

Common Rights Between Neighbors A Comparative Study Between Islamic Jurisprudence and Algerian Law

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Abstract---Neighborhood is an essential aspect of human social life, established by both natural disposition and divine guidance. This study examines the concept of neighbors and the common rights shared among them from the perspectives of Islamic jurisprudence and Algerian law. In Islamic law, neighbors are categorized based on proximity, faith, and kinship, with rights encompassing mutual assistance, tolerance, and continuous benefit. The Qur'an and Sunnah provide a comprehensive ethical and legal framework emphasizing justice, support, and coexistence. Algerian law, influenced by these principles, regulates neighborly relations through property rights, obligations, and limits on harm, while allowing flexibility in spatial boundaries and customary practices. The study further addresses shared rights, including the right of way, highlighting differences and complementarities between the two systems. Ultimately, Islamic and Algerian legal frameworks collectively offer a model for ensuring harmonious neighborhood relations adapted to contemporary social realities.

Keywords---Neighborhood, Islamic Values, Law, Rights and Duties.

Introduction

Neighborhood is an inevitable aspect of every human being's life, for man is by nature a civil and social creature—one who seeks companionship and coexistence. Accordingly, the relationship of neighborhood is a natural and social reality established by Allah Almighty since the creation of

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humankind. As Allah says: “O mankind! Indeed, We created you from a male and a female and made you peoples and tribes that you may know one another. Indeed, the most noble of you in the sight of Allah is the most righteous of you.”

(*Surat Al-Hijrāt, verse 13*)

The phrase “We made you” in this verse denotes divine establishment and creation. Hence, a significant part of the neighborly relationship occurs beyond human choice; it is a naturally occurring bond.

From another perspective, it is also a social phenomenon, since man cannot live in isolation but must interact within a community—being social by disposition. From this necessity arises cooperation among people to fulfill the essential needs of life.

Accordingly, the main problem that imposes itself here is:

What is meant by the term *neighbor*?

And what are the **common rights shared between neighbors**?

From this central question stem several sub-questions, including:

- What is the concept of a neighbor, and what are the criteria for defining him?
- What are the shared rights that exist between neighbors?

To address these questions and in consideration of methodological clarity, this article is divided into two sections:

- The **first section** discusses the concept of neighborhood in Islamic Sharia and the Algerian Civil Law.
- The **second section** explores the **common rights of neighbors**.

And with Allah’s guidance and success.

Section One: The Concept of the Neighbor

Man is by nature a social being who interacts and associates with others. He cannot live in isolation from people, especially from those who live nearby. Therefore, the existence of a system or a legal framework regulating neighborhood relations is an inevitable necessity.

In this section, the study addresses **the concept of neighborhood in Islamic jurisprudence (Fiqh) and the concept of neighborhood in Algerian law**.

First Requirement: The Concept of the Neighbor in Islamic Jurisprudence

The **Islamic Sharia** is among the legal systems that have shown the greatest concern and precision in regulating the relationship between neighbors. This is clearly evident in the numerous Qur’anic verses that mention the term *neighbor (al-jār)* or its derivatives, each carrying a distinct meaning that contributes to organizing and refining the ethics of neighborly relations.

This requirement is divided into two subsections:

- The **first subsection** examines the meaning of *neighbor* in the **Holy Qur’an**.
- The **second subsection** explores the meaning of *neighbor* in **Islamic jurisprudence**.

Subsection One: The Meaning of “Neighbor” in the Holy Qur’an

The word *neighbor* appears in several Qur’anic verses, with various meanings that complement one another in their implications. Some of these meanings include the following:

1. The Neighbor as One Who Is Close or a Co-dweller

“...They will not remain your neighbors therein except for a little while.”

(*Surat Al-Aḥzāb, 33:60*)

That is, Allah Almighty will expel them from the city so that they will no longer reside near the Prophet ﷺ except for a short period. Hence, the word *neighbor* here signifies **closeness and cohabitation**.

(*Ibn Kathīr, Tafsīr al-Qur’an al-‘Azīm, Vol. 4, p. 556, 1994*)

2. The Neighbor as a Symbol of Acceptance and Tolerance

“...And on the earth are neighboring tracts...”

