

**Neighboring Rights: An Analytical and Comparative Study of  
Window Openings from The Perspectives of Afghan Civil Code and  
Hanafi Jurisprudence (Fiqh)**

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**Abstract**

This research analytically and comparatively discusses the principles of window openings in residential buildings from the perspectives of Afghan Civil code and Hanafi jurisprudence (Fiqh). Every Muslim is obligated to respect the rights of their neighbors and ensure that the window openings does not lead to intrusions into their neighbors' private lives. The Afghan Civil Code and Hanafi jurisprudence have specific regulations that require maintaining a minimum distance between windows and neighboring properties. The aim of this research is to clarify the principles of the Afghan Civil Code, Hanafi jurisprudence, and ethics concerning the protection of neighbors' rights and privacy, as well as to strengthen social order and prevent the potential harm and disputes. The significance of this research lies in presenting a balanced perspective between modern and traditional values in Afghan society, emphasizing that in window openings all Islamic, legal, and ethical principles and boundaries should be considered in the context of window placement. This research employs a doctrinal method along with descriptive, critical, and analytical approaches. It utilizes primary sources such as the Holy Quran, hadith, Afghan Civil Code, and other relevant national laws. Additionally, secondary sources including legal dictionaries, legal and jurisprudential books, articles, and relevant websites, have been thoroughly considered. All pertinent sources have been critically analyzed. This research provides specific guidelines regarding the principles of window openings and outlines how these can align with statutory and

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jurisprudential standards. Through its findings, the study aims to foster great respect for neighbors' privacy and propose appropriate solutions for resolving legal disputes.

**Keywords:** Neighboring rights, window opening, Privacy, Civil Code, Hanafi Jurisprudence.

## Introduction

The Civil Code of Afghanistan and Hanafi jurisprudence have comprehensive and clear principles and rules regarding various aspects of human life, such as land ownership, dwellings, the window openings in houses, and others. Property owners must consider the Sharia and legal rulings when placing windows in their homes to ensure that neighbors feel protection and respect of their personal privacy in their own dwellings. The Civil Code of Afghanistan contains a series of rules and principles regarding the use of property, construction of buildings, personal privacy, and the rights of individuals. According to Article 1900 of the Civil Code, "...only owner may, within the limits of provisions of law, use and utilize their property and take any possessive actions on it." Similarly, Articles 9, 1906, 1907, 1929, 1930, and 1931 of the Afghan Civil Code contain complete and detailed provisions regarding the prevention of harm, restrictions on the use and enjoyment of property, and the window openings. All restrictions legally placed on the use, benefit, and disposal of private property are intended to protect individual rights, ensure social order and justice, and prevent potential conflicts. Therefore, these provisions must be observed with full honesty and integrity.

Islamic Shariah and Hanafi jurisprudence also render the owner of a right powerless in the absolute use, benefit, and disposal of their rights when harm is directed towards society, particularly towards neighbors. The Quranic verses explicitly prohibit harm, aggression, and oppression. Allah Almighty says "وَلَا تَعْتَدُوا إِنَّ اللَّهَ لَا يُحِبُّ الْمُعْتَدِينَ". "And do not transgress. Indeed, Allah does not like transgressors." (Quran, 2:190). Similarly, Allah Almighty says, "إِنَّ اللَّهَ يَأْمُرُكُمْ بِالْعَدْلِ وَالْإِحْسَانِ", "Indeed, Allah commands to do justice and good conduct." (Quran, 16: 90). These verses from the Holy Quran reveal that Islam has a strong legal and ethical foundation for the prevention and elimination of harm. They guide people not to cause

harm or damage to others and to spread justice, peace, and goodness within society.

Numerous hadiths provide important guidance regarding the prevention of harm, which forms the foundational principles of Islamic jurisprudence. One of the most famous hadiths that emphasizes the elimination of harm is: ‘لا ضرر ولا ضرار.’ (Abu Dawood, 4,3843). It means there should be no harm nor reciprocating harm." Additionally, the Prophet Muhammad (PBUH) said, ‘مَنْ كَانَ يُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ فَلَا يُؤْذِ جَارَهُ.’ (Sahih Bukhari, 8:6018). Meaning that, “Whoever believes in Allah and the Last Day, let him not hurt (or insult) his neighbor.” In light of these hadiths, Islam provides clear instructions for the prevention and elimination of harm. Based on this, Islam commands individuals not only to protect themselves from harm but also to avoid causing harm to others, which is essential for the establishment of social justice, harmony, and equality.

