment in their private life. It also involves protecting a person’s private life within their

¹- (The Intermediate Dictionary), 4th ed., Maktabat al-Shuruq al-Dawliyya, 2004, p. 239.

²- Hasan al-Joundi, Guarantees of the Sanctity of Private Life in Islam, Dar al-Nahdha al-Arabiyya, 1st edition, 1993, p. 46.

home as a right, requiring that they be left alone to enjoy familiarity and tranquillity, away from the gaze of others and beyond their interference or monitoring without legitimate justification³. However, privacy in this sense does not imply isolation or social withdrawal, nor does it mean severing one's ties with others⁴.

Moreover, privacy is a relative concept, both culturally and socially. Its meaning and boundaries evolve over time and in different places, and definitions differ between societies and civilisations. This evolution and diversity is influenced by religious, cultural, social, environmental and technological factors⁵. For instance, the steady technological advancements of today have brought some aspects of privacy into the public domain, as can be seen with social media platforms, where many elements of privacy are now more easily exposed or accessed than before.

Nevertheless, this conceptual development within Muslim society has its own fields of application and regulatory boundaries; it does not exceed the community's enduring values and constants. The principles of Islamic law (Shari'a) and human ethics that shaped the concept of privacy forbade suspicion and spying and emphasised modesty and lowering the gaze⁶. They also established the maxim "no harm and no reciprocating harm"⁷ as a fixed principle, whose standards do not change regardless of changes in time or the transformation of social conditions. Thus, privacy is a principle grounded in the original values of Islam, its law and the customs of the community to which it is connected, distinguished by stability and rootedness.

2. Residential (dwelling) privacy

The term 'المسكنية' derives from 'السكن'. Referring to the linguistic root (s-k-n) in Lisan al-Arab, we find that its verbal and nominal derivations converge on a single, deep semantic field. 'Sukn' and 'maskan' mean 'the dwelling/home' and 'the house'⁸.

According to Al-Afahani, maskan is the name of a place of residence (i.e. a place where one settles). It is also related to sukun (stillness/calm), meaning the stability of a thing after motion. It is also used to mean 'settlement'. Similarly, the verb 'sakan' means 'to reside in a place prepared for habitation'.

Furthermore, (سكينة) comes from sukun, which refers to when something's movement ceases and it becomes settled. Additionally, sakan refers to everything one comes to rest with and feels

³- Ahmad Hilal and Ammar sadik, 'The Crisis of Privacy in Architecture, with a Focus on Contemporary Architecture in Jeddah as an Example', *Journal of Engineering Sciences*, Assiut University, Vol. 36, No. 5, 2008, p. 1303.

⁴- Imad Hamdi Hijazi, *The Right to Privacy and the Responsibility of the Journalist in Light of the Provisions of Islamic Sharia and Civil Law*, Dār al-Fikr al-Jāmi'ī, Alexandria, 2008, p. 52.

⁵- Regarding the relativity of privacy and the evolution of its concept, see: Majdi Naima, *The Right to Privacy: Between Criminal Protection and Procedural Controls for Investigation*, unpublished PhD dissertation, Faculty of Law, University of Jalali Liabis, Sidi Bel Abbes, 2018–19, p. 46.

⁶- Ibid., p. 47.

⁷- Mohamed Abd al-Aziz al-Sharim, 'Privacy in Arab Culture: Reading and Analysis', *King Saud University Journal*, Vol. 22, Architecture and Planning, 2010, p. 96.

⁸- Ibn Manzur, Djamel Eddine Mohamed b. Mukarram (*The Tongue of the Arabs*), Dar Sadir, 1993, vol. 13, p. 212.

tranquil with⁹, whether from among one's people or others. Perhaps the Arabs sometimes use the word 'sakan' in reference to what one settles into¹⁰.

This is reflected in the Qur'anic verse: 'And Allah made for you from your homes a sakan (dwelling/resting place)¹¹' (Q 16:80). Here, the dwelling is understood as a form of divine favour that calls for gratitude from human beings towards their Creator, since He made houses and dwellings to protect them from heat and cold, provide shelter for them and their children¹², and preserve their honour, possessions, and wealth. Through dwellings, human beings realise their benefits and interests¹³.

From these meanings, the dwelling takes on its social and cultural reality as a space shaped by and through society. Therefore, as anthropologists emphasise, it is indeed a social product. The forms of this space vary, and its manifestations differ according to the diversity of cultures that generate it.

In psychological and social terms, the dwelling becomes synonymous with meanings such as tranquility, calmness and social stability. It is also the primary functional objective of the Islamic cultural concept of sukn.

B. Levels of residential privacy

Studies that have analysed traditional architecture suggest that residential privacy can be divided into three levels:

1. The public level: This includes the public area within the residential neighbourhood. People carry out activities in this space and do not require a high degree of privacy. Auditory and visual contact occurs among individuals within the surrounding environment of the general residential space¹⁴.
2. The semi-public level refers to the area of residential adjacency (neighbours' proximity), where a certain closeness and shared living takes place¹⁵. Here, a sense of semi-collective ownership and belonging to the environment is cultivated¹⁶. At this level, a distinction is made between the family's public and private lives, which is achieved by preventing visual, auditory or olfactory intrusion into dwellings.
3. The internal private level: This occurs among family members within the home and represents the highest level of privacy. It has two parts:

⁹- Al-Raghib al-Isfahānī, *Lexicon of Qur'anic Words*, trans./ed. by Safwan Adnan Waad, Dar al-Qalam, Damascus, 4th ed., 2009, p. 417.

¹⁰- Ibn Manzur, *idem* (m.s. = ma sabaqa / same reference), vol. 13, p. 212.

¹¹- Surat al-Nahl: verse 80.

¹²- Al-Saadi, Abderrahmane b. Nasir (Facilitating the Noble Merciful in Interpreting the Speech of the Benefactor), trans./ed. by Abderrahmane al-Luwayhiq, Dar al-Salam, Riyadh, p. 517.

¹³- Ibn Maamar Abd Allah, *Residential Space in Algerian Culture*, Kunuz, 1st ed., Algeria, 2018, p. 3.

¹⁴- Islam Obaydat and Yazn Mohamed Obaydat, 'Privacy Between the Past and the Present in Designing the Jordanian Dwelling', *Jordanian Journal of the Arts*, Vol. 16, No. 2, 2023, p. 176.

¹⁵- Dunya Fikri, 'The Islamic Content and Its Effect on Shaping the Design Vision for the Contemporary Dwelling', *Architecture and Arts and Human Sciences Journal*, Vol. 2, No. 5, 2017, p. 3.

¹⁶- Ahmad Hilal and Ammar Sadiq, *Idem*, p. 1025.

a) Family privacy: At this level, privacy must be highly protected to enable family members to carry out their activities freely and safely without outside interference¹⁷, in order to safeguard family secrets and their lifestyle from outsiders.

b) Individual privacy: Each individual has a sphere of privacy that they do not want anyone to access. This gives them a certain degree of independence, even within their own family. This applies to both females and males since the sexual nature of the two categories differs in terms of behaviour, interests and, especially, matters of modesty/exposure.

C. Types of Residential Privacy

1. Visual residential privacy:

Visual privacy is tied to the sense of sight, since sight is one of the most significant means by which privacy can be violated and others' actions can be monitored. In the juristic references of the Islamic tradition, it is described as "harm of looking and exposing"¹⁸. It relies on adequate distance to prevent clear viewing and on the ability to distinguish facial expressions of people whose identity we do not know. Jurists treated this as a criterion for determining what constitutes harm from exposure. Accordingly, it involves protecting internal spaces—such as courtyards, rooms, arcades/covered walkways, and roofs—from being seen by neighbors or passersby in the street.

2. Auditory residential privacy

Auditory privacy is associated with the sense of hearing. It is achieved by ensuring sound protection for the private domain of individuals within the home. This involves preventing disturbing sounds and noise from outside from penetrating the interior. Such noise can prevent individuals from freely expressing their feelings and emotional reactions, and impede essential functions of the dwelling. This, in turn, hinders many residential activities and reduces the overall efficiency of the living space¹⁹.

Auditory privacy is also realised by providing a calm acoustic environment that offers the psychological comfort required without the annoyance or anxiety of others intruding on conversations and relationships within the home. It also involves safeguarding the secrets of the home and the patterns of life within it from being accessed by others, in line with the Qur'anic principle: "Do not spy"²⁰.

Importantly, auditory privacy does not mean complete isolation from the surrounding environment²¹. Rather, it enables limited contact and interaction with the external environment surrounding the dwelling by allowing sound transmission to the necessary extent.