(*Surat Ar-Ra’d, 13:4*)

This means that there are adjacent portions of land differing in nature—some fertile and some barren, some yielding much and others little—yet they coexist side by side. (*Ibn Kathīr, Tafsīr al-Qurʾān al-Karīm, Vol. 2, p. 658*)

This reflects another aspect of neighborhood: the idea of **tolerance and coexistence**. A true neighbor does not resent the presence of others beside him, for the very nature of existence requires neighborly relationships, and no one can dispense with others entirely.

3. The Neighbor as a Source of Ease and Facilitation

A neighbor should strive to make matters easier for his neighbor and to assist him in his affairs. Allah Almighty says: "...And those that run with ease." (*Surat Adb-Dhārijāt, 51:3*)

This verse refers to ships that sail smoothly upon the surface of the sea. Allah swears by these ships that move with ease and fluidity. Some exegetes interpret them as stars gliding easily in their orbits, symbolizing a progression from the lower to the higher.

Likewise, a good neighbor should be **gentle and accommodating**, bringing ease rather than difficulty to those around him.

4. The Neighbor as a Source of Ongoing Benefit

A neighbor should be continually beneficial to his neighbor, just as running water continually nourishes life. Allah Almighty says:

"...Therein will be a flowing spring."

(*Surat Al-Ghāshiyah, 88:12*)

Here, *flowing spring* refers to **streams of water that run freely and abundantly**. The indefinite form of the word in Arabic implies multiplicity—there are numerous flowing springs in Paradise that the dwellers may direct as they wish.

(*ʿAbd al-Raḥmān al-Saʿdī, Taysīr al-Karīm al-Raḥmān, 2002, p. 594*)

In the same way, a good neighbor should be **constantly beneficial** to those around him, his good flowing abundantly like water.

5. The Neighbor as a Helper and Supporter

A neighbor should also be a source of support and protection. Allah Almighty says:

"...And [remember] when Satan made their deeds pleasing to them and said, 'No one can overcome you today from among the people, and indeed, I am your protector.'"

(*Surat Al-Anfāl, 8:48*)

Here, the term *protector* (*ḥār*) means a **supporter, ally, and defender**. Satan said this to the disbelievers, promising them victory and protection from their enemies.

(*Ibn Kathīr, Vol. 2, p. 419*)

Thus, *neighbor* in this context conveys the meaning of **aid and defense**.

Other Related Meanings

The Qurʾān also employs derivatives of the root *j-w-r* in related senses, such as:

- **Protection and granting asylum:**

"...He protects, while none can protect against Him."

(*Surat Al-Muʾminūn, 23:88*)

- **Deviation or turning aside:**

"...And upon Allah is the direction of the [right] way, and among them are those deviating [from it]."

(*Surat An-Naḥl, 16:9*)

Subsection Two: The Definition of the Neighbor in Islamic Jurisprudence

Defining the concept of *neighbor* in Islamic jurisprudence holds great significance, particularly in determining the **mutual rights and obligations** between neighbors.

However, early Muslim jurists (*fuqahāʾ al-mutaqaddimūn*) did not provide a precise or technical definition of the term *neighbor*; rather, they discussed it through its **legal boundaries, rulings, and related rights**.

First: The Definition of the Neighbor from the Perspective of Persons

From a personal or relational standpoint, a *neighbor* is one who shares with you a right of proximity and social interaction. The Qurʾān identifies **three categories of neighbors** in the verse:

“Worship Allah and associate nothing with Him, and to parents do good, and to relatives, orphans, the needy, the near neighbor, the neighbor farther away, the companion at your side, the traveler, and those whom your right hands possess. Indeed, Allah does not like those who are self-deluding and boastful.”
(*Surat An-Nisa*, 4:36)

This verse identifies **four types of neighbors**, each entitled to specific rights:

1. The Near Muslim Neighbor

He is the Muslim neighbor who shares a **blood relation** with you. Such a person enjoys **three distinct rights**:

1. **The right of neighborhood (proximity and cohabitation):** deriving from physical closeness in residence.
2. **The right of Islam:** for a Muslim has inherent rights over fellow Muslims, including assistance and mutual support.
3. **The right of kinship:** stemming from family ties and blood relations, which entail duties of connection, help, and solidarity.

