

THE CORRELATION BETWEEN ISLAMIC LAW AND MODERN INTELLECTUAL PROPERTY LAW

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Abstract

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This paper explores the intersection between Islamic Law and modern Intellectual Property (IP) law, a subject often overlooked in contemporary scholarship. The research problem centers on whether Islamic legal traditions provide a foundational basis for recognizing and regulating IP rights. The study's aim is to demonstrate that Islamic jurisprudence not only supports the attribution of intellectual contributions but also provides conditional allowances for overriding exclusivity, particularly in public health contexts akin to IP regulations. Methodologically, this paper employs doctrinal legal analysis, drawing on classical Islamic sources (Quran, Sunnah, Ijma, and Qiyas), supplemented by case-based interpretation and comparative references to the World Trade Organization's (WTO) Trade-Related Aspects of Intellectual Property Rights (TRIPS) provisions. This research contributes to the limited but growing discourse on IP in Islamic contexts (Kamali, 2021; Saeed, 2005). The study is significant for policymakers in Muslim-majority jurisdictions navigating IP reform in harmony with religious doctrine. The conclusion reinforces that while exclusivity in IP may conflict with certain Islamic ethical principles, a qualified recognition of intellectual labor exists within the Sharia framework.

Keywords: Islamic Law, Intellectual Property Law, Compulsory Licensing, Monopoly

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1. INTRODUCTION

Islamic Law, also interchangeably referred to as Sharia Law, is the comprehensive, dynamic, and diverse legal system derived from the religious texts of Islam (Salaymeh, 2015). Despite not having a unified code (Badawi, 2009), Islamic Law, is based primarily on the Quran (the holy scripture) but also includes: the Sunnah (the teachings of holy Prophet (PBUH), consensus (*Ijma*), inference (*Ijtihad*), Islamic jurisprudence (*Fiqh*), roots of law (*Usul al Fiqh*), Custom (*Urf*), analogy (*Qiyas*), abrogation (*Naskh*) as well as juristic preference (*Istihsan*) (Shahrouri, 2023; Manto, 2023; More, 2022).

Scholars agree that the Koran is at the epicenter of Islamic Law, yet there are disagreements over the "rank" (Malkawi, 2013) of

the other sources of Islamic Law abovementioned. Henceforth, there exist four dominant schools of legal thought and interpretation in Islamic Law, and these are 1) Hanafi School, 2) Shafi School, 3) Maliki School, and 4) Hanbali School (Nakissa, 2019). These four schools interpret the sources of Islam, which consequently form Sharia Law. These interpretations presented by these four different schools of thought serve as the guidelines by which Muslims conduct their day-to-day dealings and every aspect of their lives, from working, marriage, and even how they should behave around food and drink (*The Quran*, n.d., Al-An'am 6:38).

The above schools of thought all agree in their belief in the Quran and Sunnah as primary resources of Islamic Law as well as the five pillars of Islam (declaration of faith, prayer, fasting during the holy

month of Ramadan, almsgiving, and pilgrimage of Hajj (Nakissa, 2019). However, the above schools do not agree on their interpretations of the Islamic texts in many instances, for example on the application of punishments, amongst other things as well as their interpretation of property, for example, the Hanafi School recognizes physical possession as the only criterion to establish an intellectual property (IP) right whereas the other schools have assessed that usefulness is the criteria for recognizing IP rights (Islam, 1999).

Although Islamic Law has made inferences on protecting human invention, the prevailing consensus is that there is no definite relationship between modern IP law and Islamic Law. This could be because, intrinsically, all property in Islamic Law is linked to Allah, "To Allah belonged whatsoever is in the heavens and on earth" (*The Quran*, n.d., Ali 'Imran 3:129), whereas in modern IP law the owner of the property is the registered owner who ultimately holds the idea for the invention.

Further, a few scholars have argued that there is no basis for Islamic Law in modern IP law on the premise that IP laws in the Middle East are based on French Law and not Islamic Law (Samarah, 2005). This implies that the regulations for IP laws were late in the Arab World¹ and somewhat behind the developments in IP when compared with European countries (Abbas, 1971; Zein Al-Din, 2022).