3. Residential (dwelling) olfactory privacy

Olfactory privacy is associated with the sense of smell. It refers to residents' right to enjoy clean, fresh air within their homes. This is achieved by preventing smoke-related harm and unpleasant and harmful odours from entering private spaces. This also involves preventing

¹⁷- Islam Obaydat and Yaza Obaydat, *Idem*, p. 176.

¹⁸- Ibn al-Rami, Mohamed b. Ibrahim al-Lakhmi, *Announcement/Pronouncement on the Rulings of Construction*, trans./ed. by Farid b. Sulayman, University Publishing Centre, Tunisia, 1999, p. 68.

¹⁹- *Ibid.*, (Islam Obaydat, Yaza Obaydat), *Idem*, p. 177.

²⁰- Surat al-Hujurat: verse 13.

²¹- Azal Kazim and Raja Saadi, 'Cybernetics Between Determinism and Privacy in Designing Interior Spaces', *Al-Akademi (The Academic Magazine)*, No. 108, 2023, p. 464.

kitchen odours from spreading into spaces used for entertaining guests and protecting the home from smoke emanating from ovens or adjoining chimneys/flues, especially those in direct proximity.

One of the most important objectives of Islamic law is the protection of public health and the prevention of anything that threatens individuals²², safety or deprives them of a clean environment and pure air, such as foul odours, smoke and filth. In this regard, such violations are classified as harmful transgressions that affect a neighbour's olfactory privacy.

The incident-based (nawazil) compendia document cases in which jurists addressed these issues through protective means, such as juristic reasoning tools and judicial authority. They sought to preserve olfactory privacy while balancing public interest with individual interest: on the one hand, the community's need to expand and develop public amenities, establish factories and workshops, and operate facilities such as those related to tanneries; on the other hand, residents' right to stability and environmental safety²³. Accordingly, olfactory privacy is realised by preventing the living space from being contaminated or 'spoiled' by offensive odours.

The concept of privacy in the terminology of Maghrebi jurists

The term 'privacy', as we understand it today, is the product of modern intellectual and legal developments²⁴. It did not enter Arabic usage until the last decades of the previous century, which raises the issue of avoiding the literal projection of this concept onto a medieval jurisprudential reality that was not familiar with this formulation²⁵. This methodological issue must be addressed; however, the absence of the term does not entail the absence of its meaning. Indeed, the jurists of the Maghrib (the Western Islamic lands) developed a fully coherent semantic field around this notion: their component concepts are interconnected, such that it is difficult to separate one from another except for analytical purposes. For example, "sanctity", "covering" (setr), "uncovering", and "peeping/looking in" all point to the dwelling's immunity and the protection of its inhabitants.

The foundation of this entire conceptual framework lies in the notion of "sanctity" (حرمة), derived from a root signifying prevention and prohibition of violation. Ibn Manzur states that the sanctity of a house is 'what has been added to it and what belongs to its rights and amenities', and affirms that 'its origin is prohibition'²⁶. The juristic conception of the dwelling was built upon this linguistic principle — namely, that it is a 'sanctified precinct' (harim) having rights whose observance requires respect, such as the sanctity of its entrances, exits, and facilities²⁷. Thus, sanctity becomes the covering that preserves habitation and shelters it under its protective canopy.

If sanctity describes the dwelling's general condition, then awrah discloses the precise point of vulnerability from which that sanctity may be violated. According to al-Fayrouzabadi, awrah

²²- Ibn al-Rami, idem, p. 61.

²³- Abu Abd Allah al-Obhari. (The Crown and the Ornaments/Decorations), 2nd ed., vol. 5, Beirut: Dar al-Fikr, vol. 3, p. 164.

²⁴- Al-Sharim, Idem, p. 119.

²⁵- Al-Omari, Idem, p. 87.

²⁶- Ibn Manzur, Idem, vol. 12, pp. 125–126.

²⁷- Al-Gharnati, Idem, vol. 1, p. 222.

means ‘every locus meant for covering’²⁸, while for Ibn Manzur it is also ‘a defect in the rampart and elsewhere, from which one fears’²⁹. This is what makes any opening or window facing the neighbour a ‘breach’ in the linguistic sense: a point from which one fears the sanctified precinct may be penetrated. Hence, Moroccan jurists required such openings to be blocked. The meaning also extends to the dwelling itself when it ‘becomes awrah’ — that is, when its awrah becomes apparent. This is based on the idea that an exposed roof is like a defective house and must therefore be repaired. Moreover, this fear does not disappear in the absence of the occupant³⁰. Emptiness necessitates supervision and protection, as Ibn Fāris stated. On this basis, al-Wanshirīsī applied the rule of sealing an old opening even if the household members had left³¹. All these meanings converge in the Qur’anic verse: ‘Surely our houses are awrah’ — meaning, in effect, not secured or immunised³². Accordingly, awrah, across this whole semantic complex, becomes synonymous with the place of defect where immunity is absent, while its opposite is ‘the fortification/chastising safeguard’, i.e. complete protection³³.

Between the two extremes of general sanctity and the locus of vulnerability lies ‘covering’ (setr) as the positive act that seals the breach and converts ‘عورة’ into immunity. It is not merely negative abstention from violation, but an active architectural and legislative undertaking³⁴. On an architectural level, this involves requiring neighbours to build dividing walls and fixing the height of roof partitions at seven handspans³⁵. Legislatively, it involves prohibiting windows facing³⁶ outwards and obliging owners to install barriers such as lattice-like screens.

Thus, it becomes clear that sanctity, awrah and covering are three interlinked aspects of a single reality. Sanctity is the foundation of protection, ‘awrah is the point where that protection is threatened, and covering is the instrument by which it is restored’³⁷.

In contrast to this positive triad, ‘uncovering’ and ‘peeping/looking in’ (ittilā‘) stand as the negative opposing aspect, meaning the realisation of violation as an act rather than merely a possibility. ‘Uncovering’ is the removal of covering and the exposure of what was concealed, whether by opening a door facing the neighbour, creating a window through which one can look into the neighbour’s dwelling³⁸, or demolishing a physical barrier such as a wall or curtain. Jurists established this measure with respect to whether one can discern the features of the person or not.

²⁸- Al-Firouzabadi, Idem, p. 446.

²⁹- Ibn Manzur, idem, p. 616.

³⁰- Al-Wancharisi, Ahmad b. Yahia. (The Clarifying Standard), edited and verified by Mohamad Hajji and others. Rabat: Ministry of Awqaf and Islamic Affairs and Dar al-Gharb al-Islami, Beirut, 1981, vol. 8, p. 435. Beirut, 1981, vol. 8, p. 435.

³¹- Ibn Manzur, idem, p. 617.

³²- Al-Wancharisi, Idem, vol. 8, p. 444.

³³- Ibn Faris, idem, p. 185.

³⁴- al-Wancharisi, Idem, vol. 8, p. 435.

³⁵- Surat al-Ahzab, verse 13.

³⁶- Ibn Faris, Idem, p. 135.

³⁷- Ibn al-Hajj, Nawazil Ibn al-Hajj al-Tujibi, ed./verified by Ahmed Chouaib, Tétouan Printing Press, Morocco, 2018, vol. 2, p. 284.

³⁸- (The Compendium of Major Rulings), edited and verified by Yahya Mourad, Dar al-Hadith, Cairo, 1428 AH/2007 CE, p. 664.

As for ‘peeping/looking in’, it is more specific than ‘uncovering’ and carries a heavier sin because it involves intentional surveillance from an elevated position³⁹. An example of this is neighbours complaining about the muezzin looking down at them from the minaret⁴⁰. Accordingly⁴¹, jurists in the Maghreb and wider Western Islamic lands have prohibited “uncovering and peeping at the awrahs of Muslims and looking into their sacred spaces”⁴², even when peeping is achieved through means such as a ladder or a chair⁴³.

Dwelling Privacy in Maliki Jurisprudence in the Maghrib

One of the most important themes to which the Maliki corpus of jurisprudence devoted extensive space is the issue of dwelling privacy within the structure of Islamic architecture. This issue received considerable attention from Maliki jurists, judges and accountants alike, each approaching it from the perspective of legislation, implementation and oversight. They showed particular concern for it, surrounding it with a rich fabric of rulings and legal provisions designed to protect and preserve this sacred right.

First: Establishing the Principle in Islamic Law

Islam is keen to preserve residential spaces from outsiders entering without permission from residents. Neglecting the duty to seek permission is considered a direct violation of privacy and the sanctity of the dwelling. For this reason, jurists strongly supported measures to deter intrusion into this space, not only by prohibiting entry without permission, but also by criminalising the act of secretly peeping at those inside⁴⁴.