2. The Distant Muslim Neighbor

He is the Muslim neighbor who has **no kinship relation** with you. He is entitled to **two rights**:

1. **The right of neighborhood:** due to residential proximity.
2. **The right of Islam:** since faith alone establishes a bond of brotherhood and mutual care among Muslims.

3. The Near Non-Muslim Neighbor

He is a **non-Muslim neighbor** who shares a **blood relation** with you. He, too, has **two rights**:

1. **The right of neighborhood:** a universal right shared by all human beings regardless of faith.
2. **The right of kinship:** since blood ties remain valid and binding even when religious differences exist, for this is a **natural and humanitarian right**.

4. The Distant Non-Muslim Neighbor

He is a **non-Muslim neighbor** with **no kinship relation** to you. He still enjoys the **general right of neighborhood**, which applies to all people by virtue of coexistence and humanity.
(*Ibn Rajab al-Hanbali, Jami‘ al-‘Ulum wa al-Hikam, 2002, p. 146*)

Second: The Definition of the Neighbor from the Perspective of Property (Residency)

As noted earlier, classical jurists did not formulate an explicit legal definition of the *neighbor*, but rather discussed his **rights, obligations, and proximity limits**.

Contemporary jurists, however, have proposed more specific definitions, among them: *“A neighbor is one whose property or dwelling adjoins yours in a legitimate and recognized manner, whether he is a Muslim or a non-Muslim (dhimmi).”*

This definition is distinguished by the following features:

1. It encompasses both types of neighbors — **the property owner and the tenant, guest, or friend**.
2. It grants **equal rights of neighborhood** to non-Muslims and Muslims alike in matters of coexistence and habitation.
3. It **does not impose a fixed spatial limit** for defining a neighbor—neither by distance nor by number of properties—but rather allows for **customary practice (‘urf)** to determine it.

Muslim jurists agree that a *neighbor* is anyone whose residence is close to one’s own. However, they differ on **how proximity should be defined**:

- Some maintain that neighborhood extends **forty houses** in every direction.
- Others consider neighbors to be those who **share the same congregational mosque**, i.e., those who are united by communal prayer are regarded as neighbors—hence the expression *“the mosque neighbor.”*
- A third view holds that **custom (‘urf)** is the determining factor: whoever people commonly regard as a neighbor is a neighbor, and whoever they do not, is not.

Accordingly, **Islamic Sharia** has made the concept, boundaries, and criteria of neighborhood **flexible and adaptable**, allowing them to conform to **the varying needs, customs, and contexts of people**. Thus, the definition of neighborhood may differ **with time, place, and societal conditions**.

Section Two: The Definition of “Neighbor” in Algerian Law

The concept of the “neighbor” is one that changes according to time and place, in line with the diversity of people’s customs, needs, and social circumstances. This variation is evident in legal systems and among legal scholars.

First Subsection: The Definition of “Neighbor” According to Legal Scholars

Jurists of law have differed in establishing a unified definition of the “neighbor,” and this divergence stems from their disagreement on whether contiguity between properties is a necessary condition for the existence of neighborhood.

Thus, we may say that neighborhood is:

“The spatial or geographical area within which persons or properties—of whatever nature—are located in proximity to one another, whether contiguous or not, the boundaries of which are determined by the extent to which harm from one activity may reach another, varying accordingly from one case to another depending on the nature of those activities.”
(‘Aṭā’ Allāh Sa’d Muḥammad Ḥawwās, *Civil Liability for Environmental Pollution Damage*, 2001, p. 98)

On this basis, neighbors are those natural or legal persons—or even properties—sharing a common area. Physical contiguity between them is not required; it is sufficient that they occupy the same space, provided the following conditions are met:

1. These persons or properties must be located within a single spatial area.
2. Their proximity must be such that any harm caused by one neighbor, if present, can reach the other.
3. No distinction is made between persons and properties in determining the existence of a neighborhood relationship.

Second Subsection: The Meaning of “Neighbor” in the Algerian Civil Code

The Algerian legislator does not provide an explicit definition of “neighbor,” but rather confines itself to setting out the rules governing relationships between neighbors. Article 691 of the Algerian Civil Code states:

“The owner must not abuse his right to such an extent that it causes harm to his neighbor’s property. The neighbor may not bring an action for ordinary neighborhood disturbances; however, he may request the removal of such disturbances if they exceed the customary limit.”