This paper posits that the correlation between Islamic Law and modern IP law presents a complex and under-explored area of legal scholarship. Despite the prevailing assumption that IP rights are a secular, modern legal development, several Islamic legal principles mirror contemporary concerns about innovation, authorship, and equitable access.

To address this, the study employs a doctrinal legal methodology, drawing on classical Islamic sources such as the Quran, Sunnah, Ijma (consensus), and *Qiyas* (analogy), interpreted through the lens of *Usul al-Fiqh* (roots of law) and contemporary comparative legal analysis. The modern IP framework is examined using international instruments like the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement and the Doha Declaration.

The key findings of this study reveal that while Islamic Law does not formally codify IP rights in the Western sense, its foundational ethical and legal concepts, such as attribution, public benefit (*Maslahah*), and harm avoidance (*La darar wa la dirar*), support a moral and jurisprudential basis for IP protections. This is especially visible in areas like access to medicine, where Islamic ethics and TRIPS both permit overriding exclusivity in public health emergencies.

This research contributes to the broader discourse on legal pluralism and compatibility between religious and international IP regimes. It is significant for scholars, policymakers, and legal reformers in Muslim-majority jurisdictions seeking Sharia-compliant IP frameworks.

The rest of the paper is structured as follows. Section 2 reviews the relevant literature on Islamic Law and intellectual property. Section 3 outlines the research methodology. Section 4 presents the results in the context of Islamic legal theory and IP law. Section 5 discusses the main research

findings. Section 6 concludes with reflections on the implications, limitations, and future research directions.

2. LITERATURE REVIEW

The interaction between Islamic Law and IP law has, in recent decades, attracted increasing academic interest. Nevertheless, the field remains relatively under-theorized, particularly when assessed through the lens of doctrinal legal analysis.

Among the earliest and most influential voices in this area is Kamali (2021), whose work offers a comprehensive theological and jurisprudential foundation for recognizing forms of intellectual ownership in Islamic Law. Although Islamic jurisprudence lacks a formalized IP regime akin to modern legal systems, Kamali (2021) contends that various principles, such as the emphasis on attribution and scholarly preservation, reveal functional analogues to contemporary IP protections. His discussion of Hadith transmission, where chains of narrators (*Isnad*) are meticulously preserved, illustrates the Islamic emphasis on recognizing intellectual contribution, whereby the teller of the Hadith is always stated and well documented.

Saeed (2005) similarly approaches the subject by highlighting broader Islamic jurisprudential principles relevant to IP regulation. Saeed (2005) argues that while Islamic Law does support property rights, such rights are subject to overriding ethical obligations, notably the prevention of monopolistic practices and the prioritization of public welfare, concerns that closely parallel the policy debates found in modern IP frameworks.

The economic dimensions of Islamic perspectives on IP have been analyzed by Kahf (1978), whose work situates IP within the broader moral economy of Islam. Kahf (1978) focuses on the tension between private ownership and collective benefit, a recurring theme in Islamic legal scholarship. His analysis demonstrates how Islamic legal theory can both endorse and limit IP rights, depending on their social consequences.

Further contributions to this discourse include the writings of Shabana (2010) and Malki (2011), both of whom underline the importance of custom (*Urf*) and independent juristic reasoning (*Ijtihad*) in the development of Islamic legal doctrines. These principles provide the necessary jurisprudential flexibility to engage with evolving legal concepts such as IP.

Moreover, Al-Zwaini (2004) brings a regional dimension to the discussion, tracing how Middle Eastern jurisdictions with Islamic legal heritage have integrated IP norms, often by blending Sharia principles with Western legal models. This hybridization highlights the practical efforts of legal systems in reconciling religious and secular legal frameworks.

The ethical contours of ownership and economic rights are further explored by Brockopp (2003), who approaches Islamic property law from an ethical perspective. While not focused exclusively on IP, Brockopp's (2003) work is invaluable for contextualizing IP within Islamic moral and legal reasoning, especially regarding the ethical imperative to protect public welfare.

Sachedina (2009) makes a notable contribution by analyzing IP in the context of biomedical ethics. His work foregrounds the ethical challenges of patent rights, particularly with respect to access to

¹ The term "Arab World" encompasses the 22 countries in the Middle East and North African regions that speak Arabic (<https://worldpopulationreview.com/country-rankings/arab-countries>).

medicines, and situates Islamic Law as a potentially counterbalancing force to monopolistic tendencies in global pharmaceutical regimes.

