

Building Violations Affecting the Ownership of Others in The Saudi System and The Position of Islamic Jurisprudence

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Abstract

This research explores the implications of building violations related to zoning lines and the unauthorized use of others' land within the context of Saudi law and Islamic jurisprudence. Zoning lines are established to maintain orderly construction and define property boundaries. Exceeding these lines can lead to penalties including fines and demolition. Islamic teachings also regard such encroachments as violations of public property, emphasizing compliance with established boundaries to prevent harm to others. Moreover, the research discusses the illegal construction on others' properties, highlighting that both Saudi law and Islamic principles ensure protection of property rights, stressing that any violation not only disrupts societal order but is also morally reprehensible, meriting both legal and religious condemnation. The study encapsulates the importance of adhering to legal and ethical standards in property dealings to uphold social harmony and justice.

Keywords: *Violations, Ownership of Others, Saudi System*

INTRODUCTION

Praise be to Allah, Lord of the Worlds, and prayers and peace be upon the noblest of prophets and messengers, as well as upon his family and all his companions.

The Saudi legal system has recognized the right of individuals to property ownership and protects it from any assault that may harm it. An owner has the freedom to use, exploit, and dispose of their property through all permissible types of transactions. This includes real estate ownership where an owner has the right to engage in all activities they deem beneficial to their personal interest, such as selling, leasing, farming, or endowing the property, with the fundamental right to build.

However, an owner's freedom to manage their property is restricted by the condition that it must not conflict with the public interest of the community, such as when the right to build conflicts with public urban planning and its regulations, or causes harm to others.

Consequently, the Saudi legislator has deemed construction that harms public or private property rights as violations subject to legal penalties. A review of Islamic jurisprudence also reveals that it has addressed the rules of encroachment on real estate ownership. In this study, we will explore the types of violations that affect public or private properties under Saudi law and elucidate the stance of Islamic jurisprudence on this matter.

Research Questions

This study addresses the following questions:

What are the building violations that affect the property of others in the Saudi system? And what are the methods of resolving them?

What is the stance of Islamic jurisprudence on this matter?

Research Objectives

To identify building violations that harm the property of others.

To learn about methods for resolving these violations in the Saudi system.

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To understand the stance of Islamic jurisprudence on building violations that affect the property of others.

Research Plan

The research plan includes an introduction, four main sections, and a conclusion:

The first section: Building violations that affect public or private property in the Saudi system, which includes three subsections:

Subsection one: The building's conflict with zoning lines.

Subsection two: Building on land owned by others.

Subsection three: Causing damage to neighbors without encroaching on their properties.

The second section: The stance of Islamic jurisprudence on building violations that affect public or private property, which also includes three subsections:

Subsection one: The building's conflict with zoning lines.

Subsection two: Building on land owned by others.

Subsection three: Causing damage to neighbors without encroaching on their properties.

PREFACE

The Saudi legal system considers certain building activities undertaken by owners as construction violations, which are punishable by fines and demolition. This includes encroachments on private or public properties, such as building in violation of zoning lines, on someone else's property, or causing damage to neighbors without encroaching on their properties. In this study, I will address these violations according to the following demands:

First Demand: Building's Conflict with Zoning Lines

Zoning lines aim to organize construction so that it appears orderly and consistent, and they distinguish between adjacent properties, separating public from private ownership. The owner's exceeding of these zoning lines constitutes a building violation punishable by the Saudi system. In this section, I will discuss the regulations concerning buildings in conflict with zoning lines in a first subsection, and then I will clarify the position of Islamic jurisprudence on this in a second subsection.

First Subsection: Regulations on Building Conflict with Zoning Lines in the Saudi System

The Saudi regulator defines zoning lines as lines that delineate property boundaries and separate them from neighbors and public properties, established in the approved plan (*Article (1) of the Municipal Violations Penalties Regulation issued in 1442 AH*). The establishment of a building that conflicts with zoning lines is considered a municipal violation warranting financial penalties and demolition at the violator's expense (*Article (10) of the Municipal Violations Penalties Regulation issued in 1442 AH*). Conflict with zoning lines may involve the entire building or part of it being situated on the zoning line, or it may involve an extension to the building that encroaches on the surrounding properties, whether public or private, such as balconies.