From this article, several observations can be made:

- The Algerian legislator makes ownership a condition for the existence of a neighborhood relationship, thereby excluding occupants who are not owners, such as tenants, guests, or friends.
- The legislator gives the concept of neighborhood a broad and undefined meaning, not limited by specific distance. Its determination is instead guided by other considerations such as custom, type of activity, and degree of harm. This flexibility allows the notion of neighborhood to adapt to changing times, places, and social circumstances.
- The legislator also makes no distinction between natural and legal persons in the context of neighborhood relations, treating both equally in this regard.

Section Two: Common Rights Among Neighbors

The most frequent source of disputes—and the area in which mutual rights and obligations arise between neighbors—concerns their *common rights*. Each neighbor often perceives such rights as exclusively his own, believing he has full freedom of disposition over them. Among these common rights is the **right of way**.

Subsection One: The Right of Way

The road or pathway is one of life's necessities. Without it, an owner cannot reach his land or property. Hence, it is inconceivable to imagine a usable property that is not connected by a path leading to it.

First Branch: The Right of Way in Islamic Jurisprudence

The path leading to a neighbor's property may be *private* (belonging to one or more individuals) or *shared*—either privately or publicly shared—between neighbors.

1. The Right of Private Pathway in Islamic Jurisprudence

If the person using the path is its sole owner, no legal issue arises. The private path (*al-sikka al-khaṣṣa*) is defined as “a path that is usually owned” (Muḥammad al-Bābartī, *Al-ʿInayah fī Sharḥ al-Hidāyah*, 1970, vol. 10, p. 307).

However, this definition is not comprehensive, for the expression “usually owned” suggests that at times it may not be owned, which is inconceivable.

Thus, we can say more precisely:

“A private path is a path that is owned,”

that is, owned by a natural or legal person, such as institutions or companies.

At this point, a legal question arises: **Can private individuals possess a road in full ownership?**

In response to this, scholars differed into two main views:

The First View

The Ḥanafīs, some Shāfiʿīs, and Ḥanbalīs (al-Shawkānī, *Fatḥ al-Qadīr*, 1414H, vol. 7, p. 307) held that:

“The path belongs to those who have the right of passage to their farms, shops, wells, or other properties, and not to anyone else.”

Their reasoning is that these people possess a right of *use* (intifaʿ) of the path exclusive to them, and ownership is primarily established for the purpose of use (Shams al-Dīn al-Sharbinī, *Mughnī al-Muḥtāj*, 1994, vol. 2, p. 184).

However, this reasoning is not universally sound, because *not everyone who has the right of use over a property becomes its owner*. The best example is *waqf* (endowment): the beneficiary enjoys its utility but does not own it.

The Second View

The Mālikīs (Muḥammad al-Dusūqī, *Ḥaṣḥiyat al-Dusūqī*, vol. 4, p. 84) and some Ḥanafīs (Muḥammad al-Ḥaṣkafī, *Al-Durr al-Mukhtar*, 2002, vol. 6, p. 594) maintained that:

“A private path cannot be owned.”

They argued that although its benefit is limited to those entitled to use it, they do not have full ownership over it. If it were entirely owned, they would be allowed to close it and prevent others from passing through—something not permitted (al-Kharshī, *Sharḥ Mukhtaṣar Khalīl*, vol. 6, p. 62).

The Preferred View

The more correct opinion—and *God knows best*—is that the private path belongs to those exclusively entitled to it; however, this ownership is *incomplete*. They may not close it, since public benefit takes precedence over private interest.

Extent of the Neighbor's Use of the Path

Another question arises:

Is each neighbor entitled to use the entire path, or only that portion leading to his property?

This issue also emerges in apartment buildings:

Does a resident own the staircase up to his floor only, or up to the roof?

Based on these questions, jurists formed three main opinions:

First Opinion

The neighbor shares ownership of the path only up to the entrance leading to his property. If he has two doors, his share extends to the farthest one, but he may not use what lies beyond that, as the right corresponds to the extent of his need.

This is the view of the Shāfi'is and some Ḥanafis (Ibn Qudāmah, *Al-Mughnī*, vol. 7, p. 51). By analogy, the same principle applies to staircases in buildings.

