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ABSTRACT

The aim of the research is to conduct a comparative study of intellectual property in Islamic point of view in primary sources of Islamic law the word intellectual property is not specifically mentioned but the principal extracted from the primary sources tend toward the intellectual property right prgotection.it does not mean that Islam dose not recognized the intellectual property right but there are some objectionable aspects also which does not support the current IP system. The concept of copyright is ancient concept but those work of author worthy of punishment or offensive words are not protected under copyright work along with that some of the trade are prohibited in Islam and for which any kind of trademark used is not protected under Islamic law Islam recognized all kind of scientific research and inventions but some of the invention goes against the established order of Allah like any modification or change in any gene in the human body such kind of inventions are not protected under Islamic laws and not patentable. The study attempts to answer that either Islam recognized the intellectual property or not? The objective of the research is achieved through qualitative mean of research by analyzing different article and textbooks. The comparative analysis of the current international IP system through Islamic perspective indicated that the current IP system fail to fulfill the need and aspiration of Islamic countries.

Keywords: Property, Intellectual Property, Laws and Islam

Introduction:

As we know that the property has many kinds such as movable, immovable, real, personal, tangible intangible, corporal, in-corporal, public, private, and intellectual property so it is classified in the following way. The public property is the type of property which is owned by the government and used the same for the beneficial purpose of public in general for example in such a case if the property is owned after that the government-built park or hospital or college or university for the benefit of public, so such kind of property is known as public property. The type of property which is owned by a particular person such as a car, or a residential house of a person will be considered as his private property. With reference to existence the property is divided into two types namely; The corporeal property includes all the tangible thing which can be seen and touch with senses such as house, car, land, and any other thing which can be seen with naked eyes and can be touched, furthermore the corporeal property is further divided into two types which are the following: (Maskus 1998) The type of property which can be moved from one place to another by using human force such kind of property includes mobile phone, jewelry and laptop and computer etc. Such kind of property is also known as personal property. The type of property which cannot be moved or transferred from one place to another place by using human force such kind of property are permanently attached to the earth the example of such kind of property is building, land and any other things permanently attached to earth. While incorporeal property cannot be perceived with senses. (Hesse 2002)

Purpose and Methodology of the Study

The study is aimed to develop understanding about the intellectual property, its importance, the legal and Islamic implication in this regard. Further the study aims to understand and examine the Islamic approach towards the protection of intellectual property rights. Furthermore the study will lead to reach a clear understanding among Intellectual Property, Islam and the Legal System of Pakistan. In order to achieve the above mentioned objective a meta-analytical approach was adopted under the qualitative design. Both primary data (data collected from personal observations, case laws, interviews etc.) and secondary data (printed books, published articles etc.) was collected and discussed under headings and subheadings.

1. Introduction to Intellectual Property

Intellectual property is intangible property and purely the creation of human mind and the person who made any inventions have right over that for some period of time up to twenty years like Patent because of his efforts, labor, and skill he used such as literary work, artistic work, computer program and inventions and intellectual property has a great importance in field of law because the importance of intellectual property was first recognized in Paris convention 1883 for the protection of industrial property. (Carroll 2000) In 1886 for the protection of literary and artistic work in at the Berne convention, in case of violation the infringement proceeding will initiate against alleged infringer. (Draho 2016)

Intellectual property is kind of intangible property and it is different from the tangible property by many way which are discussed above in detail but the importance of intellectual property cannot be ignored in any way because it plays a key role in the society the intellectual property covers the trademark, copyright, patent and industrial design which are also discussed in detail from which we come to the conclusion that up to what extent it is important basically intellectual

property is a result of creation of mind that's why it is different from tangible and real property which cannot be stolen and misuse easily but it is intangible and can be stolen and misuse easily like if a person write an article and the same was copy by other this is the violation of copyright and the same right of real owner is protected and at the same time and a person made a product and have its own trade mark which represent his product like (J.) is a trade mark which is brand from which we know about the product it was use by other the real owner can initiate infringement proceeding against alleged infringer and at the same time if a person discover something helpful for us like medicine the patent give exclusive right to the inventor up to twenty years and no one use it without prior permission so intellectual property is very important in the economic growth and development of the society.