In more recent years, scholarly engagement with Islamic perspectives on IP has taken a normative turn. Al-Khalili (2021), for instance, revisits the Islamic scientific tradition and contends that practices of attribution and the preservation of scholarly works represent early expressions of intellectual rights, even if they did not entail exclusive legal ownership. His findings support the argument that Islamic intellectual heritage contains latent IP norms.

Further contribution by Abu-Amir and Kassim (2023) advocates for the use of *Maslahah* (public interest) as a doctrinal tool to justify policy exceptions, including compulsory licensing, under Islamic legal theory.

Muhsin (2024) extends the ethical argument by examining how Islamic jurisprudence addresses conflicting harms in the context of medical confidentiality. Though not centered on IP, his conclusions reinforce the broader ethical principle that public welfare may override exclusive rights; an argument that parallels the compulsory licensing framework in TRIPS.

Taken together, these scholarly contributions showcase both the normative potential and doctrinal complexity of IP regulation within Islamic law. They also call for further research into how Islamic jurisprudence can be aligned with international IP standards in ways that reflect both ethical integrity and legal coherence.

3. RESEARCH METHODOLOGY

This study adopts a doctrinal legal research methodology, focusing on the normative content of both Islamic Law and modern IP frameworks. Doctrinal research is particularly appropriate given the aim of this paper: to analyze legal principles and compare their application across distinct legal traditions.

Primary Islamic legal sources, namely the Quran, *Sunnah* (Prophetic traditions), *Ijma* (consensus), and *Qiyas* (analogy), serve as the core texts for evaluating how Islamic jurisprudence conceptualizes rights over intangible property. These sources are interpreted using classical jurisprudential tools such as *Usul al-Fiqh* (principles of Islamic jurisprudence) and *Ijtihad* (independent reasoning).

To evaluate the modern IP context, the study examines international legal instruments such as the TRIPS Agreement, particularly Articles 7, 8, and 31 (WTO, 1994), as well as the Doha Declaration on Public Health (WTO, 1996/2001). These provide a framework for assessing how modern IP law balances exclusivity with public interest, especially in health-related matters.

Comparative analysis forms a secondary methodological component. By comparing Islamic legal norms with the TRIPS compulsory licensing regime, the paper investigates conceptual overlap in the treatment of monopoly, public interest, and authorial rights.

Qualitative content analysis is used to examine scholarly works that interpret Islamic texts in light of evolving legal issues, such as access to medicine, ethical monopolies, and innovation incentives. Textual sources were selected based on their relevance to both jurisprudential integrity and

practical legal application in Muslim-majority jurisdictions.

Alternative methodologies such as empirical socio-legal studies or economic modeling were considered but found unsuitable for the objective of this research, which is grounded in theoretical and doctrinal legal inquiry. However, future research could benefit from empirical studies examining how Islamic IP principles are applied in national legislation or judicial decisions.

4. RESULTS

4.1. Recognition of intellectual labor in Islamic Law

The study finds that while Islamic Law does not explicitly codify “intellectual property” as a legal category, the principle of attributing intellectual work is deeply rooted in its jurisprudence. This is evident in the scholarly rigor applied to the transmission of Hadiths, where narrators are credited for their contributions through the system of *Isnad* (chain of narration), thereby reinforcing the ethical imperative of intellectual attribution (Melchert, 2020).

Further, Quranic verses and Hadiths emphasize the sanctity of one’s labor and property. For example, the Hadith stating “He who cultivates the land, it is for him” (“Hadith by Malik”, n.d.) provides a general analogy that aligns with the notion of labor-based ownership, including intellectual efforts. However, such recognition does not translate into exclusive monopolistic rights unless qualified by overriding principles such as *Maslahah* (public interest).

4.2. Limitations of exclusive rights: Monopoly in Islamic ethics

Islamic law prohibits *Ihtikar* (monopoly), particularly where it causes harm to public welfare. This prohibition extends to essential goods and services, such as food and medicine (Awadah, 2017). The Prophet (PBUH) is reported to have said, “He who monopolizes is a sinner” (Dedew, 2021), thereby rejecting monopolistic behavior even where it might be legally permissible under secular law.