Second Opinion

Some Ḥanbalīs (Ibn Qudāmah, *Al-Sharḥ al-Kabīr*, vol. 3, p. 19) held that each neighbor's share of the path extends from its beginning to the end of his building, as he may open an entrance to the path at any point along his property.

Third Opinion

Other scholars held that all neighbors share the entire path from beginning to end, as one neighbor might need to use sections beyond his property (Ibn Qudāmah, *Al-Mughnī*, vol. 7, p. 50).

The Most Balanced Opinion

The most accurate view—and *God knows best*—is that each neighbor shares the private path with others **from its beginning to the end of his land or building**, for several reasons:

1. When repairs are needed, every neighbor contributes to repairing the part extending from the beginning of the path up to his property.
2. Each neighbor considers the section of the path opposite his property as an extension of his courtyard.
3. The portion used by each neighbor extends from the beginning of the path to his private entrance—or to the end of his property—since he may open an additional entrance there.
4. The path is not an independent property; it is an appurtenance of the land or building it serves.

Thus, the most reasonable conclusion—and *God knows best*—is that each neighbor's participation in the private path extends from its beginning to the end of his land or building.

Second Branch: The Right of Way in Algerian Law

The Algerian legislator addressed the *right of way* in **Article 693** and the following articles of the Algerian Civil Code.

Legal scholars classify this right among those granted to **the owner of an enclosed property** — that is, a plot of land without access to a public road — provided that the chosen passage causes **the least possible harm** to the neighboring property and that **adequate compensation** is paid.

This principle was explicitly recognized by the **Algerian Supreme Court** (Decision No. 50516, March 15, 1989).

To ensure that such cases remain **exceptional and strictly limited**, and to prevent abuse of this right, the legislator imposed specific **conditions** under which the right of way may be established only when they are fulfilled:

1. The passage must be a necessity

This means that the reason for creating a passage across the neighbor's land must arise from genuine necessity.

The width and type of the passage depend on the **nature and use of the property**: the path leading to agricultural land differs from that leading to a residence, and so on. Hence, the beneficiary may open only the passage that is **sufficient for his need and no more** (ʿAbd al-Munʿim Faraj al-Ṣiddāq, *The Right of Ownership*, p. 97).

2. The beneficiary must not have another access route

This condition is satisfied in either of the following two cases, explicitly referred to by the legislator in **Article 693** of the Civil Code:

“The owner of an enclosed property that has no access to a public road, or that has an access which is insufficient for passage, may claim a right of way through neighboring properties in return for compensation proportionate to the damage that may result therefrom.”

This is a clear indication by the Algerian legislator of the **two situations of necessity** justifying the establishment of a right of passage through another's property:

1. **The complete absence** of an access route to the public road.
2. **The existence of an access route that is inadequate**, provided that compensation is paid for the harm caused by the use of the neighboring property.

The legislator further clarified the meaning of the **second situation of necessity**—that is, the existence of an insufficient access route—in **Article 694**, which states:

“The access to the public road shall be deemed insufficient or impossible when it would entail considerable hardship that could only be removed by carrying out works so costly as to be disproportionate to the value of the property.

Conversely, the access shall be considered sufficient when the inconvenience is minor and can be remedied with minimal expense, or when another route exists by permission, provided that such use has not been prohibited.”

In other words, if an alternative route exists but is **unsuitable for passage** or **cannot be repaired**, or if repairing it would entail **excessive costs disproportionate to the property’s value**, then the right of way through the neighbor’s land is justified.

However, if the existing access can be repaired with **reasonable expense**, the right of way **does not arise**, since a viable alternative exists.

Section Two: The Right to Use Water

Water is one of life’s essential necessities. It sustains human existence through drinking, food preparation, hygiene, agriculture, and livestock. Both Islamic jurisprudence and civil law have addressed this right as part of *neighborhood rights*, given the disputes it may cause among neighbors—especially when they share limited water resources.

Subsection One: The Right to Use Water in Islamic Jurisprudence

Islamic jurisprudence divides shared water resources and related rights into two main categories:

First: Public Shared Waters

These include rivers, seas, valleys, dams, and large ponds that are not owned by any particular individual.

However, this does not include flowing waters that pass through privately owned lands. In such cases, the landowner may benefit from the water passing through his property provided that he does not harm others by, for example, polluting or withholding the water.

The same applies to rivers bordering multiple properties — each landowner may use a portion of the river’s water to irrigate his land or for personal use, on the condition that he does not cause harm to others.