In the *Majallah al-Ahkam al-Adliya*, (a collection of legal maxims) there are numerous rulings regarding the prevention of harm to society particularly to neighbors, as well as the elimination of harm. For instance, the legal maxim of *الضرر يزال* (*Al-Dharr Uzal*), meaning "Harm must be removed." (Rostam Baz, 2016, p. 51). States that any harm or damage affecting individuals should be eliminated and prevented. Additionally, another legal maxim clearly states *درء المفاسد أولى من جلب المصالح* (*Dar’ al-Mafasid Awla min Jalb al-Masalih*), meaning ‘Prevention of harm is preferable to the acquisition of benefits.’” (Rostam Baz, 2016, p. 56). Based on these principles and others like them, any harm or damage that affects individuals must be removed in order to protect their lives from corruption and injury, and to ensure their rights are safeguarded in the best possible way, particularly neighboring rights. For instance, if one neighbor blocks the flow of air or light to another house, or if the personal privacy of a neighbor is threatened by the windows of another’s house, then in such cases and similar situations, the harm must be removed to ensure social justice and order.

This research aims to comparatively and analytically examine the principles related to the window openings in residential house according to the Afghan Civil Code and Hanafi jurisprudence. The study will focus on

how the Afghan Civil Code and Hanafi jurisprudence established specific principles for protecting the rights and personal privacy of neighbors, strengthening social order, and preventing potential harm and disputes. The significance of this research lies in providing a balanced perspective between modern and traditional values in Afghan society, ensuring the statutory, Islamic, and ethical principles and limits are considered in relation to window openings in residential homes.

Throughout this research, several specific questions will be addressed. For example, what legislative and jurisprudential principles does the Afghan Civil Code and Hanafi jurisprudence provide regarding the window openings in residential homes? Furthermore, how do potential harms and disputes related to the window openings arise, and how are these disputes resolved based on the provisions of the Afghan Civil Code and Hanafi jurisprudence? Answering these questions will help clarify the core purpose of the research and contribute to a deeper understanding of the subject. The article covers the concept of neighboring rights, concept of private privacy, respecting the sanctity of dwellings, the principles and conditions of window openings in the Afghan Civil Code, the principles and conditions of window openings in the Hanafi jurisprudence (Fiqh), a comparative analysis between the civil code of Afghanistan and Hanafi jurisprudence, Conclusion, and recommendation.

### **Problem Statement**

Neighboring rights, especially window openings, has long been a legal and ethical issue, balancing property rights with privacy and well-being. The idea of neighboring rights is an important one in both the Afghan Civil Code and Hanafi Jurisprudence (Fiqh). Its purpose is to ensure that the use of an individual's property does not infringe upon the rights or comfort of the individual's neighbors. However, these two legal systems handle the topic differently, notably for constructions like windows that overlook a neighbor's private space. There is a possibility that the Afghan Civil Code, which is influenced by civil law traditions, may place an emphasis on concrete legal frameworks such as the use of property, easements, and confidentiality rights. The Hanafi Fiqh, on the other hand, is a more morally

motivated approach that emphasizes the moral responsibility of preventing harm to others. Although it has less formal regulation, it has a profound cultural and religious importance. Hanafi Fiqh has its roots in Islamic law.

### **Research Questions**

1. How does the Afghan Civil Code address window openings in relation to neighboring rights, and what legal provisions balance privacy with property use?
2. What are the key principles in Hanafi Fiqh regarding neighboring rights, particularly in the context of window openings?
3. In what ways do the Afghan Civil Code and Hanafi Fiqh converge or diverge in their approaches to ensuring privacy and preventing harm through the regulation of window openings?

### **Research Objectives**

1. To discuss the Afghan Civil Code's provisions regarding neighboring rights and window openings, focusing on privacy and property use.
2. To analyze the key principles in Hanafi Fiqh regarding neighboring rights, particularly in the context of window openings.
3. To compare the approaches of the Afghan Civil Code and Hanafi Fiqh in regulating window openings, focusing on their methods of ensuring privacy and preventing harm.

### **Research Methodology**

This research employs a doctrinal method along with descriptive, critical, and analytical approaches. It utilizes primary sources such as the Holy Quran, hadith, Afghan Civil Code, and other relevant national laws. Additionally, secondary sources including legal dictionaries, legal and jurisprudential books, articles, and relevant websites, have been thoroughly considered. All pertinent sources have been critically analyzed.

## The Concept of Neighboring Rights

The neighbor is the closest person to one's home, and their responsibility is broader than that of others. They are the quickest to respond in all circumstances, whether in times of joy or sorrow. In the Holy Qur'an and the Noble Sunnah, there are many verses and hadiths that command us to treat the neighbors well, such as not causing them harm. This includes a strong emphasis on maintaining the neighbor's rights, to the extent that the Prophet (peace be upon him) said: 'Gabriel continued to advise me regarding the neighbor until I thought he would make him an heir. (Noman 2012, p.20). The messenger of Allah said:

“ ما زال يوصيني جبريل بالجار حتى ظننت أنه سيورثه (Sahih Bukhari, 8, 5669).

*Meaning that,* “Gabriel kept recommending treating neighbors with kindness until I thought he would make him an heir,”

Additionally, the Prophet Muhammad (PBUH) said:

مَنْ كَانَ يُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ فَلَا يُوْذِ جَارَهُ (Sahih Bukhari, 8, 6018).

Meaning that, “Whoever believes in Allah and the Last Day, let him not hurt (or insult) his neighbor.”