This ethical stance finds resonance in Article 8 of the TRIPS Agreement (WTO, 1994), which allows member states to adopt measures to protect public health and promote the public interest. Therefore, although modern IP laws grant temporary monopolies through patents, Islamic jurisprudence calls for limitations on such rights when public harm or exploitation results.

4.3. Access to medicine: A converging principle

One of the most significant findings of this study is the convergence between Islamic legal principles and the TRIPS regime in the context of access to medicine. Under Islamic law, public access to life-saving resources is prioritized over proprietary claims. *The Quran* (n.d., Al-Ma'idah 5:32) equates saving a life with saving all of humanity, which establishes a moral imperative that may override personal rights.

Similarly, Article 31 of TRIPS allows for compulsory licensing during national emergencies (WTO, 1994). The Doha Declaration (WTO, 1996/2001) reaffirmed this flexibility by emphasizing that IP rights should not hinder access to essential medicines. Islamic legal doctrines such

as “necessities permit prohibitions” (*Al-darurat tubih al-mahzurat*) align with this rationale (“The meaning of “the necessities permit what is prohibited”, 2003).

However, a key divergence lies in the treatment of compensation. TRIPS mandates remuneration to the patent holder under compulsory licensing (Article 31(h)), whereas Islamic jurisprudence does not condition the override of rights on financial compensation if public necessity is established.

4.4. Doctrinal boundaries and ethical constraints

While the attribution of intellectual contributions is well-supported in Islamic tradition, the commodification of knowledge, particularly the sale of ideas for profit, is ethically contentious. Islamic Law encourages the dissemination of beneficial knowledge and condemns its concealment for private gain (Sachedina, 2009). This raises questions about the moral basis of granting exclusivity over knowledge that could alleviate suffering or advance societal welfare.

This tension underscores a key doctrinal limit: Islamic Law supports recognition and even reward for intellectual work, but only within the ethical boundaries of fairness, non-harm, and communal benefit. The jurisprudential principles of *La darar wa la dirar* (“no harm and no reciprocating harm”) serve as a baseline for regulating rights that could negatively affect others.

5. DISCUSSION

5.1. Intellectual property rights

IP rights as defined by the WTO are “rights given to persons over the creations of their minds. They usually give the creator an exclusive right over the use of his/her creation for a certain period of time” (WTO, n.d.-c). The aim of establishing IP rights, therefore, is to: 1) recognize the inventor and 2) give the creator a head start to reap the benefits of their invention/creation, usually in monetary form, before the public is permitted to use it.

In terms of codification, the Paris Convention for the Protection of Industrial Property (1883/1979) marked the initial step in formalizing IP regulations to safeguard the interests of inventors and creative individuals. Subsequently, the Berne Convention for the Protection of Literary and Artistic Works (1886/1979) was introduced to address the shortcomings of the Paris Convention, including the specification of a minimum copyright duration. Ongoing demands for amendments to both the Paris and Berne Conventions ultimately led to the establishment of the World Intellectual Property Organization (WIPO) in 1967 and, finally, the formation of the TRIPS to address IP enforcement (WTO, 1994). TRIPS continues, therefore, to be the authority for all IP matters, especially amongst its member nations.

According to Article 1 of the TRIPS Agreement, members shall give effect to the provisions of the agreement, which define IP rights broadly to include patents, copyrights, trademarks, and trade secrets. WIPO similarly defines IP in Article 2(viii) of its Convention as “rights relating to literary, artistic and scientific works; inventions; trademarks; commercial names; and all other rights resulting from intellectual activity” (WIPO, 1967).

5.2. The foundations of intellectual property rights in Islamic Law

While intellectual property rights, as we know them in the modern context, have evolved over time, the underpinnings of IP rights in Islamic Law, although always present, have gradually developed within the framework of Islamic Law.

Muslims have recognized the principle of protecting intellectual rights since early times, even if it was not known by this common term or in this particular way, as follows:

- Scientific integrity in the field of sciences and attributing the work to its rightful authors through textual documentation: In Islamic history, scholars have placed importance on attributing works to their rightful owners, which was seen especially during the Golden Age of Islam, which was a period of significant advancements in various fields, Muslim scientists were meticulous in documenting their findings and acknowledging contributions of their predecessors and included citations of their predecessors (Kaddoura, 1981; Al-Khalili, 2010).