Second Subsection: Islamic Jurisprudence's Stance on Building Conflict with Zoning Lines

Zoning lines, such as streets and pathways between residences, are considered public property that must not be encroached upon. Therefore, constructing a building in conflict with zoning lines is deemed a legal violation and an encroachment on public property. This could be due to extending beyond the designated horizontal or vertical construction limits, or causing harm to others as a result of violating the established zoning lines, the violator risks exclusion from God's mercy. Several Islamic texts prohibit encroachment on someone else's property by building, planting, or altering its features. Among them:

- 1- A hadith from the Prophet Muhammad states: "God curses those who change the land's landmarks" (*narrated by Imam Muslim in his Sahih, Book of Sacrifices, Chapter on the Prohibition of Sacrificing*)

to Other than Allah and the Curse on Those Who Do, Hadith No. 1978, previous reference, 6/84). Considering the definition of zoning lines as those that clarify property boundaries and separate them from neighbors and public properties, placed in the approved plan, they are considered as landmarks of the land, and encroaching upon them results in being cursed by God's Messenger.

2- Another hadith from the Prophet Muhammad states: "Muslims must adhere to their contractual conditions, unless a condition legalizes what is forbidden, or forbids what is legal" (narrated by Abu Dawood in his Sunan, Chapter on Settlements among People, Hadith No. 1352, 3/27). Therefore, anyone who owns a piece of land within zoning lines has agreed to abide by the conditions and specifications that must be followed during its development and must not deviate from them.

Second Demand: Building on Land Owned by Others

This demand will be addressed in two subsections: the first will detail building on land owned by others in the Saudi system, and the second will discuss the stance of Islamic jurisprudence on this matter.

First Subsection: Building on Land Owned by Others in the Saudi System

Private property holds significant priority within the Saudi system. The Basic Law of Governance in the Kingdom of Saudi Arabia stipulates that the state guarantees the freedom and sanctity of private ownership, and no one's property can be expropriated except for public interest, with the owner receiving fair compensation. (*Article (18) of the Basic Law of Governance issued by Royal Decree No. A/90 dated 27/8/1412 AH*).

Reaffirming this, the Civil Transactions Law issued by Royal Decree No. (M/191) dated 29/11/1444 AH establishes this right and regulates it, stating that "property rights authorize the owner alone within the legal framework to use, exploit, and dispose of the owned item, including all its fruits, products, and appendages, unless a regulatory text or action dictates otherwise. The owner of a land owns everything above and below it to the extent useful for its enjoyment, unless a regulatory text or action dictates otherwise. No one shall be prevented from or stripped of their ownership except in cases specified by regulatory texts". (*Articles: 608, 609, 610 of the Civil Transactions Law*).

The regulator also imposes restrictions on private ownership, specifying that the owner's use of their rights must conform to statutory restrictions set for the public or private benefit, and if another's right is attached to the property, the owner may not engage in harmful dealings without the permission of the right holder. (*Articles (611, 612) of the Civil Transactions Law*)

Moreover, owners must not overuse their rights to the extent that it harms a neighboring property. Neighbors cannot claim damages for usual neighborhood nuisances that cannot be avoided, but can request the removal of nuisances if they exceed normal limits, considering local customs, the nature of the properties, their location relative to each other, and their designated purposes. Official permissions do not prevent neighbors from exercising their right to demand the removal of these nuisances. (*Article (613) of the Civil Transactions Law*)

Building on someone else's land can take various forms, such as erecting structures on another's land, leaning a building into someone else's airspace, or extending a balcony onto another's property, and it can involve encroaching on a neighbor's property, leading to dire economic consequences as funds spent on construction are wasted, and social consequences as disputes may arise and escalate to violations of personal and property rights.