Thus, being kind to the neighbor is commanded because it is one of the causes of happiness in this world and the Hereafter. As for good neighborhood, it is a term that corresponds to good relationships, such as noble brotherhood and good contributions from the neighbor towards their neighbor. Goodness to the neighbor is not just about not causing harm, but it also means being patient with the harm from the neighbor and enduring it on their behalf. Goodness to the neighbor can mean either rewarding them or treating them kindly, such as refraining from harming them. Additionally, it can involve acts of mercy, solidarity, and mutual care between neighbor. (Noman 2012, p. 20-21).

Furthermore, one of the significant rights of neighbors is to refrain to no cause harm to the neighbor, such as the extension of tree branches over the neighbor's wall, which blocks light or causes other harm, resulting in harm to the neighbor. Additionally, one of the neighboring rights is to protect their dignity. From this, one of the great duties towards them is to protect their dignity and not expose any of their private matters. A neighbor should act with the manners of brotherhood toward their neighbor and must avoid mentioning his neighbor's faults and should protect his fellow Muslim's dignity. (Noman, 2012, p. 54-55).

### **The Concept of Private Privacy**

The term “privacy” is derived from is the Arabic term “*Hareem*” which literally refers to the area around a house or building, or to the place that should be protected and defended. (Moeen Dictionary, 1984, p.1352). Additionally, “*Hareem*” refers to what should not be touched or approached. (Africaee, 1994). Legally, privacy is that which must be protected and respected, and any harm to its sanctity is prohibited. (Raoufi, Jamshidirad & Bafrani, 2021, p. 5). In other words, privacy refers to the part of an individual’s life where they expect that others should not have access, observe, monitor, or in any other way infringe upon their private privacy without their consent. (Mashhadi & Sajad, 2016, p.134).

The right to privacy is one of the fundamental human rights, designed to protect individuals' rights and freedoms and emphasizing the respect for human dignity. This right not only protects personal liberties but also plays a crucial role in ensuring the security and stability of society, by fostering an atmosphere of respect and mutual coordination. The right to privacy has been given special consideration across legal systems, civilizations, cultures, and religions worldwide. Every individual should have the freedom to live their personal and family life without unauthorized interference. This includes the protection of homes from unwarranted inquiries or surveillance, the safeguarding of personal and financial information, freedom from both auditory and visual monitoring, among other related rights. (Raoufi, Jamshidirad & Bafrani, 2021, p. 10).

Furthermore, it is important to note that privacy is a discretionary right, meaning that a person can choose whether or not to exercise it. If a person does not actively exercise this right and discloses information from their private space to others, they forfeit their privacy. Privacy can be understood in two ways. The first is "individual privacy" which refers to a person's right to their own unique privacy, protecting them from interference by others. In contrast, some individuals share a joint right to privacy, which is mutually beneficial, and this is referred to as "shared privacy." For instance, a husband and wife each have their own individual privacy, which is separated and respected. However, in addition to this right, there is also the shared privacy that arises from marriage, and both parties acknowledge and upholds this right within their relationship. In this case, not only has privacy not been violated, but it has also been expanded in accordance with their shared circumstances. (Mashhadi & Sajad, 2016, p.142).

The sacred religion of Islam places great emphasis on ethics and justice in all aspects of human life, particularly when it comes to privacy. According to Islamic teachings, the personal and family rights of every Muslim, and indeed, every human being, are to be highly respected. Islamic guidance explicitly prohibits actions such as secretly observing another person, entering their property without permission, or spying on their personal affairs. The protection of privacy is mentioned in numerous places in the holy Quran and Hadiths, as follows:

Almighty Allah says that:

‘ يَا أَيُّهَا الَّذِينَ آمَنُوا اجْتَنِبُوا كَثِيرًا مِّنَ الظَّنِّ إِنَّ بَعْضَ الظَّنِّ إِثْمٌ وَلَا تَجَسَّسُوا وَلَا يَغْتَبَ بَعْضُكُم بَعْضًا أَيُحِبُّ أَحَدُكُمْ أَنْ يَأْكُلَ لَحْمَ أَخِيهِ مَيْتًا فَكَرِهْتُمُوهُ وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ تَوَّابٌ رَّحِيمٌ .’

Meaning that, "O believers! Avoid many suspicions, for indeed, some suspicions are sinful. And do not spy, nor backbite one another. Would any of you like to eat the flesh of their dead brother? You would despise that!<sup>1</sup> And fear Allah. Surely Allah is 'the'

Accepter of Repentance, Most Merciful.” (Quran, 49:12). The Messenger of Allah (PBUH) said:

“عن أبي بَرزَةَ الأَسْلَمِيّ رضي الله عنه قال: قال رسول الله صَلَّى اللهُ عليه وسلَّمَ يا معشر من أسلم بلسانه ولم يخلص الإيمان إلى قلبه لا تَدْمُوا المُسلمين ولا تتبَّعوا عوراتهم. فإنَّه من تتبَّع عوراتهم تتبَّع الله عورته و من تتبَّع الله عورته يفضحه ولو في بيته.” (Abu Dawood, 5, 4880).