- Establishing a system for the narration of Hadiths (Prophetic traditions): The system of preserving and transmitting Hadiths in Islam is a further example of recognizing the importance of intellectual rights. Hadiths are the recorded sayings and actions of the Prophet (PBUH) and are central to Islamic jurisprudence and theology.

To ensure the accuracy and authenticity of Hadiths, a rigorous system of narration and authentication was developed. Each Hadith was accompanied by a chain of narrators (*Isnad*) tracing its transmission back to the original source, which is the Prophet (PBUH). Scholars meticulously recorded these chains, and the credibility of each narrator was evaluated (Melchert, 2020). While Hadith preservation highlights the value of attribution, it does not confer exclusive monetary rights over the content. Rather, it reflects moral recognition, akin to modern moral rights under copyright (e.g., right to attribution), not economic exclusivity or license (Ganea, 2016; Melchert, 2020).

This system aimed to safeguard the intellectual rights of those who transmitted the Prophetic traditions. This system represents moral attribution rather than commercial exclusivity. It aligns more closely with moral rights in copyright law, such as the right to be identified as the author, and not with economic monopoly rights. This also ensures that they were accurately attributable. Scholars responsible for transmitting and recording the Hadiths have been praised for their rigor in sifting credible and trustworthy chains of narrations (“Evolution of Hadith reliance in Sunni Islam”, 2023).

- The system of preservation (*I'dah*) by placing a public copy of the authored work in public libraries: It is another aspect of recognizing intellectual rights in a historical Islamic context. Throughout the Islamic world’s history, libraries and centers of learning played a crucial role in preserving and disseminating knowledge (Rusydia et al., 2021). Scholars and authors would donate or deposit copies of their works in these libraries, ensuring that their intellectual contributions were accessible to the public.

This practice served multiple purposes, including protecting the intellectual rights of authors by providing a public record of their works and allowing broader access to knowledge.

It promoted the dissemination of knowledge while acknowledging the contributions of scholars and authors. However, this practice should not be interpreted as an Islamic legal doctrine of exclusivity. It reflects ethical custom (*Urf*) and the value placed on knowledge dissemination. Islamic legal sources, such as *Qiyas* and *Istihsan*, could support the idea of knowledge preservation, but not necessarily its commercial monopolization. (Kamali, 2021; Hallaq, 2009).

In Islamic Law, much like contemporary IP law, there is a parallel aim to acknowledge inventors and grant them the opportunity to enjoy the rewards of their innovations.

Giving credit to the original creators of works, like the tradition of narrating the sayings of the Prophet, as seen in the Hadiths, ensures that the chain of narrations is linked to each individual who heard those sayings (Anjum, 2019). Regarding rewards, the teachings of the Prophet (PBUH) convey that “he who cultivates the land, it is for him” (“Hadith by Malik”, n.d.), signifying that those who put in the effort should also enjoy the fruits of their labor. Although classical texts address tangible goods, analogy (*Qiyas*) allows for the extension of theft-related prohibitions to intellectual content, especially when copying misleads or deceives the public or deprives the creator of recognition.

Further, an important foundation for protecting IP rights in Islamic Law is the emphasis that violating intellectual rights and their goals and applications is considered forbidden in Islam because it falls under cheating, arrogance, deception, falsehood, theft, harming others, and infringing on their rights, all of which are prohibited in Islam. In this regard, the Prophet (PBUH) said: “Whoever bears arms against us is not one of us, and whoever cheats us is not one of us” [Emphasis added] (“The meaning of hadeeth: Whoever cheats us is not one of us”, 2021). These Islamic sources support the moral protection of intellectual output but do not directly justify economic exclusivity over ideas. Rather, the tradition encourages attribution, not monetization. The Quran also revealed the concepts of paradise and hell, lawful and unlawful, and emphasized that human rights in Islam are an integral part of the Islamic faith. Islam further promotes conscience, a sense of responsibility, and trustworthiness in the hearts of individuals.