The Saudi regulator protects real estate ownership and considers building on another's property, whether intentionally or unintentionally, as a municipal violation punishable by financial fines and the violator being charged with the removal of the infringement. (*Article (10) of the Municipal Violations Penalties Regulation issued in 1442 AH*)

The Civil Transactions Law also confirms the protection of property rights and establishes a set of rules, including:

If a person constructs or plants with their own materials on land they know to be owned by another without the owner's permission, the owner may request the removal of the construction at the builder's expense, with compensation if warranted, or retain it by paying its value or an amount equal to the increase in land value due to the construction or planting. (*Article (651) of the Civil Transactions Law*)

If a person in good faith builds or plants with their materials on land owned by another, the builder may remove it if the removal does not damage the land; if removal damages the land or if the builder chooses not to remove it, the owner may choose to pay for the materials and labor or an amount equal to the increase in land value due to the construction or planting.

If the construction or planting reaches a scale that burdens the land owner to fulfill what is due, they may request to transfer the land ownership to the person who built or planted, in exchange for fair compensation. (*Article (652) of the Civil Transactions Law*)

If a landowner unintentionally encroaches on adjacent land while building in good faith, the court may, if it sees fit, compel the owner of the adjacent land to relinquish ownership of the occupied part to the neighbor, in exchange for fair compensation. (*Article (653) of the Civil Transactions Law*)

Second Subsection: Building on Land Owned by Others in Islamic Jurisprudence

Islamic Sharia prohibits encroachment on others' properties, considering it equivalent to unlawfully consuming wealth. The Quran states: "O you who have believed, do not consume one another's wealth unjustly, except through a business transaction by mutual consent among you" (*Quran, Surah Al-Nisa, 4:29*)

The Prophet Muhammad stated, "It is not lawful for a man to take another's wealth except with his goodwill" (*reported by Imam Ahmad in his Musnad, Hadith No: 21082, authenticated by Al-Albani in "Irwa al-Ghalil," reference 5/279*)

During his Farewell Pilgrimage, the Prophet declared, "Your blood and properties are sacred to one another like the sanctity of this day, in this city, this month" (*reported by Imam Bukhari in Sahih Bukhari, Book of Hajj, Chapter: Sermons During the Days at Mina, Hadith No: 2/165, 2/619*)

These and other texts strictly prohibit encroachment on people's wealth, including unauthorized building on their properties. A Hadith narrated by Sa'id ibn Zayd warns, "Whoever unjustly encroaches on a span of land will have it wrapped around his neck on the Day of Judgment from the seven earths" (*reported by Imam Bukhari in Sahih Bukhari, Book of the Beginning of Creation, Chapter on the Seven Earths, Hadith No: 3198; and by Muslim in the Book of Transactions, Chapter on the Prohibition of Oppression and Land Usurpation, Hadith No: 1610*)

Regarding the removal of constructions on another's property, Ibn Rushd notes a scholarly consensus: "Scholars unanimously agreed that whoever plants trees or constructs buildings on land not his own must remove them" (*bidayat almuhtabid wanibayat almuqtasad 4/106*)

Ibn Qudamah Al-Maqdisi stated, "If someone plants or builds on another's land without permission, and the landowner demands their removal, the encroacher must comply, and there is no known disagreement on this" (*Al-Mughni, 7/365*)

Abu Dawud reports from Sa'id ibn Zayd, the Prophet said, "An oppressor has no right over his sweat" (*reported by Abu Dawud in his Sunan, Book of Taxation and Governance, Chapter on Reviving Dead Land, Hadith No: 3073, and classified as sound by Al-Albani in Irwa al-Ghalil, 5/353*)

Abu Dawud and Abu Ubaid report a dispute to the Prophet between a man who planted on another's land, resulting in the Prophet ruling in favor of the landowner and ordering the removal of the palm trees, which were indeed removed (*reported by Abu Dawud, Sunan, Book of Taxation and Governance, Hadith No: 3074, and considered sound by Ibn Hajar in Bulugh al-Maram*)

Jurists have stated that any damage caused to the land by construction or planting obliges the removal of the damage. Al-Mughni mentions, "If one removes a plantation or construction, they must level any pits and restore

the land to its original state, as the damage was done on someone else's property, obligating its removal" (*Al-Mughni*, 7/366)