Meaning that, “Abu Barzah al-Aslami (RA) reported that the Messenger of Allah (PBUH) said: O those who have embraced Islam with their tongues, but whose faith has not yet reached their hearts, do not speak ill of the Muslims or seek out their faults. For whoever seeks out the faults of others, Allah will seek out their faults, and if Allah seeks out someone's faults, He will expose them, even if they are in the privacy of their own home.” Moreover, the prophet Mohammad PBUH said,

أَنَّكَ إِنْ اتَّبَعْتَ عَوْرَاتِ النَّاسِ؛ أَفْسَدْتَهُمْ، أَوْ كَدَّتْ أَنْ تُفْسِدَهُمْ . (Abu Dawood, 5, 4888).

Meaning that, “Certainly, if you seek out the faults of people, you will either cause their corruption or be very close to doing so.”

The above Quranic verse and noble hadith emphasizes the importance of respecting privacy and dignity. Islamic Shariah strongly commands Muslims to honor the private lives of others and forbids interference in their personal matters. Based on the Quran, protecting one's privacy and social dignity is a fundamental principle that entails avoiding suspicion, spying, and gossip. Suspecting and prying into people's private matters is a violation of their personal space, which Islam strongly condemns. The Prophet Mohammad (PBUH) forbids Muslims from

seeking out others' shortcomings or exposing their secrets, as this harms their personal life and dignity. These teachings are intended to protect the privacy and dignity of individuals in society, ensuring that Muslims live with mutual respect and trust. Thus, Islam regards the protection of privacy as both an ethical and social principle that fosters peace, trust, and mutual respect within the community.

### Respecting the Sanctity of Dwellings

The principle of protecting the sanctity of homes is recognized in both Sharia and statutory laws. Neither individual nor legal entities have the right to interfere in another person's private space, and any violation of this, is considered an offense. There are numerous verses in the Holy Quran that emphasize the significance of protecting privacy. Almighty Allah says:

يَا أَيُّهَا الَّذِينَ ءَامَنُوا لَا تَدْخُلُوا بُيُوتًا غَيْرَ بُيُوتِكُمْ حَتَّى تَسْتَأْذِنُوا  
وَتُسَلِّمُوا عَلَىٰ أَهْلِهَا ذَٰلِكُمْ خَيْرٌ لَّكُمْ لَعَلَّكُمْ تَذَكَّرُونَ .

Meaning that, “O you who have believed, do not enter houses other than your own houses until you ascertain welcome and greet their inhabitants. That is best for you; perhaps you will be reminded.” (Quran, 24:27).

In another place Almighty Allah says:

فَإِن لَّمْ تَجِدُوا فِيهَا أَحَدًا فَلَا تَدْخُلُوهَا حَتَّىٰ يُؤْذَنَ لَكُمْ ۚ وَإِن قِيلَ لَكُمْ  
ارْجِعُوا فَارْجِعُوا ۚ هُوَ أَزْكَىٰ لَكُمْ ۗ وَاللَّهُ بِمَا تَعْمَلُونَ عَلِيمٌ .

Meaning that, “And if you do not find anyone therein, do not enter them until permission has been given you. And if it is said to you, "Go back," then go back; it is purer for you. And Allah is Knowing of what you do.” (Quran, 24: 28).

There is a strong emphasis on protecting the individual’s privacy, and no one has the right to enter another person’s dwelling without the

permission of their inhabitants. Similarly, in Islam, safeguarding the privacy of one's own home and observing proper etiquette for entering someone's house is considered of great important. If a person needs to enter their own home, they should notify the inhabitants in some way, such as knocking on the door, coughing, or making another indication, so that the residents are aware of their arrival. This practice ensures that family members, such as mothers, sisters, or daughters, are not seen in situations they would prefer to keep private. According to the principles of modesty and privacy in Islam, such notifications are essential to protect the sanctity of the home and preserve mutual respect and ethical values among family members.

Furthermore, Almighty Allah says:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَيْسَتْ أُنثَىٰ لَكُمْ مَلَائِكَةٌ أُنثَىٰ وَلَئِن لَّمْ يَظْهَرُوا  
الْحُلْمَ مِنْكُمْ لَآتِيَنَّكُمْ مِنَ الْغَيْبِ مَا تَتَذَكَّرُونَ وَيَتَذَكَّرُونَ  
مِنَ الظُّهُورِ وَمِنْ بَعْدِ صَلَاةِ الْعِشَاءِ ثَلَاثُ عَوْرَاتٍ لَّكُمْ لَيْسَ عَلَيْكُمْ  
وَلَا عَلَيْهِمْ جُنَاحٌ بَعْدَهُنَّ طَوَافُونَ عَلَيْكُمْ بَعْضُكُمْ عَلَىٰ بَعْضٍ  
كَذَلِكَ يُبَيِّنُ اللَّهُ لَكُمْ الْآيَاتِ وَاللَّهُ عَلِيمٌ حَكِيمٌ .

