

Building Legislation in Islam and Its Relationship to Urban Formation Case study: "Urban Fabric in the City of Amman"

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Abstract:

This paper is examining building legislations and their effects on the cities form , and buildings style, and comparing between Islamic legislation which was applied in Amman city before the nineteenth century and the modern one which are in use since the creation of the Hashemite Kingdom of Jordan . The result of applying the modern legislation on the city style is a city with no identity, similar to New York, Singapore, or Abu Dhabi. One of the most important features of Islamic legislation is preserving the privacy of the population, reducing separation on the basis of wealth or social status, and reducing land costs and not harming others. These legislations have produced cities that have their distinctive character and some of these cities still maintain their style, such as the old city of Cairo, the city of Salt (Jordan), the old city of Sana'a (Yemen) and other Islamic cities , and this legislation played an important role in preserving these cities.

Keywords: Building legislations, cities form , Islamic legislation , Amman city, Jordan

1-Introduction

Building legislation is described to be the set of laws and regulations that define the establishment of cities, urban design and land use, and the relation between them. It may be the most dangerous factors that shape the cities [1], and determine the shape of the different neighborhoods, building function and facades. This is due to its vital role in regulating building works most suitable to the neighborhood, public health, security, safety, comfort, and provided services. Therefore, these Building legislations and laws are considers to be an essential element in achieving a city with a distinct identity for any society [2]. Hence making the Building legislations and laws that regulate urbanization to be among the basic mechanisms used to shape buildings that are most compatible to the daily needs and requirements of community members.

Many Countries preserve their architectural and urban heritage through legislation, whereas others damage their architectural heritage with the same legislations and laws. Majority of cities in the Arab world were transformed into world-class cities with legislation, and entire neighborhoods were also demolished by the same legislation. A clear example is Basra, Kufa, Baghdad and other major cities of Iraq were settled through legislative laws. Residential streets had been turned into commercial streets, their facades and their shapes were altered by another law.

In most recent times, cities in the Arab world no longer retain any building characters and perish to the practical and financial needs. Another element is the price-of-land in these countries which has exaggerated into millions of dollars, and the ordinary people from the working class in these countries can no longer afford owning a humble property no matter how small. The trade of land and property in these Arab countries has become one of the most popular trades as a safe investment, resulting in burial of immeasurable wealth in these lands. When comparing these practices with the Western Countries, it varies dramatically since the Governments provide residents with free plots of land used for personal housing, and the land trade in these Countries is hardly known.

This paper discusses Building legislation and laws in the Hashemite Kingdom of Jordan, and how these legislations led to reform the shape of Cities with time, and in many cases led to eliminate the unique architectural style in these Cities. We will highlight the Building legislations from the arrival of Islam era until the end of the 1960s, with the new legislations that governed the city's organization [3].

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2- Building legislation in Amman

The first structural plan for Amman was drawn up in 1956 under the supervision of experts from the United Nations [4], which could not absorb the sudden increase in housing demands. This increase occurred from several reasons at different time intervals, such as: the end of World War II and the immigration of the Palestinian people as result of the Zionist occupation of Palestine in 1948, which called for the need to update these Building legislations.

Another two basic systems were introduced in 1965, namely the “Regulation of the City of Amman” which governs the regulatory provisions for land use, and the “Buildings legislations” which defines the regulatory provisions for buildings, and the regulatory provisions / amendments that followed for the Hashemite Kingdom of Jordan in general and the city of Amman in particular.

Abiding with the Building legislations enacted during the period from the beginning of the Kingdom’s establishment until the issuance of the Building Law no.79 that recognized the following:

The objectives of planning in general at that time – planning stage – is of high importance for which:

- 1- Distributing development gains in balance and justice to the individual and communities through:
- 2-Defining broad guidelines that clarify the comprehensive development process, explaining the main uses of the lands, while preserving the aesthetic aspects in order to provide a safe and healthy planning environment.
- 3-Adapting with elements of nature that prevails within the territorial scope of the local unit as a whole and not as a part of it, and is based on the foundations of environmental, social, economic, urban and other studies.

As a result, the foundation and principles on which planning processes relate in general are not-consistent with the principles of Islamic legislation, but rather are fully compatible with the general purposes of these legislations, sharing the common aim to support and develop the urban organizational policy and link it to the economic and social policy of the state.