A. Residential privacy in the Holy Qur’an

Islamic Sharia law emphasises residential privacy through a set of verses from the Qur’an that establish the legal foundations for the sanctity of the home and the correct way to enter it. The most important of these verses are:

1. The verses on seeking permission

Allah says: “O you who believe, do not enter houses other than your own until you seek permission and greet their occupants. This is better for you, so that you may remember.”⁴⁵

Sharia law does not permit entry to others’ homes under any circumstances. Instead, entry is conditional upon obtaining the householder’s permission according to their will. This affirms the sanctity and privacy of the home, and adherence to this rule becomes a means to achieve good and success.

2. The Verses on the Times of Privacy

³⁹- Ibn Rushd, Abu al-Walid Mohamed b. Ahmed. (Issues/Questions of Abu al-Walid Ibn Rushd), edited and verified by Mohamed al-Habib al-Tajkani, 2nd edition, Beirut: Dar al-Jil, 2007, p. 909. 2nd ed., Beirut: Dar al-Jil, 2007, p. 909.

⁴⁰- al-Wancharisi, 1981, vol. 8, p. 452.

⁴¹- Ibn Rushd, 1993, p. 1096.

⁴²- al-Wancharisi, 1981, vol. 8, p. 473.

⁴³- al-Barzouli, Abu al-Qasim b. Ahmed al-Balwi: (Legal Opinions of al-Barzouli) (Collecting Issues of Rulings), edited and verified by Mohamed al-Habib al-Hayla. 1st ed., Dar al-Gharb al-Islami, 2002, vol. 4, p. 361.

⁴⁴- Ibn Maamar, Idem, p. 81.

⁴⁵- Surat al-Nur, verse 27.

Allah says: “O you who believe, let those whom your right hands possess, and those among you who have not yet reached puberty, ask your permission to enter on three occasions.”⁴⁶

To protect the sanctity of private life, Sharia law specifies particular times for even children and close dependants. This helps to establish the concept of ‘private times’ within the home. These times are before Fajr (pre-dawn), at midday (when privacy is typically most required) and after Isha (after the evening meal).

B. Residential Privacy in the Prophetic Sunnah

The Prophetic Sunnah likewise reinforces the Qur’an’s teachings on residential privacy. This protection is evident through practical examples, including the following:

1. Seeking permission

It was narrated by Sahl ibn Sa’d that the Messenger of Allah ﷺ said: ‘Seeking permission has been prescribed only because of vision.’⁴⁷

Since vision is the first avenue through which privacy may be violated, the Prophet ﷺ clarified that the legal basis of seeking permission is to protect the eye from looking at what is inappropriate. The Prophet ﷺ also taught the etiquette of seeking permission, which includes not standing directly opposite the door, offering greetings, asking permission three times, withdrawing if permission is not granted, stating one’s name and seeking permission from within the home. The door is the first barrier of privacy and the quickest passage into the interior of the house. Therefore, safeguarding those inside from unwanted sight requires observing these manners and respecting these rights.

2. Prohibiting Peeping into People’s Homes

The Prophet ﷺ said: “Whoever looks into a house without the permission of its inhabitants should have their eye gouged out; there is no blood money and no retaliation.”⁴⁸

This severe warning preserves the sanctity of the dwelling and gives it a profound level of inviolability. By attaching a disciplinary consequence to the violation without entitlement to compensation, the ruling functions as a deterrent to protect residential privacy.

C. Residential Privacy and the Objectives of Islamic Sharia

Residential privacy is closely connected to the objectives of Islamic Sharia. It embodies these objectives in practice, both when it is present and when it is absent, by warding off harm to the family and promoting its well-being. As Ibn ‘Abdūn described, dwellings are ‘shelters for souls, hearts, and bodies’⁴⁹, and must therefore be fortified as they are places for safeguarding wealth and protecting lives. Islamic Sharia strongly affirms this, treating residential privacy as one of its most prominent overarching goals.

⁴⁶- Surat al-Nur, verse 50.

⁴⁷- Al-Asqalani, Ahmed b. Ali al-Asqalani, *The Opening/Conquest: Commentary on Sahih al-Bukhari*, verified by Mohamed Fouad, Al-Maktaba Al-Salafiyya, 1st edition, 1970, vol. 11, p. 24.

⁴⁸- Ibid., vol. 12, p. 243.

⁴⁹- Ibn Abdoun, 'A Treatise on al-Hisbah', in *A Book of Three Treatises on al-Hisba and the Muhtasib*, ed./verified by Lévy Provençal, Tétouan Printing Press of the French Institute of Oriental Antiquities, Cairo, 1955, p. 34.

Sharia law also considers the needs of Muslim individuals for stability, security and privacy to support psychological and social balance⁵⁰. It prevents any infringement upon this right. The home is thus a safe space where individuals can practise their religion freely, with tranquillity and peace of mind. Moreover, it protects honour and lineage, fortifying the family and shielding it from violation and exposure. It also covers the family's private matters and reputation. A secure dwelling protects offspring from loss and the soul from destruction. It also ensures the right to life by preventing sensory harm (such as that affecting hearing and smell) and by providing a clean, healthy environment. Finally, the home safeguards property and possessions, protecting them from theft and damage. As for *sakinah* (composure) and quietness, these protect the human mind and contribute to achieving psychological and social equilibrium.

2. Jurisprudential Rules Governing Residential Privacy and Their Applications in the Maghreb

In the medieval Maghreb, the concept of 'residential privacy' emerged from the interaction between scriptural texts and the lived experiences of urban and social life. This produced a comprehensive system of rules and legal rulings that established the individual's right to privacy within their home:

Definition of jurisprudential principles:

Principles: Linguistically, the singular form is ' ' meaning 'قاعدة', 'foundation'; thus, the 'principles' of a house are its foundation and the pillars upon which it rests. This meaning encompasses both tangible, sensory matters and abstract, intellectual matters. The term 'construction' refers to building, whether physical or conceptual. The root ' ' generally 'قاعدة' revolves around stability, firmness and foundation as it is the basis for what lies above it

In technical terminology: A 'rule' (قاعدة) in technical usage means a guiding principle. There are multiple definitions of the term, all of which convey a unified meaning despite differing phrasing. These definitions include: 'a general principle applicable to all its particulars' and 'a general principle to which many particulars apply, the rulings of which are derived from it'⁵¹. These definitions indicate that a 'rule' is 'a ruling, a general principle or a general proposition from which the rulings of the particulars falling under its subject matter are derived and applied to them'⁵².

Fiqh rules, considered both as a science and as a designation for this discipline, are defined as 'the science of general fiqh rulings that apply to specific cases whose rulings are derived from them'⁵³. The term 'jurisprudential' excludes non-jurisprudential rulings, such as those pertaining to linguistics and hadith. The particulars are the subordinate branches, and knowledge of their rulings is derived through deduction and classification. Scholars take a

⁵⁰- Al-Qahtani, Mohamed b. Masaar, *Protecting Privacy in Light of Islamic Sharia*, Research and Studies Centre, King Fahd Security College, Riyadh, 2008, p. 31.

⁵¹- Mohamed al-Rawki, *The Theory of Fiqh Codification/Rule-Formulation and Its Effect on Jurists' Differences*, Matbaat al-Misbah, Casablanca, 1st ed., 1994, p. 38.

⁵²- Ahmed b. Mohamed al-Fayoumi, *al-Misbah al-Mounir*, ed./verified by 'Abd al-Azim al-Shanqawi, Dar al-Maarif, Egypt, 2nd ed., p. 510.

⁵³- Mohamed Sadiqi al-Bournou, *The Concise Clarification of the General Fiqh Rules*, Dar al-Risala al-alamiyya, Beirut, Lebanon, 4th edition, 1996, p. 16.

different approach in defining it, stating: ‘A general legal proposition whose particulars are also general legal propositions.’⁵⁴

Fourth: Conditions of a Jurisprudential Rule: A jurisprudential rule must meet the following conditions:

Generality: This means that many existing or potential branches of jurisprudence share its concept and that the absence of some specific details does not undermine its generality. Al-Shatibi states that if a general ruling is established in its entirety, the absence of some specific details does not prevent it from being general because, in Islamic law, what is predominant and most common is considered the definitive general rule⁵⁵.