1.1. Difference with other types of Properties

Intellectual Property differs from other types of properties in the following ways;

- ❖ **It is an intangible property:** The first and foremost feature of the intellectual property is that the intellectual property is that intellectual property in intangible cannot be seen or even touched.
- ❖ **Intellectual property is the creation of mind:** The other feature on the basis of which it is different from other physical property is that intellectual property is purely the creation of human mind by using own skills and labor. (Khan, Habib et al. 2019)
- ❖ **It is territorial in nature:** Its mean that it is protected in that particular area in which the right has been violated but it can also be protected outside the territory international protection is also granted to intellectual property right.
- ❖ **Gives exclusive rights to the owner:** As we know that it is the creation of human mind so the protection will be given only to the creator and originator so, it the exclusive right of the creator and those exclusive right is granted in the form of registration after fulfillment of the legal requirements. (Kinsella 2008)
- ❖ **Assignable:** The other unique characteristic of the intellectual property is that it can be transferred to another person by way of licensing for a specific period of time and the right of ownership retain with the creator he only enjoys the right for a specific period of time. (Pisano 2006)
- ❖ **It is Subject to Public Policy:** It means that the new invention must not be against public morality and public moral should not be affected with new creation but if the invention is such that which goes against society, then law will come into motion so anything which goes against public policy can be challenge in any court of law. (Posey and Dutfield 1996)
- ❖ **Dynamic in Nature:**
- ❖ **Dynamic** mean if the society changes so the different aspect with regard to invention also changes and the right with regard to the intellectual property also changes with time. For example, at some time the exclusive right to produced new variety of seed which have unique kind of characteristics was not protected but in year 2002 certain exclusive right to the farmer was granted that if they do certain development over the seed or create some new variety of plants which lead to high production. (Spence 2007)
- ❖ **Co-existence of Different Rights:** The intellectual property has co-existence right which exists between one intellectual property with other in patent you will have

trademark protection or any other aspect which are interconnected with each other.(Strathern 1999)

1.2.Why do we protect intellectual property?

As we know that intellectual property is the creation of mind and need hard work and struggle In intellectual property the human use their mind and hard work to achieved the result and the other most important point that leave space for protection is intellectual property can be easily stolen and misuse for example an inventor after hard work and struggle discover a medicine of cancer diseases here the inventor use their mind and due to his hard work he achieved the same result and if the same was stolen by other is violation of his right and discourage the inventor that why the paten give exclusive right to inventor up to twenty year and no one other than the real owner use the same without prior permission of the inventor.(Khan, Habib et al. 2019) So, the protection of intellectual property is very important and it will encourage the people to discover the new thing which help full to the society and the intellectual property right is important for economy and its further growth such is inventions research and employment and the protection prevent others from using their brand and good will and encouraging the owners to stay ahead with their own business and no one take financial benefit from your product and brand and give exclusive right to the owner to get benefited and even can transfer the same to other by licensing is well because intellectual property is highly valuable part of your business so from the above discussion it is clear that the intellectual property protection encourage the inventor to advanced re-search and keep their idea safe and protect business growth and differentiate your product from rest of the people and benefited the society.(Masud 2019) if there is no protection of intellectual property right will discourage the inventors and researchers and people will pilfer the re-search of other and will get financial benefit from the same and as a result people will lost interest in new re-search, discovery and inventions.

1.3.Types of intellectual property

The intellectual property has the fallowing type namely.

1.3.1. Trademark

A trademark is a kind of intellectual property which identify the goods made by individuals, company, and organization a trademark also differentiates the product of one company from the other and at the same time help to distinguish the similar product from each other's a trademark may be: a symbol, sign, sound, shape, song, word or color and the trademark can be used for both goods and services.(Carroll 2000) So trademark basically give identity to the product and can be a symbol, sign sound shape song and words etc.