3-Urban fabric of Amman city

In those times; the city center was surrounded by fences and fortifications by virtue of its occurrence at the crossroads of commercial roads, and this continued in the Islamic era, were the Abbasids fortified it when some Umayyads revolted calling for the caliphate during the reign of the Caliph al-Mamun Ibn Al-Rashid [4].

Then the fences were moved from linear planning, as a result of its occurrence on the Shami Hajj line and the Ottoman construction of the Hijazi Railway in 1903. The core of the city within nine administrative regions (Amman being the capital) due to the rapid development and urban expansion (Figure 1.a). Amman has continued to expand since the establishment of the Emirate of Trans Jordan in 1921. Roads, hospitals and public service buildings were constructed, and the residential buildings became a combination of multi-story buildings. The city continued to expand in a similar trend during the sixties (Figure 1.b).

The city witnessed several booms as a result of the forced migration that occurred during the Gulf War 1990. The demand for housing increased, and the vertical expansion of housing appeared significantly [5].

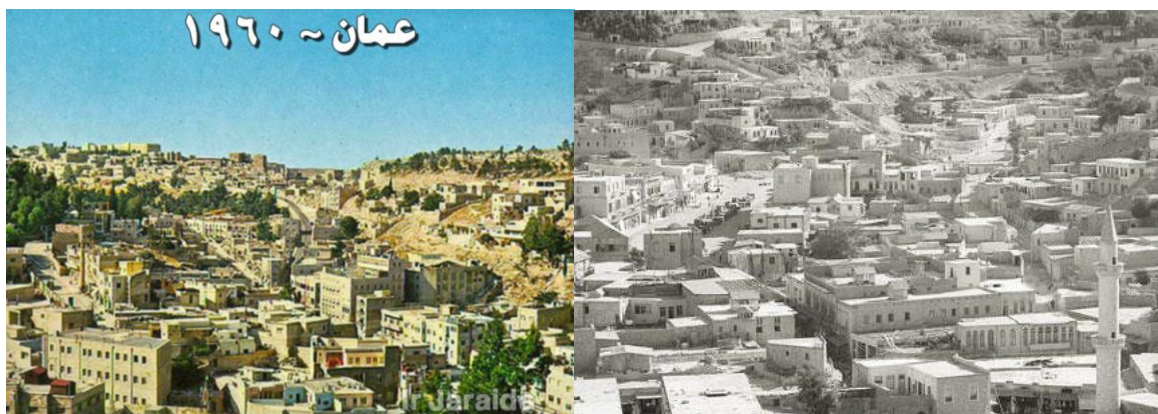


Figure 1.a) Amman in Othman era, b) Amman in the Sixties’.

Source: <https://www.almadenahnews.com/article/339945>

In 1966, coinciding with the emergence of Building Law 79[6], Amman started to witness a new architectural boom, which is the phenomenon of high-rise buildings. This phenomenon continued to appear as well in recent years to include hotels, trading offices and commercial buildings such as the Sheraton, and Le’Royal, which reached a height of about 100m. Such high-rise buildings revolutionized the Amman architectural fabric. Resulting in deformation and causing severe damages to the surrounding community, as a result of the Building legislation in laws.

4-Jordan Building Legislations

Jordan Legislations were written and applied since the establishment of the Kingdom, to regulate buildings in the city of Amman. As previously detailed, the residential lands were divided into four general categories: A, B, C, and D, each category is defined with limits for land secretion, specific ratios of the floors area to land area ratio, and number of floors and heights. Also some lands and streets were categorized as commercial lands, whereby defined by its own proportions and distinctive uses. Until today this legislation still governs the buildings within the Amman city. Most recently a new building code was legislated in 2018 under No. 28 according to Law No. 79 of 1966. However, with minor changes related to a slight increase in the floor area percentage and building heights.

The following observations can be made on this law:

- This legislation was established by the British legislator, however it differs radically from the current legislation. Despite the presence of a large number of planners, architects and engineers in Jordan and the region; it is noticed that this law has become so engraved that it is not subject to any change, amendment or development.
- When underwriting this legislation by the Ottomans; the regulations were drawn from the Islamic Law and reflected into many aspects of Jordanian Public Law, such as the Law of Preemption right, and the removal of damage and harm. This is clearly apparent in the planning of the ancient city of Assalt (Figure 2).



Figure (2) a) General view of Assalt City, b) the old roads in Assalt, Jordan

Source: <https://www.fay3.com/iRot37jx4>

- This Legislation divided the city into two levels: poor and wealthy neighborhoods, based on the minimum land area in each neighborhood.
- This Legislation treats all land plots in a similar way despite the large topographic difference between one plot and the other. It is noticeable the difference in height of buildings while being adjacent to each other (Figure 3).