Abstraction: This means that the rule defines rulings on people’s actions based on their characteristics rather than their specific identities. Thus, it does not address a specific incident or person. For example, the rule ‘harm must be removed’ does not refer to a specific type of harm, but rather to any type of harm that meets the characteristics of harm that the Lawgiver has commanded to be removed. Thus, it links rulings to characteristics and meanings rather than to entities or individuals.

Consistency: This means that the ruling applies to all its particulars without exception in terms of continuity, persistence and uniformity. Consistency is the default principle for rules, but some exceptions may apply, meaning the rule only applies to the majority of its particulars — as is the case for most jurisprudential rules, as indicated by inductive reasoning⁵⁶.

The Importance and Benefits of Jurisprudential Principles:

Jurisprudential principles hold a prominent position in Islamic jurisprudence, as they serve as its guiding framework and reveal its aims and objectives; through them, legal rulings are harmonized and aligned. Mastering them is the key to protecting the jurist from contradiction, as they enable him to organize the numerous branches and countless issues⁵⁷. These principles organize the fundamental principles into a single framework and enable the jurist to recognize the connections and unifying characteristics among disparate details. Ibn Rajab said: “They organize scattered issues into a single thread, restrain deviations, and bring together all that is distant.” Their usefulness is also evident in applying rulings to new realities⁵⁸; through these principles, the scope of fiqh expands to encompass contemporary issues and emerging matters that concern people—through analogy, analogy by extension, and derivation—thereby highlighting the relevance of Islamic law to all times and places.

The most important jurisprudential principles related to residential privacy and their applications: The jurisprudential system has established a set of important principles in this area, the most prominent of which are:

The First Principle: “No Harm and No Reciprocal Harm”

⁵⁴- Yaakoub b. Abd al-Wahhab al-Bahsin, *Fiqh Rules*, Maktabat Rushd, Riyadh, 1st ed., 1998, p. 54.

⁵⁵- Abu Ishaq Ibrahim al-Shatibi (*Concordances*), verified by Mashhour b. Hasan al-Salman, Dar Ibn Afnan, 1st edition, 1997, vol. 2, p. 83.

⁵⁶- Darar al-Sunni/Doras site, 'Encyclopedia of Fiqh Rules', accessed 20 August 2026 at 10:00, available at: <https://dorar.net/qfiqhia/125>.

⁵⁷- Al-Zarqa, *idem*, p. 35.

⁵⁸- Ibn Rajab, *Zayn al-Din Abderrahmane al-Hanbali, Establishing Rules and Clarifying Benefits*, verified by Mashhour b. Hasan, Dar Ibn Affan, Saudi Arabia, 1st edition, 1998, vol. 1, p. 55.

This principle represents the major legal pillar of the entire Maliki fiqh system regarding neighborhood and construction disputes, and it is derived from the Prophetic hadith, “No harm and no reciprocated harm.”⁵⁹ The jurists of al-Andalus and the Maghreb made extensive use of it in rulings concerning residential privacy. Ibn al-Rami relied on it in ruling that a window opening must be sealed and that construction overhanging a neighbor’s property must be prohibited⁶⁰. Ibn Rushd issued a fatwa stating that anyone who constructs a building that overhangs their neighbor’s property, or opens a window in it that overlooks their neighbor’s home—if this causes harm to the neighbor—is obligated to seal it and remove the harm, in accordance with the Prophet’s ﷺ saying: “No harm and no reciprocated harm.”⁶¹

Various interpretations of the hadith’s meaning have been offered by scholars, and its apparent meaning generally points to the prohibition of all forms of harm⁶². In his commentary, Ibn Hajar al-Haythami stated: ‘No harm and no reciprocated harm’ — from ‘ (harm) and ‘ (to harm) — which is the opposite of benefit. These two terms are used together for emphasis, but the widely accepted view is that they are distinct. It has been said that the former refers to causing harm to others in an absolute sense, while the latter refers to causing harm to others in a reciprocal manner⁶³. This view is preferred by Ibn al-Hajj, who attributed it to Shaykh Abu Marwan ibn Siraj. ‘No harm’ means that one should not retaliate with an equivalent harm, as this would constitute harm itself because it would become a mutual act between two parties, like fighting. Ibn al-Hajj commented, ‘This is the best explanation I have heard on this matter.’⁶⁴ Based on this principle, al-Wanshiri issued a fatwa permitting the blocking of a newly built ‘firehouse’ or ‘smokestack’, because the smoke from it harms neighbours. He emphasised that disposing of one’s property in a way that exceeds personal benefit and harms the health of others is prohibited⁶⁵. This principle has implications for residential privacy, meaning that it is a right whose violation is not permitted, even as retaliation or revenge, let alone as an act of intentional harm.

One issue concerning privacy between neighbours is when one neighbour creates a window from which they can see into another neighbour’s porch, and the other neighbour remains silent about it. Sahnun issued a ruling to close two windows belonging to two neighbours who had a narrow alley between their houses. One of the neighbours had a window from which he could see into the other neighbour’s house. Then the other neighbour built a room and opened a window in it directly opposite the first window, from which he could see into the first neighbour’s room⁶⁶. The first neighbour requested that the newly opened window be sealed,

⁵⁹- Malik b. Anas (The Muwatta’), narrated by Yahya al-Laythi and verified by Kamil Ali Hasan (1st ed.). Book of Judgments, Chapter on Judging Regarding al-Marfaq, Hadith No. 1503. Beirut: Muassasat al-Risala Publishers, 2013, p. 56.

⁶⁰- Ibn al-Rami, Idem, p. 68.

⁶¹- al-Wancharisi (The Standard), Idem, Vol. 6, p. 387.

⁶²- See the multiple perspectives shown by scholars when interpreting this hadith: al-Wancharisi, vol. 8, p. 474.

⁶³- Ibn al-Rami, Idem, p. 55.

⁶⁴- Ibn Hajjar al-Haytami, Shihab al-Din b. Ahmad, The Clear Opening: Commentary on the Forty', Dar al-Manhaj, Beirut, 2nd edition, 2009, p. 516.

⁶⁵- Ibn al-Hajj, (The Legal Cases), Idem, p. 542.

⁶⁶- al-Wancharisi, Idem, vol. 9, p. 5.

and demanded that the other neighbour seal the original window because he had remained silent about it, despite the harm it caused, for about five years out of good neighbourly relations. The jurists considered this a form of ‘harm’ — that is, responding to harm with its equivalent — because the neighbour’s silence, even if motivated by good neighbourly relations, had granted it a form of urban stability by virtue of prevailing custom. The second window is considered an encroachment because it is ‘newly created’ and violates the purpose of tranquility in a Muslim home.

One of the most notable cases brought before Judge Ibn Ali ibn Dhakwan by the muhtasib concerned the muezzin Abu al-Rafi’ and his practice of reciting the adhan at dawn and supplications at night from the mosque roof, which was considered a nuisance by the neighbours. This issue was referred to the jurists of Córdoba, whose responses varied⁶⁷. One of the rulings issued by jurist Ibn Dahun was that harm to neighbours must be prevented, the muezzin must confine himself to the customary call to prayer and previous practices, and innovation and disagreement must be avoided. Judge Abu Bakr ibn Abd al-Rahman ruled that nutcracking shops in the market, which were located above residential areas, must be relocated outside the city because they were causing harm, and he did not permit them to return. The case cited by al-Ma’yar in his ninth volume concerns harm caused to neighbours by odours: a man had a shed containing a single fire pit and wanted to build another hearth with a separate chimney for the smoke⁶⁸. The neighbours prevented him from doing so and sought a ruling from the jurist Abu Muhammad al-Sharif al-Umrani on the matter. Al-Umrani ordered that the newly built hearth be sealed off because it caused the neighbours additional smoke, which constituted an increase in harm. This ruling embodies the principle that ‘harm is not to be removed by means of harm’. This important approach is used to determine the extent of existing harm: prior harm does not justify additional harm caused by new actions. Ibn al-Rami supports this principle, extending it to include smoke from the ‘safaj’ and ‘tawajin’ — devices newly introduced for roasting barley in markets and homes — and considering them a form of harm.

Second Rule: “Harm Must Be Removed”

This rule serves as a practical corollary to what precedes it. Therefore, it is not sufficient to merely prohibit causing harm; one must strive to remove it once it occurs⁶⁹. In the case-law **nawazil** of Ibn Sahl, Ibn Atab also cites this rule in a comprehensive formulation in a dispute involving harm caused by a kiln: “All harm must be cut off.⁷⁰” Among the conditions established by the jurists for applying this rule in construction-related disputes are: first, the occurrence and proof of actual harm; second, that establishing it can only be done through direct observation or testimony; and third, that removing the harm should not be achieved by causing a more severe harm.