Belief in Allah (S.W.T.), the faith of the hereafter, accountability, trustworthiness, and awakening the human conscience all give guidance on the sense of morality that exists when dealing with each individual. Islam does not prescribe painful punishments in this world to the extent that it abolishes retribution in the hereafter. This is following religion, morality, and trustworthiness, as Allah (S.W.T.) has said: “Do not betray Allah and His Messenger, nor betray your trusts while you know [the consequence]” (*The Quran*, n.d., Al-Anfal 8:27).

Sharia Law, further, provides foundational evidence for the necessity of protecting intellectual property.

While Islamic law encourages the dissemination of benefits and the spread of knowledge and strictly prohibits concealing knowledge, it does not justify infringing upon the rights of others. In Islam, the principle of general benefit must follow its rules and principles that serve the common good and prevent harm.

The Quran, in its wisdom, provides clear directives regarding the sanctity of property rights. In Surah Al-Baqara, Allah (S.W.T.) warns against the unjust consumption of one another’s wealth or its unlawful transfer to those in authority, which is tantamount to bribery and the exploitation of acts of charity for personal gain (*The Quran*, n.d., Al-Baqarah 2:188). The Quran addresses the believers, commanding them not to engage in the wrongful appropriation of each other’s wealth, especially when it involves dealings with those in positions of authority, as such actions are deemed sinful and forbidden (*The Quran*, n.d., An-Nisa 4:29).

In the Farewell Pilgrimage, the Prophet (PBUH) delivered a sermon that emphasized, amongst other things, the protection of property (Tariq, 2025). Additionally, in another Hadith, it was reported that on the Day of Sacrifice, the Prophet (PBUH) delivered a sermon and emphasized the sacredness of property.

The Prophet (PBUH) delivered a sermon to the people on the Day of Sacrifice and said, “O people, which day is this?” They replied, “The Day of Arafah”. He then asked, “In which city are we?” They answered, “The sacred city (Mecca)”. He continued, “In which month are we?” They said, “The sacred month”. The Prophet then said, “No doubt, your blood, your property, and your honor are as sacred to one another as the sanctity of this day of yours, in this city of yours, in this month of yours”.

Moreover, in another Hadith, narrated by Abu Huraira, the Prophet (PBUH) reinforced the inviolable nature of the bonds between Muslims. He stressed that the sanctity of a Muslim’s life, wealth, and honor should be upheld and protected by fellow Muslims, highlighting the significance of safeguarding each other’s property rights (Sunneyah Encyclopedia of Hadith, 2024).

In essence, the common theme running through these Quran verses and Hadiths is a resounding affirmation of the sanctity of a Muslim’s property in Islam. These teachings unequivocally convey the message that unjust infringements upon or unlawful consumption of another’s property are strictly prohibited. Such principles extend to the modern concept of IP laws, where the infringement of one’s intellectual creations without consent or rightful attribution is analogous to the forbidden acts of bribery, deception, and the misappropriation of wealth, as emphasized in the Quran and Hadiths.

The above shows the correlation that exists between property rights and the sanctity of protecting each individual’s property, and by extension, his thoughts and fruits of labor. Further, Islamic jurisprudence does not prohibit the reproduction of works for public benefit, particularly in endowment-based libraries. The principle of *Maslaha* supports making knowledge widely available, especially for non-commercial purposes.

5.3. Evolving concept of intellectual property in Islam

It is crucial to understand that Islamic Law continues to be the paramount authority governing various aspects of daily life for Muslims, including matters related to IP (Bani Taha, 2021).

The aforementioned principles of IP have been enshrined in the Islamic Declaration on Human

Rights, which highlights the progress of civilization and recognizes the safeguarding of intellectual property. It acknowledges the contributions of scholars, inventors, creators, and those who bring innovative and creative ideas to the forefront, all while respecting the fundamental human right to benefit from the knowledge and accomplishments in diverse fields. This sentiment is explicitly articulated in Article 16 of the Islamic Declaration on Human Rights.

Article 16 of the Islamic Declaration on Human Rights affirms that every individual possesses the right to enjoy the rewards of their scientific, literary, artistic, or technical creations. Furthermore, they have the right to protect their intellectual and financial interests arising from these creations, provided that such production does not contravene the dictates of Islamic law (Cairo Declaration on Human Rights, 1990; Kayaoglu, 2000). This statement aligns with the principles established in the foundational tenets of Islamic Law discussed earlier.