Figure (3) the different in building height in one area.

Source: <https://qoshan.com/>

- In some cases, Commercial roads were chosen in a way that serves the personal interests of some residents, which increased the prices of those lands when compared to the neighboring land-plots that were organized as housing.
- These Commercial roads have floor building ratios of 75% compared to the floor building of residence of 36%, and have no side setbacks.

- Most of the roads in the City are considered as state property, and realtors that have built on private ownership land are not entitled to control the right to pass. These roads were carved out from the owners of the lands, who are not entitled for any compensation until the carved area forms more than 25% of the overall land.
 - Roads and sidewalks are constructed at the expense of the landlord overlooking these roads. Furthermore, the landlords also bear the costs of installing and extending electricity power lines, water and sewage pipes, in addition to the annual property tax that reaches nearly 17% of the real estate rental estimate.
 - The legislation determines the minimum number of car-parks for each building. This has also become a heavy burden on the cost of land plots. Since most of these car-parks is constructed under the ground, it becomes vulnerable to water flooding in winter season. Such unfortunate events occurred most recently in the 2017 floods, where many vehicles were sunk due to the flow of water into the car-parking area.
 - The pathways used in entering and exiting the vehicles from under these buildings have eliminated the side space and possibly the backyard allocated for trees and gardening purposes. Even with the presence of some trees and gardens; the cost of maintaining and watering them has become so expensive and thus left to dry.
 - The inflated cost-of-land in Amman led to demolishing of small houses, and turning them into huge residential buildings set for sale as apartments. This trend caused landlords to be reluctant in selling their lands, unless it is turned into a multi-role mega project, or is waiting for that opportunity.
 - Some high-rise buildings, such as hotels, Governmental buildings, and institutions, are exempted from the Legislation, whereby building heights sometimes exceeded 40 floors, such as “Amman Gate” twin towers.
 - Congesting many high-rise hotels and buildings in the new constructed area of Abdali, caused an imbalance to the foundation on which this law was based. Hence, such high-rise buildings appeared abnormal to the urban surroundings, and caused severe damage to the neighboring residential area.
 - The Legislation allowed converting of agricultural lands and Public parks into residential and commercial building plots, which affected the overall greenery surrounding of the entire Amman city.
- In conclusion, there are many valuable reservations on this legislation, and its role in changing the local city’s fabric towards a more global architectural character. In addition to causing injustice for the landlords and property owners, the Legislation increased severity of traffic congestion which increased the burden on the city’s infrastructure [7].

5-Building legislation in Islamic architecture:

Islamic laws and legislations are deduced from various sources: the Holy Quran, Sunnah, measurement, consensus, custom, and other sources defined by Muslim scholars. These laws became known and codified in (Fiqh) books, and thousands of books, letters, and volumes were written in them [8]. And it has become fixed in the basic topics such as acts of worship, zakat, transactions, and the rest of the important behaviors of human lies. Ultimately, it aims to preserve the basics of life: religion, money, and honor which respects the privacy of Muslims and maintaining the balance between individual and public interests, while prevailing the Public interest over private whenever necessary. As for modern and new matters, there are specialized committees of scholars of the Islamic Ummah to review these matters and regulate laws and legislations around them within the general Islamic framework. Building legislation in Islamic law is one of the oldest things, going back as-old-as the cities and the Islamic communities. It is not one of the updated issues, and Islamic jurisprudence scholars have exposed and recorded it in the various references of journals. Specialized books have been written on building legislation, neighborhood relations, and the relationship between society and the state since the first Hijri century [9].

As this legislation is specific to the Islamic nation, and radically different from the Roman legislation that preceded the Islamic civilization, it produced cities that have a distinctive characters but are similar across all the Islamic countries. Hence, the similarities can be explained in the planning of Khartoum, Cairo, Damascus and other Islamic cities. These characteristics is a result of the distinctive Islamic thoughts, the specific requirements of Muslims, the state’s relationship with the Muslim individual, and similar building legislation [10].