In his *nawazil*, Ibn al-hajj presents an expansive judicial query and records jurists’ differing opinions regarding the matter of a shop situated opposite a house. Ibn Abdous held that the shop

⁶⁷- Ibn al-Rami, *Idem*, p. 71.

⁶⁸- al-Wancharisi, *Idem*, vol. 9, p. 5.

⁶⁹- al-Wancharisi, *Idem*, vol. 8, p. 457.

⁷⁰- Ahmad b. Mohamed al-Zarqa, *Commentary on Fiqh Rules*, reviewed by ‘Abd al-Sattār Abū Ghudda, Dār al-Qalam, Damascus, 2nd ed., 1989, p. 178.

should be prevented, due to manifest harm⁷¹. He argued that prolonged sitting in the shop leads to repeated exposure, far more than incidental looking—an argument also adopted by Sahnoun in the Muwatt'a for the same underlying reason. In another incident, jurists ordered the demolition of a shop adjacent to a bathhouse where people of idle curiosity would sit⁷². With such judicial strictness, jurists confronted evident harm to privacy, the source of which was the presence of shops.

Jurists also addressed auditory privacy through preventative rulings and developed precise standards to protect associated spheres. They aimed to prevent harm caused by sound, considering offensive noise, clamour and reverberation to be forms of harm that the Shari'a requires to be removed and prohibited⁷³. Accordingly, they prohibited the establishment of bathhouses, ovens, flour mills, tanneries and blacksmith workshops in residential neighbourhoods. They prioritised residents' rights over newly introduced industrial activities that generate harmful noise⁷⁴. They therefore ruled against the expansion of existing activities where they were located prior to the construction of neighbouring properties, and prohibited new activities that would cause harm to neighbours. Instead, they sought to relocate these activities to the outskirts of the city and beyond⁷⁵.

Likewise, Sahnoun considered it harmful — and therefore subject to prohibition or removal — to place ovens and blacksmiths in the vicinity of a house. Based on this, when asked about a man who wished to use an area of his land adjacent to a group of people to build a bathhouse, an oven, or a mill, Ibn al-Qasim issued a legal opinion. The neighbours opposed this because of the potential harm caused by smoke and other factors, and Ibn al-Qasim regarded this opposition as legitimate.

Jurists elaborated on the prohibition of 'auditory disturbance' that disrupts the tranquillity of homes or threatens the integrity of their structures. In their legal rulings, they treated dwellings in Morocco and al-Andalus as interdependent ecological systems, addressing any violation of privacy through sight or sound in the same way. Numerous legal rulings demonstrate how jurists safeguarded the acoustic privacy of homes in Islamic cities, protecting residents from noise pollution that might disturb them and prevent them from enjoying peace and tranquillity. One of the most significant sources of noise pollution and damage to walls was the installation of 'al-Rawahi' (hand mills) for grinding grain in homes; thus, the jurists ruled that their installation was impermissible if it caused harm to a neighbour⁷⁶. Al-Ma'ayyar documented a case in which the jurist Ibn Abd al-Rafi' issued this ruling after someone complained that their wall had been damaged by the vibration of a millstone. Notably, the jurist-judge did not leave the assessment of the extent of the damage to the plaintiff, but devised a technique to measure the vibration caused by the mills' rotation and prove this harm. This technique involved placing grains of dried cassia on a weight and suspending it from the shared wall. If vibration was

⁷¹- Ibn Sahl, *Idem*, p. 656.

⁷²- Ibn al-Hajj, *Idem*, vol. 3, p. 655.

⁷³- Ibn al-Hajj, *Idem*, vol. 3, p. 541.

⁷⁴- al-Barzouli, *Idem*, vol. 4, p. 392.

⁷⁵- al-Hudhullou (as written), *Idem*, p. 70.

⁷⁶- al-Wancharisi, *Idem*, vol. 9, p. 7.

confirmed, damage was established and the millstones were stopped⁷⁷. When asked about a man who had installed mills in his house, the noise of which was harming his neighbours, Ibn Harith considered placing mills against a person's house wall to be one of the gravest forms of harm and ruled that it should be prohibited⁷⁸.

The case recorded by al-Wanchrisi concerning the Andalusian jurist Ibn 'Atab (5th century AH/11th century CE) is an exemplary instance of the judicial protection of auditory and olfactory privacy. It clearly demonstrates the transformation of maqasidi principles into binding architectural regulations in the Islamic West. The case involved a neighbour complaining about 'a kitchen whose smoke is harming him'. This constitutes a clear violation of olfactory privacy. Sources confirm that controlling cooking odours to prevent their spread is an integral part of Muslim home design. In this case, smoke is not just a passing odour, but rather 'actual harm' that requires a remedy because it affects 'health and air quality' within the affected dwelling.

Third Rule: "The greater harm is removed by the lesser harm."

When two harms conflict and cannot both be eliminated⁷⁹, the lesser of the two must be chosen. In the case of a neighbor being exposed to some form of humiliation⁸⁰, Ibn al-Hajj cited a case in which Yahya ibn Ibrahim was asked about a man who opened a door through which he could look into his neighbor's property because his neighbor's wall was short; he forced him to extend his wall, yet he did not prevent his neighbor from opening a door that would be of benefit to him, because this was the easiest way to avert the harm. This is partially at odds with what is stated by Ibn al-Rami, as the one who initiated the action is the one required to remedy or prevent the harm⁸¹; whereas, according to al-Wanshiri, in the matter of constructing a screen between two rooftops, the expense falls on the one who benefits from it, since the party suffering the harm bears the burden of the screen, and this reflects the application of the principle of "the lesser of two evils." Al-Wanshiri was asked about a person who wanted to build a screen wall to prevent exposure, but his neighbor prevented him on the grounds that the weight of the wall would weaken his own structure. The ruling was to refer the matter to "those with expertise" to determine which of the two harms is lesser; if the harm of exposure is greater, then the homeowner may build the screen⁸².

In the unfolding of this rule, Abu Bakr ibn Abderrahmane formulated, in Ibn Sahl's nawazil, a rhetorically eloquent expression:

> "When two harms coincide, the lesser is disregarded for the greater, and the person is prevented from benefiting from his property and the means by which he sustains his livelihood—where the harm caused is greater than the harm suffered by those affected by the noise of the mills."⁸³

He then compelled the neighbor to raise his wall for the sake of screening (to ensure privacy), instead of preventing the owner of the door from opening it. This is because prohibiting the

⁷⁷ - Al-Zarqa, Idem, p. 95.

⁷⁸ - Al-Wancharisi, Idem, vols. 9, p. 59.

⁷⁹ - Ahmad ibn Muhammad al-Zarqa, M.S., p. 199

⁸⁰ - Ibn al-Hajj, Idem, vol. 2, p. 284.

⁸¹ - al-Wancharisi, Idem, vol. 8, p. 444.

⁸² - al-Wancharisi, Idem, vol. 8, p. 464.

⁸³ - Ibn Sahl, Idem, p. 661.

owner from opening a door is a more severe harm than requiring the neighbor to build a wall. He further preferred the placement of a partial screen (shurjub*, a projecting barrier) over blocking the door completely⁸⁴, since a full closure would harm the door's owner more than a partial screen—while still reducing the harm of exposure with the door's essential utility remaining intact. In this way, both interests were realized simultaneously: preventing being looked at, and preserving the functional benefit of the door⁸⁵.

However, the jurists differentiate between shops located on a main, through street and shops on a non-through or restricted street. Ibn Rushd was asked about two adjacent men separated by a through lane: one of them opened a door and two shops opposite his neighbor's door, and none from his household could enter or exit except while their actions would be visible to those sitting in the two shops. This was, in itself, clear harm through exposure. Ibn Rushd therefore issued a ruling that the builder of the door and shops should, as far as possible, turn his own door and shops away from directly facing his neighbor's door. Yet he did not forbid him altogether. Since the lane was through and heavily trafficked, the ruling required turning away in order to ward off the resulting harm. Here, the jurist selected "the lesser of the two harms": turning away was less harmful to the shop owner than complete closure.

This is also the view of Abū Muṭarrāf. He likewise distinguishes between a narrow thorough lane and a wide thorough lane. In the case where there is no prohibition due to the narrower setting, he nevertheless orders turning away—otherwise prohibition would follow. He also stipulates direct on-site observation from the physical location. On this basis, the jurists' rulings restricting the creation of shops in through streets were conditioned, because the owner of the opposite house is not the only person to look through the opening and to pass by; rather, this applies to everyone who comes and goes along the route.