In "Al-Insaf," it is noted, "The well-known opinion of Ahmad is that the owner may remove it for free, supported by his followers. Another view is that it should not be removed, but owned by its value" (*Al-Insaf*, 15/144)

The Hanafi school makes an exception that if land would be damaged by the removal, the owner may keep the building and secure its value if removed (*Bada'i al-Sana'i*, 7/149)

The Maliki school allows the owner to choose between taking over the construction and paying its demolition value or ordering the encroacher to demolish it and level the land (*Bada'i al-Sana'i*, 7/149)

Ibn al-Qasim al-Maliki stated, "If someone builds on the land of others without their permission and they later claim it, they may either compensate him for the value of the construction and take it, or they may demolish it at their discretion" (*Al-Dardir's Great Commentary with Dasuqi's Margin*, 3/454)

Ibn Qudamah elaborates on related issues:

If the landowner wishes to own the construction without compensation, they cannot do so because it belongs to the encroacher.

If the landowner wishes to own the construction by paying its value and the owner refuses but opts for removal, they are allowed to remove it, as it is their property.

If the encroacher offers the construction as a gift to the landowner to avoid removal, and the landowner accepts, it is permissible. If the landowner refuses and there is a legitimate reason for removal, they are not forced to accept. If there is no legitimate reason, they might be compelled to accept to avoid prolonging the dispute (*Al-Mughni*, 5/183)

Third Section: Causing Harm to Neighbors Without Encroaching on Their Property

This section is divided into two parts. *In* the first part, I discuss causing harm to neighbors without encroaching on their property under the Saudi legal framework. In the second part, I address the stance of Islamic jurisprudence on this matter, as follows:

First Subsection: Causing Harm to Neighbors Without Encroachment on Their Property

Harm to others does not necessarily result from encroachment on their property through construction; rather, it can occur if one builds on their own property in ways that harm neighbors. This might include constructing doors or windows that overlook neighbors and compromise their privacy, installing ventilation openings that emit foul smells, or elevating a building to an extent that blocks neighbors' access to air. All these actions are considered violations subject to penalties, including fines and demolition under the system.

Second Subsection: Causing Harm to Neighbors Without Encroachment on Their Property in Islamic Jurisprudence

Islamic Sharia emphasizes the prevention of harm to others, regardless of the type.

This includes harm arising from construction activities among neighbors. A hadith from Ubada bin As-Samit – may Allah be pleased with him – reports that the Prophet Muhammad decreed, "There should be neither harming nor reciprocating harm" (*reported by Bukhari in his Sahih, Book of Partnerships, Chapter: Casting Lots in Division and Shares, Hadith No: 2361, 2/882*).

The prohibition of harm is mentioned in an indefinite manner, which implies the forbiddance of all types of harm, as an indefinite in the context of negation generally includes everything (*explained in the commentaries on Sunan Ibn Majah by Al-Suyuti, p. 901*).

Thus, it includes any harm to others resulting from construction on one's own property.

Since Sharia prohibits causing harm to others, it also mandates its removal. A hadith reported by Abu Dawud tells of Samurah bin Jundub, who had a palm branch extending into the courtyard of a man from the Ansar, causing inconvenience and hardship to him and his family.

The man requested Samurah either to sell it or exchange it, but Samurah refused. The man then brought the issue to the Prophet Muhammad, who asked Samurah to either sell or exchange it, but he refused. The Prophet then said, "Grant it to him and you will have such and such," but Samurah still refused, at which the Prophet said, "You are causing harm," and instructed the Ansari, "Go and cut down his palm tree" (*reported by Abu Dawud in his Sunan, Book of Judgements, Chapter on Judgement, Hadith No: 3636, 3/315; however, Al-Albani classified this hadith as weak in his series of weak hadiths, Hadith No: 1375*).

CONCLUSION

This study demonstrates that Saudi law protects both public and private properties from encroachment, whether such encroachment involves construction on the property or inflicts harm through other means, such as opening a window overlooking the property or obstructing sunlight and air. In this respect, Saudi law aligns with Islamic jurisprudence.

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