This type of shared water generally causes fewer disputes today due to the presence of legal and administrative authorities that regulate the management of water resources.

Second: Private Shared Waters

These are waters jointly used by a group of individuals or properties. The scope of such shared rights may vary — from waters shared by an entire village to those shared only among a few neighboring households.

The type of shared water relevant to this discussion is that which exists between *neighbors*, especially when their need for the resource is equal and the available supply cannot satisfy all of them simultaneously. This raises a key question: **who has priority in using the water?**

Islamic jurists have differed on this matter, forming two main opinions:

1. The Proximity Principle (Priority to the Nearest User)

This view, supported by Ibn Ḥazm and some Hanbali scholars, holds that priority should be given to the person whose property is closest to the water source, then to the next, and so forth.

Their evidence is found in the ḥadīth narrated by al-Bukhārī from ‘Urwah ibn al-Zubayr (may Allah be pleased with him), in which an Anṣārī man disputed with al-Zubayr over the use of a stream. The Prophet ﷺ ruled:

“O Zubayr, water (your land) first, then let the water flow to your neighbor.” When the Anṣārī objected, the Prophet ﷺ, angered by his words, said: “O Zubayr, water (your land) and then withhold the water until it returns to the walls and you have fully taken your right.”

This indicates that the closest person to the water source has priority in its use, without distinction between owner and tenant, or between earlier and later occupants.

2. The Priority of Precedence in Ownership (Priority to the Older Owner)

This is the opinion of the majority — the Mālikī, Shāfi‘ī, and one Hanbalī view — which gives precedence to the person who owned the land first. Their reasoning is that the right to water is among the natural appurtenances of land ownership. Thus, one who bought land considering its access to water cannot later be deprived of that right by someone who came after him. However, if the water source appeared *after* all parties had already acquired their lands, they all become equal in right and the resource should be shared in a manner that serves the public interest (Ibn Qudāmah, *al-Mughni*, vol. 8, p. 170).

Preferred Opinion:

It appears — and God knows best — that giving priority to the *nearest* neighbor to the water source is most appropriate under modern urban conditions, provided that the following principles are observed:

1. Fair Distribution of Water:

The water should be distributed equally among neighbors, either by dividing usage time or by volume, as commonly practiced in modern systems.

2. Priority to Those in Greatest Need:

Those whose need for water is vital (e.g., for drinking) should be given precedence over those whose need is less essential (e.g., irrigation or cleaning), in accordance with the principles of fairness and compassion in resource sharing.

Subsection Two: The Right to Use Water in Algerian Civil Law

The Algerian legislator has given significant attention to the nation’s water resources, recognizing them as among the **most important restrictions on private ownership** and declaring them the collective property of all citizens.

Article 692 of the Algerian Civil Code explicitly states:

“All water resources are considered the property of the national community.”
(Article 692, paragraph 2)

This provision demonstrates that the Algerian legislator regards water as a **national resource**, given its vital role in human and animal life, as well as its importance to economic activity, particularly in the field of navigation.

Furthermore, **Articles 15 and 16 of the Water Law** regulate how water may be used and prohibit causing harm to others through its misuse.

It is, however, essential to distinguish between **privately owned irrigation water** and **public irrigation water**.

1. Privately Owned Irrigation Water

In principle, this type of water resource belongs to its owner. Nevertheless, the legislator allows neighboring landowners to benefit from such water for the irrigation of their own lands, subject to certain **conditions**, which constitute restrictions on the absolute right of ownership:

- That such use does not cause harm to the owner’s interests, such as damage to crops due to water shortage.
- That the original owner has already satisfied his own needs for himself, his crops, and his livestock.

This principle was affirmed by the **Algerian Supreme Court**, which ruled:

“It is legally established that all water resources are the property of the national community. Therefore, alleging that the contested decision contravenes the law is unfounded. Since the appellate judges ordered the appellant to allow the respondent to irrigate his land and orchard from the disputed water channel, they correctly applied the law. Accordingly, the appeal is to be dismissed.”

(*Decision No. 53572, May 11, 1988*)

This judgment demonstrates that while an individual may own a water resource, this ownership is **subject to a restriction**—the obligation to allow neighbors to benefit from it after the owner’s own needs have been met.