Example of trademark:

Some of the examples of registered trademark are the fallowing which cannot be used by any other person except with prior consent of the owner the coca cola, Nike, have own trademark if someone use it the owner can initiate infringement proceeding against alleged infringer.(Spence 2007)



1.3.1.1.Feature of Trademark:

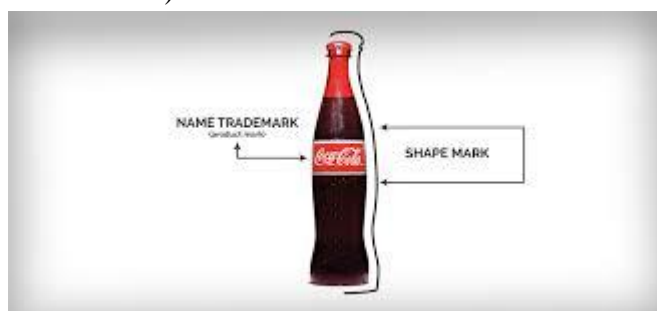
The trade must have the following feature:

- The trademark must be distinctive in nature.
- The trademark should be easy to pronounce.
- The trademark shall not be such that forbidden by law.
- It should be short.
- The trademark should be visible and attractive.

1.3.1.2.Types of Trademarks:

The following are the main type of trademark:

- **Product mark:** The product mark is the type of trademark which is associated with products not with services.
- **Service mark:** The type of trademark which is used to identify the service instated of product for example Amazon provide service for online shopping and used its own service mark and it the same time Whatsapp is a service mark as well as a trademark.(Ali and Khan 2021)
- **Collective mark:** When two or more than two companies made a same product collectively so for its collective mark is used.
- **Certification Mark:** Certification mark is one of the types of the trademark in which the owner of the product certified that in case of any side effect we will be responsible for any kind of loss happened because of our product simply we can say that the certification mark denotes the quality of products the material used and mode of manufacturing.(Hina, Batool et al. 2017)
- **Shape Mark:** The shape mark includes the shape of the product if the shape of the product is distinctive in nature is able to be registered for example the coca cola shape is a shape mark which cannot be used by any other company or organization.(Babar, Jamshed et al. 2013)



- **Sound Mark:** Now the sound mark is also used as a trademark when the sound is such that which distinguish the one product from the others, so it is called the sound mark for example when we open Nokia phone its ring tone is sound mark.

1.3.1.3.Laws Related to Trademark in Pakistan:

In 1940 the first law of trademark was passed which is known as trademark act 1940. and Later on to comply with international obligation the government of Pakistan decided to amend the law relating to trademark therefore, the president of Pakistan passed the trademark ordinance 2001 and currently governed by the trademark ordinance 2001 and trademark rule 2004.

1.3.2. Copyright:

Copy right is the kind of intellectual property which provide protection to the original work of authorship include literary, artistic, dramatic, musical, and certain other intellectual work. The “statute of Anne” is considered is the first copy right law which is passed in 1709 but it is to be noted that the copy right does not protect the idea instead it transfers to the tangible form or in black and white form it was also declared by the superior court that the copy right law does not cover the idea. (Sherwood 1996) In the above case the court declared that the copy right does not protect the ideas but only the expression of an idea. (2006 CLD 97 Karachi).

1.3.2.1.What works are protected under the copyright:

The copyrightable work is divided into four categories which are the following:

- **Artistic work:** Paintings, drawings, diagrams, maps, charts, labels, logos, monograms, photography, architectural work, design, and sculpture are examples of artistic work that have their own registration and fee procedures. (Ahmed, Munir et al.)
- **Literary work:** The literary work under the copy right includes the (books, magazine, poetry, dramas, Journals, lectures, novels, computer programs software and compilation of data).
- **Cinematographic work:** The cinematographic work includes the movies, audio-visual work, documentaries, and dramatic work. (Saleem 2011)
- **Record works:** Record work under the copy right include music, sound and song or lyrics.