5.4. Monopoly rights in Islamic Law

Whilst the authors recognize that monopoly and intellectual property are not mutually synonymous terms, IP laws confer legal monopoly rights (Blair & Wang, 2017; Qureshi, 2018). In Islamic Law, monopoly (*Ihtikar*) is a forbidden concept. The Prophet (PBUH) said: "Only a wrongdoer monopolizes, and he who monopolizes is a wrongdoer", meaning that a person who engages in monopolistic practices is sinful (Dedew, 2021; Awadah, 2017). Islamic law generally supports moral recognition (*haqq al-tarīf*) over commercial exploitation (*haqq al-intifā'*), particularly when the public interest is at stake, such as during health emergencies.

This means that whilst inventors and creators are granted exclusive rights to their work, this must be exercised within the bounds of ethical and legal principles, without exploiting and monopolizing essential goods or knowledge, which includes access to essential medicine.

In this context, in Islamic ethics, it is considered unethical to use IP rights to artificially inflate the cost of essential medications, thereby limiting access to those in need. This ethical framework underlines the responsibility of inventors and creators to balance their exclusive rights with the broader welfare and well-being of society, ensuring that their innovations are not utilized in ways that would be detrimental to the common good.

5.5. Access to medicine in Islamic Law

Islam places a significant emphasis on ensuring access to necessities for all individuals. The teachings of Islam include principles of social justice, compassion, and the equitable distribution of resources. This is evident in the teachings of Islam through the principles of Almsgiving (Zakat) (Al-Bar & Chamsi-Pasha, 2015). This means that even if IP or legal monopoly rights are granted to a certain extent in Islamic Law, this need ends when there is an essential need.

Whilst access to medicine in Islamic Law is not explicitly addressed in the primary sources, for example, food and necessities are what is cited in the Hadiths as a necessity (Tahir et al., 2016;

Hashim, 2021) access to medicine in Islamic Law is considered a right that is deeply intertwined with the broader principles of justice, compassion, and the preservation of human life, the Quran states "If anyone saved a life, it would be as if he saved the life of all mankind" (*The Quran*, n.d., Al-Ma'idah 5:32). The sanctity of life and the alleviation of suffering are paramount in Islamic ethics, and as such, Islamic jurisprudence recognizes the obligation to ensure that essential medicines are accessible to those in need (Muhsin, 2024).

Further, Islamic Law does not explicitly outline detailed regulations for the pharmaceutical industry or intellectual property rights concerning medicines; it provides a framework that emphasizes the importance of public welfare and the duty to prioritize the health and well-being of individuals and communities. In this context, the *Fiqh* concept, which states, "The necessities permit what is prohibited except [when compelled by] necessity", becomes relevant (*The Quran*, n.d., Al-An'am 6:119; "The meaning of "the necessities permit what is prohibited", 2003). This is because this is based upon the Koranic verse whereby Muslims are encouraged to break from the norm in times of need and extreme urgency ("The meaning of "the necessities permit what is prohibited", 2003).

Although Islamic Sharia promotes the universalization of benefits and the sharing of knowledge, it strongly discourages the concealment of knowledge, as it does not see this as a valid reason for infringing upon the rights of individuals. Instead, it prioritizes the promotion of benefits following its core principles and doctrines, which aim to achieve well-being while preventing harm. In a Hadith by the Prophet (PBUH), he says, "The best of you is the one who is most beneficial to others" (Hadith on Friendliness: Best people are kind, benefit others, n.d.). Further, in another Hadith by the Prophet (PBUH), it is recorded that a companion of the Prophet recounted, "When we were with the Prophet, a scorpion bit one of us". A companion asked, "O Prophet, may I do Ruqqa to him". The Prophet replied, "Whoever can do anything beneficial to one of his brothers, he should just do it" (Muslim, n.d.).

In this context, it is an acceptable legal concept to offset a greater harm with a lesser harm. This rule has been adopted by renowned Islamic scholars and can be found in various sources, such as *Majallah Al-Ahkam Al-Adliyya* or The Civil Code of the Ottoman Empire of 1876, Article 27, Haydar (2010), Al Zarqa (2017), Muhammad Al-Zuhayli (2006), and Al-Sudhlān (2016).