2. The Right to Convey Water Across Another’s Land

The Algerian legislator addressed this issue in the following provision:

“Every natural or legal person, whether governed by public or private law, who holds a concession, shall benefit from the right to convey water of any nature through underground pipes across intermediate properties, under the most reasonable and least harmful conditions, provided that appropriate compensation is paid.”

(*Article 40, Water Law*)

This article explicitly recognizes the right of a landowner whose property is distant from a water source to pass water through the land of others—whether public or private property—for irrigation or other essential uses. This interpretation has also been supported by legal scholars (*Mustafa Mohamed Jamal, The System of Property, 1985, p. 231*).

This right is conditional upon two factors:

- The beneficiary’s land must be remote from the water source and lack any other feasible access.
- The beneficiary must pay appropriate compensation for the use of the neighboring land.

A similar rule applies to the **right of drainage**, which concerns the passage of used, excess, or rainwater through another’s property to reach the nearest public drainage system.

The legislator codified this in the following terms:

“Owners or users of intermediate properties subject to the servitude established in Article 40 above may benefit from the works carried out under that servitude for the drainage of water entering or leaving their properties. In such cases, they shall bear:

- A proportionate share of the cost of the works from which they benefit;
- The expenses arising from necessary modifications to ensure the exercise of the right;
- A contribution to the maintenance costs of the shared installations.”

(*Article 40, Water Law*)

Conclusion of this Subsection

The **right to pass drinking water, irrigation water, or wastewater** through a neighbor’s land constitutes a legitimate *neighborhood right* under Algerian law, supported by both **Islamic legal principles** and **civil legislation**, for the following reasons:

1. The general ḥadīth of the Prophet ﷺ: “There shall be neither harm nor reciprocating harm.” (*Musnad Aḥmad, 1/313*)
Preventing a neighbor from conveying necessary water through another’s land falls within the harm prohibited by this ḥadīth.
2. Neighborhood entails **additional mutual rights**; a neighbor may be entitled to privileges that do not extend to strangers, in accordance with general scriptural injunctions emphasizing the neighbor’s rights.
3. Water is among **life’s essential necessities**. Cultivated land requires irrigation, and both humans and animals depend on drinking water. Hence, necessity permits what would otherwise be restricted, but only to the extent required.

4. The most accurate and balanced view — and **God knows best** — is that this position best fulfills the necessities of life while preventing harm to property owners, provided that no injury is caused to the neighbor whose land is used.

This conclusion aligns with the opinion of **Imām Mālik (may Allah have mercy on him)** and demonstrates that the **Algerian legislator** has been largely successful in harmonizing Islamic jurisprudence with modern legal principles in this regard.

Conclusion

Following this comparative study between Islamic jurisprudence and Algerian law regarding the shared rights between neighbors, it becomes evident that both systems stem from the same fundamental principle — **striking a balance between an individual's right to property and the neighbor's right to benefit and protection from harm**.

Islamic jurisprudence established, centuries ago, a comprehensive framework governing neighborhood relations, grounded in **justice, benevolence, and the elimination of harm**. It drew upon Qur'anic verses and Prophetic traditions that grant the neighbor a distinguished status, conferring upon him both material and moral rights, and obliging Muslims to uphold the higher objectives of Sharia — the preservation of life, property, dignity, and social harmony.

The Algerian legislator, influenced by these Islamic principles, incorporated them into the Civil Code by imposing **limitations on property ownership** to protect public interest. He also prohibited abuse of rights that may harm neighboring properties, and regulated rights of passage, water use, and other forms of neighborhood relations in a manner consistent with Islamic values and the principles of social justice.

Through this comparison, it is clear that **Islamic jurisprudence excels in its comprehensiveness and flexibility**, combining moral and legal dimensions, whereas Algerian law emphasizes **procedural and statutory regulation** of these rights. Nevertheless, there exists a clear **complementarity between the two systems**, which can serve as a valuable model for developing a modern legal framework inspired by the spirit of Sharia and adapted to contemporary realities.

In conclusion, strengthening the relationship between Islamic jurisprudence and modern legal systems in the field of shared neighborhood rights can contribute to **balancing rights and duties, fostering cooperation and solidarity within society**, and achieving the higher objectives of Sharia and the principles of justice upon which modern law is founded.

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