1.3.2.2.Laws related to copyright in Pakistan:

In Pakistan the following law cover the copyright if someone use the dramatic work, literary, cinematographic and record work of other and reproduce the same in material form or to publish the work or to perform the same in public or made any unauthorized use of the same in any mean shall be libel under the following law.

- 1) copyright ordinance 1962.
- 2) Copyright rule 1967.
- 3) Copyright amendment order 2000.

1.3.3. Patents:

Patent is the type of intellectual property patent is in official documents give right to the inventor to stop others from selling, copying, using their invention without his permission and give to the inventor exclusive right to sell use and distribute the same up to twenty years and the basic purpose behind the protection of patent right is to encourage the inventors to made new inventions helpful for society and its development.

1.3.3.1.Type of patent:

Patent is also one of the kinds of intellectual property and basically patent Is official documents give exclusive right to the inventor to stop others from selling, copying, using, and distributing

the invention without their permission and give the inventor the exclusive right to sale purchase, and distribute the invention.

There are three types of patents:

- **Utility patent:** The type of patent which cover the usefulness of the product or the functional aspect of the invention.
- **Design patent:** The type of patent which cover the design of an object or product.
- **Plant patent:** The type of patent cover new type of plant reproduces asexually without use of pollen.(Noshab 2001)

1.3.3.2.Laws Cover the Patent:

The Patent Ordinance, 2000 protects the patent in Pakistan. The patent office was established under section 55 of the patent and design act 1911 in year of 1948.but later on the same act was amended and the patent ordinance 2000 was made since April 2005 the patent office currently is a part of intellectual property organization of Pakistan. Industrial design is also one of the kinds of intellectual property but in Pakistan mostly the trademark, patent and copyright are protected and protect the right of inventor up to twenty year and no one other than the owner uses the invention of other without prior permission.

2. Islamic Approaches toward Intellectual Property Right:

The intellectual property rights are not recognized by Islamic law and the main sources such as Quran and Sunnah, Ijma and Qiyas but the basic principles extracted from the primary sources give legal protection to the intellectual property right. the intellectual property is an ancient concept in pre-Islamic society protection of original authorship was recognized for poets this show that the copyright protection was recognized in pre-Islamic civilization but mostly now a day a Muslims countries apply secular laws for the protection of intellectual property but at the same time some constitution of the same country consider sharia is their main source the intellectual property is not regulated by the main sources but not incompatible with sharia but if its principal can be interpret in way that tend toward protection of intellectual property right.(Raslan 2006)

2.1.Personal Right can be gain through Effort:

The prophet (PBUH) has reported to have said that: nobody has ever eaten a better meal then that which one has earned by working with one's own hands which mean that the person who made efforts and struggle he is entitled to his benefit implies that the copyright associated with the original creation of an author and the efforts for promoting trade mark and industrial inventions can be recognized is a personal right gain through efforts.

2.2.Copying Counterfeiting and Theft:

As we know that the many verses of Quran expressly condemned theft prohibit copying and counterfeiting such as 'woe to those who use measure and measure, who when receiving take for themselves a full measure and but when they are measuring or weighting for others give less'. along with this verse of Quran and many other Hadith give direction to the Muslims to stay in a place where there it is fair trade and practices and leaves places where the measures are not respected so its talk about fair dealing and prohibit theft copying and counterfeiting.(Posey and Dutfield 1996).

2.3. Property Right:

The Islamic law recognized to acquired Un develop land and making it useful and productive for the community this is relevant to the intellectual property right because work of authorship inventions and use of trademark also benefited for the society and need to be protected such is medicine and different software are made as a result of hard work and struggle and give benefit to the society, so it is clear that both tangible and intangible property deserved protection.