5.6. Compulsory licensing

The forbiddance of monopoly or rights in a time of need, however, is also a recognized concept in modern intellectual property rights through the mechanism of compulsory licensing.

Compulsory licensing is the legal mechanism that grants a temporary access to use a patented product without the consent of the patent holder in certain circumstances. TRIPS regulated the instances where compulsory licensing may be invoked, which are on a case-by-case basis and include efforts to obtain authorization from the patent holder, except in cases of extreme urgency or national emergency, that the scope is limited in terms of authorized purpose, duration and exclusive to the domestic market (Article 31 of TRIPS). A patent holder, even

when compulsory licensing is invoked, should be remunerated adequately (Article 31(h) of TRIPS).

Despite the reluctance and the various scholarly debates that currently exist regarding using compulsory licensing (Barqawi, 2020), the concept of compulsory licensing, nevertheless, exists and still serves as a flexibility of TRIPS.

Further, the notion that a compulsory license can be used at times of national emergency and in order to access medicine (WTO, 2024) shows that there are exceptions to the IP rules and regulations, which reinforce the ideas found in Islamic Law, the welfare of the broader community. The similarity that exists between modern-day compulsory licensing and Islamic Law, thus, is that in times of emergencies, the benefit for the greater good must take precedence.

As mentioned above, however, in the legal mechanism of compulsory licensing, the granting of a license is limited geographically and is essentially time-barred to the purpose it serves. This means that the use of IP, such as patents, under compulsory licensing is constrained in terms of its scope and duration. In contrast, Islamic Law does not impose such restrictions, allowing for more flexibility in how IP is used.

Further, compulsory licensing places as a precondition that an authorization must be sought from the patent holder first and foremost before proceeding with compulsory licensing and that the patent holder must be compensated in all instances (Article 31 of TRIPS). In other words, even if a compulsory license is granted, the original patent holder is entitled to receive compensation for the use of their patented invention. Islamic Law, on the other hand, does not provide conditions to compensate the monopoly owner.

However, Islam does not recognize a right to conceal beneficial knowledge for private gain. This stands in contrast to TRIPS, which allows commercial IP exploitation unless exceptions like compulsory licensing apply.

6. CONCLUSION

This paper has examined the extent to which Islamic Law aligns with the foundational principles of modern intellectual property (IP) law, particularly as codified in the TRIPS Agreement. Contrary to assumptions that Islamic legal systems lack a framework for IP protection, this study finds that

Islamic jurisprudence provides meaningful analogues to intellectual property rights through its recognition of attribution, protection of labor, and ethical regulation of monopolies.

The findings demonstrate that while Islamic Law does not support monopolistic exclusivity in the same form as Western IP systems, it does affirm the protection of intellectual labour, especially in contexts that demand moral integrity, such as Hadith transmission and scholarly authorship. Moreover, Islamic ethics recognize limits to such protection, particularly where public necessity demands equitable access, as in the case of life-saving medicines.

These principles mirror the flexibility provisions in TRIPS, especially the mechanism of compulsory licensing. However, Islamic Law may go further by decoupling moral recognition from financial remuneration in emergencies, suggesting a deeper ethical commitment to public welfare.

The implications of this study are twofold: First, Islamic legal principles can complement and reinforce modern IP norms when tailored to public interest needs. Second, Muslim-majority countries seeking to align domestic IP policy with Sharia principles can draw on existing jurisprudential tools such as *Maslahah* (public benefit), *Darurah* (necessity), and *Urf* (custom).

Nevertheless, the research is not without limitations. This is a doctrinal and theoretical analysis; empirical studies on how Islamic legal principles are operationalized in national IP legislation are needed. In addition, the diversity of opinion across the Islamic legal schools (Madhahib) means that no single interpretation can claim universal authority.

Nevertheless, the research is not without limitations. This study adopts a doctrinal and theoretical approach. As such, future research could explore how Islamic IP principles are operationalized in national legislation and judicial decisions across OIC member states. Empirical investigations might include fieldwork with Islamic jurists, analysis of legislative debates, or case studies on patent law reform in Muslim-majority contexts. Another potential avenue lies in comparative jurisprudence, assessing differences between Hanafi, Maliki, Shafi'i, and Hanbali interpretations of intangible rights and exclusivity. Such work would further bridge the gap between classical sources and modern legal demands.

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