Meaning that, “O you who have believed, let those whom your right hands possess and those who have not [yet] reached puberty among you ask permission of you [before entering] at three times: before the dawn prayer and when you put aside your clothing [for rest] at noon and after the night prayer. [These are] three times of privacy for you. There is no blame upon you nor upon them beyond these [periods], for they continually circulate among you - some of you, among others. Thus does Allah make clear to you the verses; and Allah is Knowing and Wise.” (Quran, 24:58).

The above verse emphasizes the importance of domestic order, modesty, and the protection of privacy. It also instructs seeking permission at specific times, such as before the dawn prayer, during midday rest, and

after the evening prayer, to maintain the modesty and privacy of family members. These are times when individuals may be resting or in situations where they do not wish to be seen by others. Seeking permission is crucial to respecting the privacy of the family and maintaining order and ethical values within the family. In this way, Allah teaches children the importance of respecting modesty and privacy before reaching puberty, ensuring that they are raised according to Islamic manners from a young age. This blessed verse serves as guidance to prevent shameful or inappropriate situations between family members while also considering the ease of everyday life within the family. Through these wise rulings, Allah takes into account human nature and the practical aspects of life, providing profound guidance for balanced social interactions.

In many hadiths, the Messenger of Allah PBUH has emphasized the importance of protecting privacy. Prophet Mohammad PBUH said:

عَنْ أَبِي هُرَيْرَةَ رَضِيَ اللَّهُ عَنْهُ قَالَ: قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: مَنْ اطَّلَعَ فِي بَيْتِ قَوْمٍ بِغَيْرِ إِذْنِهِمْ، فَقَدْ حَلَّ لَهُمْ أَنْ يَفْقَنُوا عَيْنَهُ. (Sahih Muslim, 5, 5642).

Meaning that, "Hazrat Abu Huraira (RA) narrates that the Messenger of Allah (PBUH) said: If someone looks into the house of the people without permission, the owner of the house is permitted to remove their eye (i.e., to defend their privacy)." In another hadith, the Messenger of Allah (PBUH) said:

حدثنا ابن ابي عمر، حدثنا سفيان ، عن ابي الزناد ، عن الاعرج ، عن ابي هريرة ، ان رسول الله صلى الله عليه وسلم، قال: " لو ان رجلا اطلع عليك بغير إذن، فخذفته بحصاة ففقت عينه ما كان عليك من جناح. (Sahih Muslim, 5, 5643).

Meaning that," Hazrat Abu Huraira (RA) narrates that the Messenger of Allah PBUH said: "If someone looks into your house without permission and you

throw a small stone at him and cause his eye causing  
their eye to be blinded, there is no sin upon you.”

The aforementioned hadiths outline key principles regarding the protection of personal privacy and the sanctity of one’s dwelling in Islam. In Islam, safeguarding personal privacy is regarded as a fundamental right. If someone looks into another person’s home without permission, the owner of the house is permitted to defend their property and privacy. This ensure that individuals can protect their private privacy from interference and intrusion by others. Furthermore, these hadiths emphasize that, seeking permission before entering or looking into someone else's home or personal space—even one’s own home is essential in all cases. Asking for permission is a fundamental aspect of Islamic ethics, and failing to do so is regarded as a violation of moral and legal norms. Additionally, these hadiths highlight the importance of respecting people’s rights in Islam, particularly the right to privacy. If someone violates these principles, the Shari'ah grants the homeowner the right to protect their privacy, even if it results harm to the intruder.

The statutory laws of Afghanistan also include clear provisions for the protection of homes and the sanctity of private privacy. For instance, Article 38 of the 2004 Afghan Constitution explicitly states, "A person's residence is protected from intrusion. No one, including the government, may enter or search an individual’s house without the homeowner's permission or a ruling from the competent court, except in the circumstances and procedures specified by law. In the case of a clear crime, a responsible official may enter or search a person's home without prior court authorization. This official is required to obtain a court order within the period prescribed by law after entering or searching the home.” The constitution of Afghanistan explicitly addresses the protection of dwellings from intrusion. Article 40 states that “Property shall be safe from violation. No one shall be forbidden from owning property and acquiring it, unless limited by the provisions of law. No one’s property shall be confiscated without the order of the law and decision of an authoritative court. Acquisition of private property shall be legally permitted only for the sake of public interests, and in exchange for prior and just compensation. Search

and disclosure of private property shall be carried out in accordance with provisions of the law.”

The provisions of the Afghan Constitution outlined a key principle regarding the protection of personal properties. This article emphasizes that the dwelling of every individual is protected from intrusion, neither real nor legal entity may enter an individual’s property without the owner’s permission. However, as an exception, in the case of a clear crime, authorities are permitted to search a home without prior competent court approval, when necessary for security or emergency situations. Despite this, officials must obtain a court ruling after conducting the search, ensuring the protection of judicial processes and transparency. Overall, this provision is a cornerstone of legal justice and the protection of individual rights.