Another case illustrates the exceptional and insightful application of judicial strictness, supported by technical architectural expertise, within the overarching objectives of Islamic law. A person complained of harm arising from animal sounds and vibrations caused by its continuous movement behind a wall, as well as offensive odours emitted from its tethering pen. This constituted a blatant violation of the neighbour's auditory and olfactory privacy, which is protected by jurists through prohibiting the transmission of sounds and smells into others' private domains.

The authority and severity of the principle are evident from the outset. The jurist first ruled that the harm must be removed because the animal's owner had caused it; the neighbour had the right to tranquillity and purity. Consequently, 'the one who is in possession of harm' is given absolute priority in removing the nuisance⁸⁶. However, the animal's owner argued that he needed the animal for his livelihood as it was his main source of income. The jurist did not ignore this argument or adhere rigidly to the letter of the law. Instead, he consulted experts in building practices to find a technical solution — a constructive architectural remedy. They proposed digging the animal's pen to a height of about a person's height and building a wall

⁸⁴- Ibn Rushd, *Idem*, p. 909.

⁸⁵- Ibn al-Rami, *Idem*, p. 83.

⁸⁶- al-Wancharisi, *Idem*, vol. 9, p. 8.

from the ground up to the ceiling so that sound would be blocked from travelling through the soil and the shared wall.

Thus, by balancing the two harms, the jurist chose the lesser evil by adopting the technical solution rather than inflicting hardship on the animal owner in relation to his livelihood. This reflects the Maliki school's realistic approach, which is grounded in prioritising interests in the application of law.

Fourth Rule: 'What was established in the past remains in effect'.

This is one of the most significant legal principles, with its broadest and most precise application found in cases involving residential privacy in the Islamic West. It recognises rights acquired through prescription and stabilises existing conditions to protect the urban fabric from disruption and prevent strained neighbourly relations.

In this context, jurists have defined 'the old' with precision, not referring to a specific period of time measured in years, but rather: 'The old is that of which no one knows the beginning.' This is a functional definition; thus, if no evidence of a thing's origin can be found, that thing is considered 'old' in the eyes of Islamic jurisprudence. It is not permissible to alter it from its current state due to the prevailing presumption that it was erected in accordance with Islamic law⁸⁷.

Ibn al-Hajj applied the principle of antiquity to distinguish between old structures that are left intact and newer ones that are removed. He ruled that: 'If the structure is newer, it is subject to alteration by legal ruling, and the newer structure is that which was built after the one visible from it — and it is this structure that is altered.'⁸⁸ This text provides a precise definition of 'recent' in addition to what preceded it, which makes 'old' a relative rather than an absolute concept. Thus, 'old' refers to what preceded the structure being viewed, and 'recent' refers to what came after it.

Applying this rule, jurists established an essential distinction between an existing (old) skylight/opening and a newly created one. Ibn al-Rami, in his work ("Announcing the Rulings of Construction"), made antiquity the basis of an acquired right, and built upon this distinction a branching ruling:

- The old skylight that existed before the neighbor settled is left in place.
- The new skylight, created after the neighbor has built, is to be sealed.

The decisive difference between the two cases is antiquity, which gives the opening the right to remain. Accordingly, skylights excluded from sealing are those opened by their owner before the neighbour built their dwelling. Their ruling is therefore to be maintained, because the owner has 'secured its benefit'⁸⁹. Based on this principle, Qadi Ibn Abd al-Rafi' and Abu Abd Allah ibn al-Ghumaz issued legal opinions stating that whoever precedes in construction secures their rights and benefits, and that building traditions require the later party to follow the earlier one. Thus, an old skylight that existed before the neighbour settled there is left intact in accordance with the maxim: 'The old is left upon its status.'⁹⁰

⁸⁷- Al-Zarqa, Idem, p. 95.

⁸⁸- al-Barzouli, Idem, vol. 3, p. 542.

⁸⁹- al-Wancharisi, Idem, vol. 8, p. 540.

⁹⁰- Al-Zarqa, Idem, p. 95.

By contrast, the person who builds or settles later must protect themselves from exposure, i.e. prevent their dwelling from causing harm or violating the privacy of their neighbour.

At the same time, antiquity may be used as an excuse to reintroduce the built structure. For this reason, jurists have highlighted a key issue regarding skylights that are to be sealed: the sealing must be done from the outside, not the inside, and the door and threshold must also be removed. The sealing must be an authentic part of the natural construction so that the sealed opening does not appear as a distinct addition to the wall, which would create ambiguity⁹¹.

The underlying concern is that, over time and through forgetfulness, leaving the threshold in place could be used as an argument by the person who created the opening, who could claim that the opening is ‘old’ and therefore sealing it would be improper⁹². They might argue that they only sealed it so that they could reopen it whenever they wished, effectively compelling a finding of acquired right through prescription (long-term lapse).

This precaution is based on a similar incident that occurred in Tunisia, as recounted by Ibn al-Rami, in which a man opened a window that had been sealed at its threshold, located in a dead-end alley that exposed the eaves of some houses. The owners of those houses demanded that it be sealed before the judge; however, the judge permitted its opening due to the existing doubt, as the owner of the opening presented witnesses attesting that it was an old, sealed opening whose threshold remained unchanged, and they confirmed that it had been sealed for some time. (For this reason, the jurists ruled that the features of the window must be completely obliterated; with this ruling, they not only resolved a current dispute but also preempted future disputes arising from the passage of time.

Ibn Sahl elaborated on the application of the principle of prior occupation in disputes over doors and alleys. Among the most notable examples he cited in this context is a case from the rulings of Ibn Ziyad concerning someone who opened a door in a dead-end alley and lived there for about eight years without anyone objecting. He ruled in this case that the neighbors’ silence over this period without objection necessitates the forfeiture of their claim, because prolonged silence in the face of an obvious fact creates a kind of implied acknowledgment that confers the status of prior use upon the act.

What distinguishes Ibn Sahl’s application of this rule is that he characterized acquired neighborly rights based on long-standing use as in rem rather than personal; thus, they are transferred with the property rather than with the owner as a person. Therefore, whoever sells his house transfers, along with the sale, his long-standing rights and obligations.

The “foot rule” helped protect the city’s architectural fabric from haphazard change, as it provided every existing architectural element—be it a door, a window, a wall, or an alley—with legal protection that prevented it from being altered or removed on mere allegation. Thus, the Islamic city’s urban layers accumulated and stabilized over time thanks to this rule, which enshrined what already existed and restricted what was new.

It also guaranteed those with long-standing neighborhood rights protection against retroactive encroachment and provided stability to residential relations in neighborhoods where residents

⁹¹- al-Wancharisi, Idem, vol. 9, p. 10.

⁹²- Ibn al-Rami, Idem, p. 150.

had lived generation after generation. A long-time neighbor was not threatened by the arrival of a new neighbor making claims that infringed upon his established rights.

The rule also provided judges with a practical standard for adjudicating disputes when neighbors litigate over the right to a structure, an opening, or a passageway. The judge first asks: Is this feature old or new? If it is old, it is retained; if it is new, it is removed. This simplifies the judicial process and focuses it on a single issue of proof.

When applying this rule, some jurists subsume it under the principle of ‘the possession/acquisition of harm’. In a case involving the opening of shops on a busy thoroughfare, we find that the jurist Abu al-Qasim Khalaf ibn Abi Faras al-Qarawi prevented a man from opening shops facing his neighbour’s house on a busy street⁹³.

He ruled this way because the shops would expose the neighbour’s porch/covered passage, and exposure constitutes harm. He then treated the matter as one of ‘the rights of whoever was first to come and acquire them’, such that these rights take precedence over those of later arrivals. No one may deprive the person who holds this right unless doing so would cause harm themselves. According to this view, exposing shops is more severe and harmful than exposing doors, even when the doors open onto a busy street. This is the well-known position within the school⁹⁴.

The concept of ‘possession of harm’ was further emphasised by Ibn Ziyadat Allah al-Qabisi when he was asked about someone who wished to open a door in a non-through lane or a through lane in one direction, where his neighbours disputed him. The owner then agreed not to open it⁹⁵.

This ruling even extends to the purchaser of the house afterwards: the purchaser is placed in the same position as the door owner regarding what they acquired ownership of. Therefore, if the seller relinquished his right and bound his opponents by what he had agreed to, that commitment becomes one of the opponents’ rights, and the buyer stands in the seller’s position with regard to those rights⁹⁶.