2.3.1. Verses of Holy Quran and Hadith in Support of Intellectual Property Protection:

As we studied above some of the principal extract from the primary sources talk about the intellectual property protection in same way there are some of the verses of Quran and hadith is related to the intellectual property right protection some of them are the fallowing.(Pisano 2006)

(رواه ابن ماجه) لَا ضَرَرَ وَلَا ضِرَارَ

In this hadith it is stated that cannot harm themselves and cannot in turn harm other people” this hadith talk about danger of harming others and its impacts on ourselves according to the majority of the scholars from Maliki school of thought, Shafis and Hanbali argue that this is related to the right of authorship and it is protected in shariah and the original authors is entitled for his benefit said by Wahabah Az-Zuhaili he assert that authorship is protected and downloading or printing a copy of the book is the violation an crime against the right of author.(Mittelstaedt and Mittelstaedt 1997)

لَا يَجُوزُ لِأَحَدٍ أَنْ يَتَصَرَّفَ فِي مِلْكِ الْغَيْرِ أَوْ حَقِّهِ بِإِذْنٍ

It is also confirmed by the Al-Qawaid AL-Fiqhiyah that make intellectual property protected is “no one may act on another property without permission”. It is also talk about the intellectual property protection that taking property of others without permission is prohibited.(Melhem, Haloosh et al. 2009)

As from some of the evidence it is conclude that the copyright should get legal protection as a legal protection of property of person in accordance with Islam, so we see that the Quran. Hadith and other sources of Islamic law provide principal that tend toward protection of intellectual property particularly copyright.

(رواه أبو حنيفة) لَا يُحِلُّ مَالُ امْرِئٍ مُسْلِمٍ إِلَّا نَهْهُ اِبْطِيبَ نَفْسٍ م

This hadith is narrated by Abu-Hanifa read is “not halal to steal a Muslim wealth except by permission from him the hadith basically give someone the right of private ownership which should not be taken without permission.(Masud 2019)

وَالَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ وَلَا تَقْتُلُوا أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا

In other place Allah SWT said about prohibition of consume others peoples treasures are wrong is fallow stated you have believed do not consume one another wealth unjustly but only in lawful business by mutual consent and do not kill yourselves or one another's indeed Allah is to you ever merciful” in the light of this verse of Quran no one is allowed to take the property of other person in a manner which is prohibited in Islam in this way intellectual property is own by a person through hard work struggle and use of mind,(Malkawi 2012) but along with these principals there are some other objectionable aspect of intellectual property in the Islamic context which are the following;

3. Objectionable Aspects of Intellectual Property in the Context of Islam:

It is safe to say that the Islamic law opposed intellectual property but at the same time the majority of the Muslims scholar confirmed the recognition of intellectual property right base on Quran and Sunnah but the major problematic aspect in this regard can be summarized in the following points;

3.1.Points of Controversies

The current regulation of intellectual property is not consistent with Islam as such various copyright right work based on current international standard are problematic for example some of the literary and artistic work which contain offensive and obscene language are not protected and not acceptable and any expression and idea which is worthy of punishment is not protected in Islam according to mufti Taqi Usmani who claim that the juristic view of Muslim scholar and primary source of shariah does not give protection to intangible thing and knowledge in shariah can't not be subject to private ownership along with that the late sheikh Muhammed Shafi give legal opinion (fatwa) stated that the inventions and authorship as acceptable as a mean of income but it is not permissible to exclude other from using the same and there are many VERSES of Holy Quran which dis approved the concealment of knowledge which are good for society and the Prophet (PBUH)warn Muslim against the concealment of knowledge and reported to have said that "the one who conceal knowledge would appear on the day of judgment as reined in a bridle of fire" this Hadith suggest that every person who attain any knowledge which are beneficial and helpful for others members of the society must be share with the others members of the society without any restrictions.(Lau 2005)