### **The Principles and Conditions of Window Openings in the Afghan Civil Code**

The Afghan Civil Code outlines all conditions, principles, and restrictions that must be observed when making window openings in dwellings. Adhering to these guidelines helps fulfill the Islamic, moral, and social duties of the property owner, fostering an atmosphere of respect and harmony between neighbors and preventing potential harms and disputes. The Afghan Civil Code includes specific conditions and principles regarding window openings, which will be discussed as follows:

Windows should be placed in a manner that prevent harm to neighbors, as stated in Article 1909 of the Afghan Civil Code, “Person who constructs a building shall have to construct it in a way that its window does not cause harm to the already existing neighboring building.” The provision of this article applies to the owner of the dwelling who intends to build a second or third floor on their house. The owner of the house must place windows on the second and third floors in a manner that does not harm the neighbor, such as by violating the neighbor’s privacy, observing the neighbor’s female members, exposing the secrets of their homes, and so on.

Legally, this article is based on the Islamic jurisprudential principle of *La darar* (no harm), which is one of the key principles in social and civil

matters. The building must not be constructed in a way that allows a direct view into the neighbor's house or property through the window, as this infringes upon the neighbor's privacy. This article ensures that the construction of a new building does not cause problems for the neighbor, such as the loss of privacy, disruption of comfort, negative environmental impacts, and so on. Ultimately, this article aims to protect the privacy and rights of each individual, preventing potential disputes and fostering harmony in social life.

Article 1929 of the Afghan Civil Code states that, "Neighbor shall not have the right to build window or quasi-window towards his neighbor within the distance of less than one meter. The distance shall be calculated from the back of the wall in which window or quasi-window is located or from the external corner of the wall." The provision of this article applies to those who wish to construct a second or third floor on their house. The owner of the building must place windows on the second or third floor in such a manner that the distance from the window to the neighbor's wall is not less than one meter. If the distance is less than one meter, the homeowner is prohibited from placing windows on the second or third floors. This restriction is in place to ensure the neighbor's privacy is respected and protected from unauthorized intrusion. However, the one-meter distance between the exterior of the window and the neighbor's house may not be suitable for all properties, as some areas have houses that were not built in accordance with municipal regulations. In such cases, the legal distance between dwellings may not have been observed. As a result, even a one-meter distance could raise concerns about privacy protection between neighbors in these areas. To ensure the safety of homes, this article needs to be amended, and an appropriate distance between houses should be determined.

Additionally, the aforementioned article highlights key points regarding the rights and obligations of neighbors, aiming to protect privacy and establish principles of coordination and respect to foster harmonious social relations. The implementation of this article plays a crucial role in preventing potential disputes over neighboring rights. If a homeowner attempts to place windows that interfere with the neighbor's privacy in

violation of the provision, the neighbor has the right to take legal action to delay, amend, or remove the window placement. The Afghan Civil Code also clarifies that the distance between the neighbor's homes is measured from the external side of the walls, ensuring accuracy and fairness when determining the proper distance in case of a dispute. Overall, this article is an essential tool for promoting social coordination and preventing disputes, ensuring the proper protection and respect for neighboring rights. Article 1929 of the Afghan Civil Code includes two exceptions, which are further clarified in Articles 1930 and 1931. These exceptions will be discussed as follows:

**First exception:** If a public street separates the house with the window from the neighbor's house, the placement of both large and small windows is not prohibited. Regarding this exception, Article 1930 of the Afghan Civil Code stipulates that, "Neighbor may have conterminous window or quasi-window opposite the neighboring real estate that also opens towards the public way." This article exceptionally allows the homeowner to place windows, whether large or small, facing the neighbor's house, as long as the window openings facing a public street or alley are not subject to the one-meter distance requirement. This article aims to balance the rights of the property owner with the privacy of the neighbor. Therefore, the homeowner is permitted to place such windows provided they do not significantly infringe upon the neighbor's privacy rights. This situation is particularly beneficial when buildings are situated close to each other and near public spaces. Permission for these windows is granted because the presence of a public street alleviates concerns about privacy violations, allowing neighbors to benefit from natural light and fresh air without infringing on each other's property rights. Consequently, this article provides a legal framework that allows homeowner to place windows in specific situations while respecting both private and public boundaries.

**Second exception:** The homeowner can construct a skylight (a small window designed to allow light and air into the house) on the first, second, or third floor without needing to adhere to the one-meter distance requirement. Regarding this exception, Article 1931 of the Civil Code stipulates that, "If there is an opening on the wall whose baseline stands higher

than the height of human from the floor of the room and it is built for circulation of air and entrance of light in such a way it is not usually possible to look through it at the neighboring real estate, the extent of distance shall not be a condition.”

The article states that openings designed to allow light and air into a room must be placed higher than the average human height from the floor. Under normal circumstances, these openings should not allow a person to view the private affairs of a neighboring property. This condition is crucial as it minimizes the risk of direct views into the neighbor's property, thereby ensuring privacy protection. If the skylight is located near the neighboring property, and the height requirement is met while fulfilling the purpose of allowing light and air to enter, there is no need to adhere to the required distance. In other words, while a specific distance is generally required between buildings, openings designed to provide light are exempt from this rule under certain conditions.