The jurist Abu ‘Abdullah ibn al-Hajj was asked about a situation in which someone had opened a shop directly opposite the door of another person’s house, providing a view of the courtyard⁹⁷. The judge ordered the shop’s builder to move it away from the neighbour’s door because the shop would cause severe harm; however, this is conditional on the person sitting in the shop being able to see the porch⁹⁸. This ruling was issued by Judge Abu Ishaq ibn Abd al-Rafi‘ and is considered authoritative in Al-Kashf: the person standing at the threshold of the old house’s door must be able to see the eaves. If what lies beyond is visible, the prohibition is more certain. However, if it is not visible from the doorway and remains invisible until one steps out of it, then this does not constitute exposure as defined by the ruling, nor does it warrant prohibition.

Building a staircase adjacent to the neighbour’s wall and installing wood in it infringes upon ‘auditory privacy and the structural integrity of the building’, because it inevitably

⁹³- al-Wancharisi, Idem, vol. 8, p. 453.

⁹⁴- al-Wancharisi, Idem, vol. 8, p. 454.

⁹⁵- al-Wancharisi, Idem, vol. 8, p. 413.

⁹⁶- al-Wancharisi, Idem, vol. 9, p. 27.

⁹⁷- al-Wancharisi, Idem, vol. 9, p. 37.

⁹⁸- al-Tutayli, idem, p. 141.

transmits noise and vibrations deep into the neighbour's dwelling, violating the 'sanctity of residential premises'. This act constitutes a clear 'encroachment', necessitating Ibn 'Atab's ruling to 'reverse what they have done' by applying the principle of 'possession of the harm'. The genius of this principle is evident in Ibn 'Atab's statement: 'It is necessary to remove it and restore the situation to what it was originally.' Thus, the ruling for immediate removal aims to create a 'stable built environment' that prevents disputes arising from infringements on prior rights in construction.

In Morocco and Andalusia, ensuring olfactory privacy and safeguarding the health of residents is the responsibility of religious scholars, who are concerned with this issue. This environmental oversight is illustrated by a case involving a neglected urban space that has turned into a garbage dump, posing a threat to public health. The issue centres on the environmental and olfactory harm resulting from the spread of odours and nuisance, which infringe upon 'olfactory privacy' and residents' rights to clean air and the sanctity of their dwellings.

Addressing the issue, Sahnoun compared the harm caused by the manure to that of a leaning wall on the verge of collapse. This legal analogy implies that the owner of the dilapidated structure is liable for any harm caused to neighbours, just as the owner of a leaning wall is obligated to repair or remove it before collapse. Jurists did not take a lenient stance towards the anticipated risks posed by deteriorating and weak structures, mandating their demolition to prevent harm. Thus, when asked about a neighbour who complained that a wall between them was leaning severely, Ibn al-Qasim issued a legal opinion that the sultan was obligated to order its demolition. If it is established that the neighbours are dumping garbage there, he may require them to clean it up. This confirms the general urban jurisprudential trend that open spaces and roads are the responsibility of residential neighborhoods for the preservation and maintenance of public facilities.

However, the judge al-Madyouni prioritised public interest. He linked the cleaning of a neglected plot to the sweeping/cleansing of latrines. The jurists had required the residents to sweep the latrines, and the cleaning costs were to be shared by all the partners according to the number of people in each household.

Based on this, he ruled that all those bordering the neglected plot were responsible, proportionate to the number of houses or residents⁹⁹. This reinforces the concept of social unity and solidarity emphasised in architectural studies: everyone shares the burden of safeguarding the common residential environment.

He also stated that the neighbour whose wall was damaged had an "acquired right" to peace and cleanliness. Turning the neighbouring space into an unclean area violates that neighbour's privacy, here in the sense of olfactory exposure. Thus, the jurists placed responsibility on the owner of the neglected plot and/or the neighbouring residents to protect the sanctity of the house and ensure the olfactory privacy of the affected neighbour and all residents of the neighbourhood.

Fifth Rule : 'Preventing harm takes precedence over bringing about benefit'

⁹⁹- al-Gharnati, Idem, vol. 1, p. 223.

This rule stipulates that, in the event of a conflict between harm and benefit, the harm must generally be averted because Sharia law prioritises prohibitions over obligations¹⁰⁰. In matters of construction and residential privacy, when the owner's right to use their property and pursue their own benefit — such as opening a window, establishing a shop or installing a millstone — conflicts with their neighbour's right to preserve their privacy and ward off harm caused by exposure, smoke or noise, jurists have ruled in favour of averting the harm and preserving privacy. Contemporary legal texts provide clear evidence of opposition to any intrusion into the sanctity of homes or exposure of private parts in Islamic architecture, even if the means of observation is a lawful act of worship. Sahnun explicitly permitted residents of houses adjacent to the mosque to prevent muezzins from ascending the minaret if they were exposing what was inside their homes. He considered this to be an invasion of privacy and prioritised “preventing the harm of exposure from a height over the benefit of the call to prayer”¹⁰¹. This stance is highly significant in terms of the sanctity and inviolability of homes; even the call to prayer — one of the most visible rituals of Islam — does not justify exposing the private parts of Muslims. The intention behind this prohibition is not to abolish the call to prayer ritual, but rather to find an alternative that does not lead to such exposure.

The Málaga case, which occurred in 702 AH, is one of the most precise historical fiqh documents and one of the richest in the field of residential privacy. It provides a legal and human manifestation of the values and principles of privacy, meriting special study in its own right. It demonstrates that residential privacy is vital for stabilising the lives of Muslim families; without it, the civilisational and cultural function of dwellings collapses. Therefore, protecting this right is a religious obligation.

The questioner describes an incident with human and thought-provoking implications: A muezzin climbs to the top of the mosque's minaret and calls the adhan from a place that enables him to look down onto his neighbour's home and see those inside it. The muezzin and his household were harmed and prevented from behaving normally or moving freely inside their home. This led them to erect a barrier between themselves and the muezzin. Sometimes, due to compelling necessity, the barrier was removed and the family would be shut away in one corner of the house at the time of the adhan. At other times, they might miss the timing of the adhan and not realise until the muezzin appeared and looked at them while they were fully exposed¹⁰². This forced them to appoint a watcher to monitor them during the muezzin's call.

This text portrays the distress of the household owners arising from the violation they suffered, which is rarely found in fiqh sources, and its impact on daily life. The jurist Abū 'Amr al-Qaysī then surveyed the various opinions of Málaga's jurists in a rigorous and refined methodological manner. These opinions can be summarised as follows:

- 1) One opinion holds that the house owner must be required to screen/exclude exposure on the ground that the adhan is a religious, recommended act, and therefore cannot be prohibited.
- 2) Another opinion stipulates that looking is only to be considered with respect to the lower rooms of houses—not the upper ones—so that the harm can be established.

¹⁰⁰- Ibn al-Zarqa, *Idem*, p. 205.

¹⁰¹- Ibn al-Ramī, *Idem*, p. 79.

¹⁰²- al-Wancharisi, vol. 8, p. 470.

3) A third opinion treats the minaret as analogous to a skylight/opening, and therefore considers the age (antiquity) vs. novelty of the minaret in relation to the house in order to determine whether exposure is legally attributable¹⁰³.

However, Abu amr al-Qaysi—viewing these answers together—considered that they amount to permitting what should not be permitted. He therefore rejected all of these opinions, and upheld—through a crucial and deeply significant legal formulation—the neighbor’s right.

After presenting the earlier opinions, he criticised each of them using religious, rational and evidentiary arguments. He clarified that the question of exposing and looking into a neighbour’s private space — i.e. encroaching upon their privacy — is a right that must not be annulled, regardless of the justifications advanced. This is because it is (i) a right of God, grounded in the Sharī‘a’s prohibition of looking into others’ private awrah, and (ii) a right of neighbourliness that juristic rulings guarantee. Consequently, harm to the neighbour must be prevented¹⁰⁴.

This dual protection constitutes the deepest juristic grounding of residential privacy in the Maliki legal heritage of the Islamic West.

Finally, in the dispute over the shops discussed in Ibn al-Hajj’s *Nawazil*, a group of jurists preferred preventing new additions — not allowing the establishment or expansion — to avert realised corruption/mischief, namely the increase of visitors who would fix their eyes on the neighbouring house¹⁰⁵.

Among the sources of disruptive noise were practices such as “striking the date pit kernels” inside houses to feed animals. Continuous striking weakens buildings and, over time, leads to their deterioration and fragmentation¹⁰⁶. Moreover, hearing the noise from a place that faces thoroughways harms neighbours and disrupts their tranquillity. On this basis, the jurist al-Sayouri and others issued a ruling prohibiting such practices¹⁰⁷.