In case of patent the council of Islamic Fiqah Academy 1997 confirmed that Islam encouraged the freedom of scientific research but stress some restrictions on that re-search in the light of shariah to authorize what is lawful (Halal)and what is unlawful (Haram) and hence some of the conventions is considered prohibited such is any alteration to the living organism in a way which contradict the established order of Allah and any conventions which involved any modification in the body of organism or modifying the identity of humane gene shall be exclude from patent work. Similarly, the Islamic prohibit the trade and services of certain thing such is alcohol, pork and casinos and for such a product the use of trademark and service mark would be denied because the trade of the abovementioned product is prohibited in Islam and shariah.so the Islam exclude some of the invention, trade and copyright protection but it does not mean that Islam does not recognize the idea and ownership in general.(Kinsella 2008)

3.2.The Protection of Human Life and Wealth is the Prime Objective of Islam Shariah:

The protection of human life and wealth is the prime objective of Islam but some time if we look some of the laws related to intellectual property goes beyond this objective the TRIPs (trade related aspect of intellectual property right) agreement was the first international treaty which provide protection to the pharmaceutical product but the protection was mainly design to fulfill the objective of pharmaceutical industries in a developed countries and the developing countries if desire to produce a patented lifesaving drug must wait twenty years and acting outside the TRIPs agreement was considered is a theft and in Islam it is clearly mention that if a person save the life of one person is same that he save all the humanity and if a person kill one person is same that he killed all humans.(Khouri 2003).

3.3. Intellectual Property in the Context of Four Schools of Law:

According to Professor Al-Dereni who studied the four schools of thought briefly assert that the Hanmbalis, Shafis and Maliki's accept intangible property as a subject of ownership but only classical-scholar of Hanafi's school of law reject intangible is a form of property because this school of law considered physical possession as a fundamental requirement for property therefore this school of law accept only tangible property. (Khan and Ahmad 2013)

4. Conclusion:

Intellectual property is the creation of mind and gain through human efforts, hard work and struggle. The intellectual property concept is not an ancient but latest and has a great importance and now its protection is need of the time because it is a source of income and have a great importance. in Pakistan mostly the trademark, copyright and patent is protected all the three have its own laws and rule. If someone violates the right of other the aggrieved person can initiate infringement proceeding against alleged infringer. Copyright ordinance 1962, copyright rule 1967 and copyright amendment order 2000 protect the copyright in Pakistan. While in case of trademark in 1940 the first law related to trademark was passed which is known is the trademark act 1940 and later on to comply on international obligation Pakistan decided to amend the law related to trademark and therefore, the president of Pakistan pass the trademark ordinance 2001 and currently the trademark ordinance 2001 and trademark rule 2004 give protection to the trademark in Pakistan in a same way the patent ordinance 2000 protect the patent in Pakistan. So the protection of the intellectual property is very important because it gain through hard work and struggle and can be easily stolen and misuse if it is protected then the people will take keen interest in research and inventions and will work for the development of the society

Copyright is an ancient concept the right of authorship of poet was protected in pre-Islamic society its mean that it is not a new concept, but the current IP system of copyright is inconsistent with Islam the offensive word or any other words which are worthy of punishment is not protected by copyright all those works of author which goes against Islamic law is not protected under Islam. It the same time Islam encouraged all kind of invention which is helpful and beneficial for the society but any inventions which goes against the established order of Allah is prohibited and not protected. For-example any invention such is any modification in human body or gene is prohibited in Islam because it goes against Islam and the other aspect on the ground which is objectionable is that the primary object of the Islam is to protect the life and wealth of the person. and the current IP system give protection to the inventor up to twenty years and if someone or some country invent any medicine of life saving drug and if any other country wants to make and use the life-saving drug must wait twenty years which is against the primary objective of Islam.

Similarly, the prophet (PBUH) encouraged the Muslims to run the businesses in the places where the trade is fair, and measures are respected. and as we know that Islam prohibit the trade of some of the thing is prohibited such is alcohol land pork etc. The use of trademark for it is prohibited.

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