### **The Principles and Conditions of Window Openings in Hanafi Jurisprudence (*Fiqh*)**

Hanafi jurisprudence outlines the principles, conditions, and restrictions that must be observed when placing windows. It places great emphasis on respecting the privacy of neighboring properties. Therefore, individuals should place windows in a way that does not violate their neighbors' privacy. Hanafi jurisprudence emphasizes that personal rights should not harm the privacy and comfort of others, especially the neighbors. However, in Hanafi jurisprudence, there is no specific distance requirement between the window and the neighboring house, as is sometimes found in other legal frameworks. Instead, Hanafi jurisprudence established a series of conditions and principles regarding window openings in dwellings, which will be discussed as follows:

#### **1. Prevention of Harm (*darar*) and Protection of Privacy**

In Hanafi jurisprudence, the fundamental principle governing the placement of windows is the prevention of harm (*darar*), supported by the

famous legal maxim: *'La Darar Wa La Dirar'*, “Neither harm yourself nor harm others.” (Rostam Baz, 2016 p. 51). In other words, one should avoid actions that cause harm to others. If harm occurs, it should be promptly addressed and resolved. Based on this principle, Hanafi jurisprudence asserts that a person should not place windows in a manner that infringes upon the privacy of others. If a window is placed directly towards the neighbor's house, it may allow the homeowner to observe the neighbor's private affairs, thus violating their privacy. Such placement of windows that overlook a neighbor's private affairs is generally considered improper under Islamic law. Along with the careful placement of windows, the use of curtains and other visual barriers is also recommended to protect the privacy of the neighbor's home. This not only aligns with Islamic teachings, which emphasize modesty and privacy, but also upholds an ethical duty to protect an individual's private life from others.

## 2. The Legal Maxim of *در المفساد اولی من جلب المنافع (Dar al-Mafasid Awla Min Jalb al-Manafi)*

This jurisprudential rule is one of the most important legal principles in Hanafi jurisprudence, playing a crucial role in resolving issues and making decisions. The concept of this rule is that preventing harm and corruption takes precedence over gaining benefits. In other words, when an action has both harmful and beneficial aspects, priority should be given to preventing harm. (Rostam Baz, 2016 p. 56). For instance, the purpose of placing windows in a house is to allow the homeowner to benefit from light and fresh air. However, if the placement of the window exposes the neighbor's private affairs and harms their privacy, then, according to this principle, the homeowner should be prevented from benefiting from the window. This is because removing harm to the neighbor takes precedence over gaining personal benefit.

### **3. Objection from Neighbors**

In Hanafi jurisprudence, if a neighbor objects to the placement of a window that harm their privacy and exposes their personal matters, the objection should be taken seriously. According to the fatwas of Hanafi scholars, the neighbor has the right to request that the window be closed, relocated, or altered to prevent harm to their privacy or personal affairs. These principles are not only crucial for protecting individual rights but also essential for strengthening social relationships. (Mauso'ah Al-Fiqhiyyah, 28, p. 220). Therefore, the principles of interaction and cooperation between neighbors must be upheld in accordance with Sharia rulings to maintain peace and stability within the community. These principles of Hanafi jurisprudence reflect the spirit of Sharia, which emphasizes mutual respect among people.

### **4. The Distance between Houses**

Although Hanafi jurists have not explicitly defined a general distance for placing windows, there are guidelines suggesting that sufficient distance should be maintained between windows and neighboring properties. The goal is to minimize the risk of covert surveillance into someone else's private life. Hanafi jurisprudence places particular emphasis on local customs (*urf*) in residential matters. In some areas, local customs or norms may establish accepted distances for placing windows or provide guidelines to address privacy concerns. If these customs do not cause harm and are not in conflict with Islamic principles, they may be followed in the construction of houses. (Mauso'ah Al-Fiqhiyyah, 39, p. 76). According to the principles of Hanafi jurisprudence, the distance between properties not only protects individual rights but also forms a solid foundation for social relationships. Good relationships and mutual respect between neighbors are essential for the proper functioning of community life.

In conclusion, Hanafi jurisprudence guides the placement of windows through a broad framework of ethical principles that prioritize preventing harm and protecting neighbors' privacy. This framework encompasses Islamic principles, neighbors' rights, local customs, and moral responsibilities, guiding homeowners to make responsible and considerate

decisions regarding window placement. By adhering to these principles, individuals contribute to fostering a respectful and harmonious social environment. Moreover, the focus on preventing harm and safeguarding privacy aligns with broader Islamic values that emphasize social responsibility and collective harmony. In this way, the rules of Hanafi jurisprudence not only address practical issues related to property and design but also cultivate a culture of mutual respect and understanding between neighbors, while fulfilling their religious and ethical responsibilities.