This illustrates a clash between an individual’s interest in using their property and the mischief arising from a neighbour’s loss of their right to tranquillity and peace. Thus, strict application of the principle that ‘averting corruption takes precedence over securing benefit’ is decisive.

Sixth Rule : “What Has Been Practiced”

The concept of “practice” in the terminology of the Andalusian and Moroccan Maliki jurists refers to: departing from the well-known opinion and ruling according to the weaker view that has been consistently applied by judges and muftis in the interest of the ummah and as dictated by its social circumstances¹⁰⁸. This established judicial practice, which has acquired the force of authority even if it contradicts some of the narrations attributed to Imam Malik, reflects the adaptation of jurisprudence to local realities and prevailing customs. “There is no doubt that judicial rulings and fatwas follow the customs of the times and the practices of the people .¹⁰⁹” It is well-established among the Maliki school that any newly created opening that allows for

¹⁰³- al-Wancharisi, vol. 8, p. 470.

¹⁰⁴- al-Wancharisi, vol. 5, p. 470.

¹⁰⁵- Ibn al-Hajj, *al-Nawazil* (Legal Cases), Idem, vol. 3, p. 655.

¹⁰⁶- al-Wancharisi, vol. 8, p. 445.

¹⁰⁷- al-Wancharisi, vol. 8, p. 453.

¹⁰⁸- Omar Abd al-Karim al-Jaydi, *Custom and Practice in the Maliki School*, Matbaat Fadhala, al-Muhammadiyya, Morocco, 1982, p. 342.

¹⁰⁹- al-Wancharisi, Idem, vol. 8, p. 467.

peering into a home must be sealed to prevent harm, and there is no disagreement among jurists regarding the prohibition against peering into homes; they enjoy the highest degree of protection as the family's private space. A neighbor is not permitted to do anything that causes harm to his neighbor, and Ibn al-Rami affirmed" that this was the established ruling in Morocco, and it was universally applied; Judge Ibn Abd al-Rafi' issued fatwas to this effect and ruled in favor of blocking such openings in many legal cases that arose during his time.¹¹⁰ This affirmation by Ibn al-Rami demonstrates the unity of the jurisprudential system in the Islamic West and the consistency of rulings regarding residential privacy when it is violated through windows.

Following the practice established by al-Qurtubi, Ibn Rushd ruled on the issue of the muezzin looking out from the minaret, which was presented to him, affirming that "climbing the minaret is repeated many times each day, and the prohibition is what is indicated by the narration from Malik; He did not limit himself to issuing a theoretical ruling but also proposed an innovative technical solution: if the muezzin can see the rooftops from some angles but not others, it is not entirely prohibited; rather, a barrier should be erected between him and the rooftops on the side from which they are visible. Ibn Rushd then reinforced the ruling by citing the principle of "what is practiced" in the Qurtubí school¹¹¹." This combination of jurisprudential authority and practical application embodies the Maliki school's approach to accommodating an evolving and dynamic urban reality, as well as its ability to devise solutions in harmony with it.

Further evidence that judicial "practice" was a significant argument in the Andalusian jurisprudential system is that the ruling on "tankib" became an established practice in Andalusian courts, where the jurists—may God have mercy on them—deemed it appropriate to order the owner of the shop to perform "tankib" if he was able to do so."

Maliki jurists permitted the opening of a door opposite a neighbour's door on a wide, open street because it does not compromise the privacy of the house and the owner is not exposed to being seen. As the street is very wide, only what is visible from the public lane can be seen from the open door. This is the well-known view and the established practice in Morocco, as stated by the jurist Ibn 'Abd al-Rafi'¹¹². The boundary for a wide lane is nine arm-lengths. If it is less than seven *dhirā'*s, it is considered narrow¹¹³.

As for narrow pass-through roads, the basis for prohibition is exposure — seeing and directly observing what is inside and outside¹¹⁴. Jurists in Morocco have acted upon this principle: a neighbour has no right to open a door opposite their neighbour's house and must block it.

Rulings differ regarding non-through roads, such as dead-end alleys with no exit. In such cases, the rules become stricter and more complex. Over time, these alleys are treated as shared property by the owners of the houses that face them, and the rulings regarding them are explicit and clear¹¹⁵.

¹¹⁰- Ibn al-Rami, *Idem*, p. 68.

¹¹¹- Ibn Rushd, *Idem*, p. 1096.

¹¹²- Ibn al-Rami, *Idem*, p. 81.

¹¹³- al-Barzouli, *Idem*, p. 366.

¹¹⁴- Ibn al-Rami, *Idem*, p. 82.

¹¹⁵- al-Wancharisi, *Idem*, vol. 9, p. 21.

‘If a man wants to open a door in a dead-end alley and it harms his neighbour by cutting off their access to utilities or exposing their entry area, then he is not allowed to do so and must close it. However, if he does not harm his neighbours, an important rule branches from this principle: it requires the approval of all the homeowners in that alley. This is the well-known view and what is practised in Tunisia¹¹⁶.

Al-Barzali transmitted a statement from Ibn Abd al-Barr regarding what was customary in Córdoba: ‘No one may open a door in a dead-end alley unless one has already been opened.’ Ibn Zur‘ also prohibited opening doors without the permission of the people of the alley.¹¹⁷”

Seventh Rule: ‘The person who affirms is more knowledgeable than the person who denies.’

In the event of a conflict between two parties, one of whom establishes or affirms something and the other of whom negates it, the fiqh rule states that the affirming party is given precedence over the denying party. This is because the affirming party has an additional element of knowledge that the denier does not have. Anyone who knows and recognises a matter has greater evidentiary weight than someone who does not. Also, lack of knowledge is not a valid reason to overturn established proof that is already known¹¹⁸.

Ibn Sahl explicitly mentioned this rule in connection with the issue of a door and a roof, grounding it in a practical consensus:

‘Testimony from someone who affirms something is more worthy of acceptance than testimony from someone who denies it. This was said by more than one of our companions, and this is what is acted upon.¹¹⁹’

This rule was applied when testimonies conflicted regarding harm caused by an oven: the testimony of the person who affirmed the harm was preferred, and the judgement was issued to remove or stop the harm.

This rule has a decisive impact in disputes involving residential privacy, because the harm caused by exposure/being seen is often difficult for people to prove as absolutely absent in every case. Meanwhile, it is enough for the affirming party to prove that exposure is possible — even if it occurs only in a single situation.

Consequently, in Andalusian Maliki jurisprudence, the burden of proof in privacy disputes favours the person who is harmed. This position strengthens the practical protection of residential privacy.

Conclusion

What we conclude after studying the Maliki fiqh rules on harm and residential privacy is that the jurists of the Maghrib al-Islami (the Islamic West) rely on a coherent fiqh system that functions as an integrated whole. This functional complementarity among the rules has produced highly precise protective rulings for residential privacy—rulings that call for further

¹¹⁶- Ibn al-Rami, *Idem*, p. 85.

¹¹⁷- al-Barzouli, *Idem*, vol. 4, p. 366.

¹¹⁸- Mohammad Mustafa al-Zuhayli, *Fiqh: Rules and Their Applications in the Four Schools of Jurisprudence*, Dār al-Fikr, Damascus, 1st edition, 2006, p. 969.

¹¹⁹- Ibn Sahl, *Idem*, p. 664.

study in their historical context, in their mediating social and urban environment, and also within today's dialogue with contemporary urban planning models.

The concept of 'residential privacy' is deeply rooted in the literature and compendia of Maliki fiqh in the Islamic world. It has been expressed through profound and conceptually rich terms such as 'the private character of space', 'the sanctity of not exposing or peeping', and 'covering/concealment'.

Residential privacy takes precedence in housing design in Morocco and al-Andalus. This principle formed the basis of residential design and had a strong influence on urban planning. Jurists were keen to protect, preserve and defend residential privacy from any kind of encroachment or transgression. To achieve this, they relied on a set of legal rulings and fiqh rules to ensure that privacy, whether visual, auditory or olfactory, remains safe from any breach. Jurists in the Islamic West addressed disputes over residential privacy in a practical and flexible manner, rather than being rigid in their interpretation of texts. They took social and urban realities into account when necessary, especially in Moroccan and Andalusian cities characterised by significant population density and narrow, closely situated urban spaces.

Fiqh rules formed the main framework for applying legal rulings to disputes concerning residential privacy.

Ultimately, this study paves the way for further research into the impact of fiqh rulings on the development of the Moroccan urban landscape, as well as the role of experts and on-site observations in resolving housing disputes and devising novel, collaborative solutions.

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