6-Milestones in Islamic legislation:

- Islamic legislation is derived from the holy Quran and the Sunnah, which reflects sanctity in every individual Muslim who is trying to arrange their lives according to it. Violation of these legislations is considered a violation of religion, and therefore must be dealt with carefully when overlooking or neglecting it.
- Islamic legislation is considered to be a fixed legislation in its origins, which does not change with the change of time but at the same time evolving with the developing needs of technologies and emergency conditions, but in the end it aims to achieve the basics on which the legislation was based.
- Writing the Islamic legislation, developing it, and applying it is governed by (Fiqh) jurists who are keen to preserve the basic goals of human life. On various events they may consult subject matter experts and specialists, compared to modern legislators, who may be ignorant of the purposes of (Shariah) and do not refer in their updated legislations to those subject matter experts and specialists in Islamic jurisprudence.

- Supervising implementation of the Islamic legislation is dedicated to a specialized group of experts in every domain of architecture, holding religious reference will help them to ensure that these legislations are applied within the purposes of (Shariah).
- Islamic legislation maintain complete equality in rights and duties, without distinction between buildings and lands in terms of building area and heights, uses and property rights when being used for Public utilities.
- Islamic legislation affirm the principle of privacy and ownership of properties, homes and streets owned by landlords and residents thus are safeguarded at all times preventing them from being confiscated or assaulted. Such principles cannot be exempted or bypassed even by the highest authorities in the state.
- Islamic legislation affirm the principle of “rights of neighbors” governing the individual behaviors as prescribed by (Shariah).
- Islamic legislation preserved privacy of Public properties and facilities such as river banks, seashore parks, public parks, and water wells to ensure their availability to the public users and prevent assault, take over and attaining personal gains from these Public properties and facilities.
- The Islamic legislation governed revival of the neglected lands. It is considered to be one of the most important provisions that encourage individuals to revive, restore and ownership of those neglected lands.
- The Islamic legislation governs access to lands used for agricultural or construction purposes free of charge, which reduces the price of lands.
- The Islamic legislation defined precise rules and details when putting wood in the wall of the neighbor, and other details that can be referred to have been written in books on building legislation in addition to other books of jurisprudence [11].
- The presence of private streets that are owned by individuals or a group of individuals, granting limited access to those individuals and groups thus preventing the public from using it, to achieve the greatest degree of privacy.
- In some cases, the doors of these streets are closed at night-time to ensure increased privacy. This property is alerted to the planners and architects in the modern era and established gated community, which has a great role in the case of civil wars, insecurity and the spread of epidemics [12].
- Islamic legislation considers each building as a special case that is seen from the principle of "no individual harm or other harms". This principle ensures that this building does not harm itself (used for a different purpose than the reason it was constructed for), and/or does not cause any harm to the neighborhood, no matter how insignificant it is such as prevent access to sun and air, or causing noise disturbance.

7- Discussion:

When comparing the differences between modern and Islamic legislations, the deliverables of each type is noticeable. The modern legislation produced a world-class architecture in cities like New York City or Singapore, while Islamic legislation produced a local architecture of special style which was shared with the rest of the Islamic cities in common manifestations. While wondering between these different cities, from the remains; one can feel the familiarity between them and sharing the same living experience. This experience can be felt while walking the streets of Hamidiyeh market in Damascus, Khan al-Khalili in Cairo, Istanbul markets, the similarity is very clear. And that this legislation preserved the local heritage in cities such as Sanaa [13], Aleppo, Jerusalem, and other cities that still bear witness to this architecture. Researchers confirm that Islamic legislation preserved the local urban heritage, while the developed cities suffer from many environmental and social problems due to these modern legislations. [14, 15].

In applying the “reviving dead land” legislation, there is no land trade and no billions of money buried in the price of that land while waiting for the hike in prices, and the prices of homes do not bare part of the land price on which they are built.

With the “shufaa” law, a stranger of the neighborhood cannot buy the house or property next to yours. With the law of “neither harm yourself nor harm others”, your neighbor cannot block the sun and air from reaching your property. Your neighbor is restricted from opening a window that overlooks your home and intrudes your privacy, even if they were mosque minaret’s windows. Furthermore, your neighbor is restricted from using the house in any way that detriment yours with adore smell, loud noise or any conduct of misbehavior.

When homeowners own the street, they achieve the most privacy and prevent intruders from entering the alleys and private streets, through using gates on the entrances; they lock themselves at night, in turmoil, and when epidemics spread, and this street achieves a continuous and harmonious population unit in the case of the need for social assistance and solving the problems of families.

With the legislation of equality between people, the rich live next to the poor, and brotherhood, good neighborliness and social equality are achieved.

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