### **A Comparative Analysis between the Civil Code of Afghanistan and Hanafi Jurisprudence**

In Hanafi jurisprudence, the opening and placement of windows are governed by neighboring rights. Hanafi jurisprudence places great emphasis on these rights, particularly regarding the protection of privacy. In terms of building construction and window openings, Hanafi jurisprudence establishes strict guidelines to ensure a harmonious environment between neighbors. The principles and rules of the Afghan Civil Code align with Islamic Sharia and jurisprudence. According to the Afghan Civil Code, if a window infringes upon a neighbor's privacy, its placement is prohibited. The Afghan Civil Code explicitly requires a one-meter distance between the window and the neighbor's house. The similarities and differences between Afghan Civil Code and Hanafi jurisprudence regarding the principles and conditions for window openings will be discussed as follows:

#### **1. Similarities**

There are several similarities from the perspective of Afghan Civil Code and Hanafi jurisprudence regarding the principles and conditions for window opening in houses which will be discussed as follows:

- **Protection of Privacy:** Both Hanafi jurisprudence and the Afghan Civil Code require that windows be placed in a way that does not harm

the privacy of neighbors, as protecting their privacy is a fundamental aspect of neighboring rights

- **Maintaining Distance:** Both Hanafi jurisprudence and the Afghan Civil Code emphasize the importance of maintaining an appropriate distance between windows and neighbors' houses, ensuring that neighbors can live in a secure and peaceful environment
- **Elimination of Harm (*darar*):** Both Hanafi jurisprudence and the Afghan Civil Code stipulate that if a neighbor's window causes harm to another, measures must be taken to remove the harm. This could involve relocating the window, closing it, or using alternative methods such as covering it with blinds, using curtains, installing frosted glass, or other similar solutions.

## 2. Differences

Both Hanafi jurisprudence and the Afghan Civil Code respect the rights of neighbors regarding the placement of windows in dwellings; however, there are differences in their application and legal boundaries, which will be discussed below

- **Distance Between the Window and Neighbor's House:** In Hanafi jurisprudence, there is no specific prescribed distance between a window and the neighbor's house. However, the Afghan Civil Code clearly defines this distance, stating that it should be no less than one meter.
- **Resolution of Disputes:** If a window is placed in violation of religious and legal principles, leading to a dispute between neighbors, Hanafi jurisprudence dictates that the dispute should be resolved based on local customs and legal principles. In contrast, the Afghan Civil Code mandates that disputes be resolved through formal legal procedures.

## **Conclusion**

In the context of the Afghan Civil Code and Hanafi jurisprudence, the principles governing window placement play a crucial role in protecting privacy, regulating space usage, and preserving the rights of neighbors. The provisions of the Afghan Civil Code establish clear principles for window placement that are essential to protecting neighbors' rights, ensuring the integrity of those rights, and maintaining privacy. According to this law, the height and placement of windows must be carefully considered to ensure that the neighbor's privacy is not violated. Similarly, Hanafi jurisprudence places significant emphasis on privacy and neighboring rights, grounded in principles of justice and fairness. In light of Hanafi jurisprudence, window placement is subject to specific conditions aimed at protecting privacy.

Furthermore, the principles of window placement consider the need for light and air, ensuring that natural light and ventilation requirements are met during the construction and design of buildings. Both the Afghan Civil Code and Hanafi jurisprudence permit small windows (ventilators) that allow light and air into a room. Homeowners are obligated to respect the rights to light, air, and privacy, which are essential for maintaining communal balance. However, the Afghan Civil Code may face practical challenges in implementation. For instance, some homeowners may overlook privacy rights, and buildings may be constructed in violation of municipal regulations, ultimately infringing upon neighbors' rights. To address these issues, clearer and more effective regulations based on legal and jurisprudential principles are needed.

## **RECOMMENDATIONS**

These recommendations, based on the principles of the Afghan Civil Code and Hanafi jurisprudence, will effectively promote the protection of privacy, justice, and proper use of space in window placement. They will also foster a positive environment for harmony and social justice.

- It is recommended that the Provincial Directorates of Information and Culture and the Hajj and Religious Affairs provide public awareness neighboring rights. This will help individuals understand the values of harmony, justice, and balanced living. Awareness of legal and jurisprudential principles not only aids in better implementation of the law but also plays a crucial role in preventing disputes between neighbors and fostering a positive environment for communal living.
- It is recommended that municipal authorities monitor the construction of houses and the placement of windows to ensure compliance with the Afghan Civil Code and Hanafi jurisprudence. If windows are placed in violation of the law or jurisprudence and cause harm to neighbors, the window owner should be prohibited from using the window
- Considering that a one-meter distance between the outer side of the window and the neighbor's house may not be suitable for all residential areas—especially where homes are not built according to municipal regulations—this distance could compromise neighbors' privacy. To better protect privacy, it is recommended that the Ministry of Justice amend the relevant article of the Afghan Civil Code.
- It is recommended that civil society organizations and government institutions mediate any disputes between neighbors regarding the construction or placement of windows, aiming for a peaceful resolution to avoid the need for formal legal proceedings.
- It is recommended that homeowners choose window designs that prevent visibility into neighbors' homes, such as frosted glass or one-way glass. This approach allows homeowners to benefit from natural light while safeguarding neighbors' privacy from potential violations.

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