

**Intellectual Property Rights and Islam**  
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**Final Approval**

It is certified that we have read this project report and fully evaluated the project undertaken by Mr. Qaiser Iqbal. This project meets the requirements of the Department and University.

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## Table of Contents

### INTRODUCTION

#### THE MUSLIM WORLD AND ITS RESOURCES

- a. Manpower Resources
- b. Land Resources
- c. Economic Structure
- d. Strategic Importance

#### GLOBALISATION

- a. Overview
- b. TRIPS Agreement

#### APPROACH OF THE STUDY

#### SIGNIFICANCE OF THE STUDY

### INTELLECTUAL PROPERTY RIGHTS

#### DIFFERENT PERSPECTIVES

- a. Historical Perspective
- b. Psychological Perspective
- c. The Other View
- d. Islamic Perspective

#### INTELLECTUAL PROPERTY

- a. What is Intellectual Property
- b. Need For Intellectual Property
- c. Types of Intellectual Property
- d. Implications of Intellectual Property
  - i. Science and Medicine
  - ii. Aids
  - iii. Value of Human Life

- iv. Aid Relief
- v. Patenting Life
- vi. Biological Advancements
- vii. Technology & Engineering
- viii. Intellectual Stagnation
- e. Enforcing Intellectual Property
- f. Problems

## OWNERSHIP IN ISLAM

### ISLAMIC VIEWPOINT

ISLAM AND INTELLECTUAL PROPERTY

SHARIA'H RULES

FATWAS

MUSLIM FUQAHA'

### PUBLIC *V/S.* PRIVATE GOODS

VIEWPOINT ON PUBLIC GOODS IN AN ISLAMIC PERSPECTIVE

ISLAMIC *Vs.* MATERIALISM PERSPECTIVE

ISLAMIC *Vs.* SOCIALISM PERSPECTIVE

### PROTECTION OF OWNERSHIP RIGHTS

### NATURE OF IPRs BASED ON THE ISLAMIC PERSPECTIVE

### CONCLUSION

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**Intellectual Property Rights in Islam**

*"And do not eat up your property among yourselves for vanities, nor use it as bait for the judges with intent that ye may eat up wrongfully and knowingly a little of (other) people's property."*

*(Al-Baqqarah: 188).*

*"Piracy is the worst type of theft and is prohibited by Islam,"*

(General Director of the Islamic Dawa of Al-Azhar Sheikh Ibrahim Atta Allah)

## INTRODUCTION

As a recent phenomenon and with the change in the geopolitical and economic situation, there definitely has been a paradigm shift in the matter of economic thinking in so far that a number of economic blocs have now emerged on the world horizon. All like minded nations, sensing their peculiar needs are now, in order to have a say in the international arena, and more so to survive and rise from the economic quagmire, have made their own groups. The developed nations with their common interest have NAFTA and EEC. The developing and underdeveloped Asian countries have resorted to creation of the Economic Cupertino Organisation (ECO) and the Association of South East Asian Nations (ASEAN). In this way all nations with common vested interests are scrambling to create hegemonies in areas of influence and are aspiring to extend this influence.

Muslims constitute roughly a fifth of humanity occupying about 20 percent of the land area of the world. Roughly, they enjoy one-third of the membership of the United Nations. In these circumstances, and considering the recent paradigm shift, economic co-operation among Muslim countries should be on the top of their agenda. These 56 independent Muslim states stretching between the Atlantic and the Pacific Oceans straddle from North Africa to Indonesia, in two major Islamic blocs, possessing vast human and material resources, with the added advantage of being in geographical contiguity with each other.



**Resources:** The Muslim world is rich in natural resources. The longest river of the world, the Nile (6,671 km. long), flows through Sudan and Egypt. The largest desert, the Sahara (9,000,000-sq. km.), is encompassed by Muslim countries. Turkey, on the northern gateway of the Mediterranean, overlooks the Bosphorus and Dardanelles. Egypt through Suez and Port Saeed controls the eastern gateway to the Mediterranean. The Mediterranean is almost 60 percent a Muslim lake, and the Gulf is almost 100 percent under Muslim countries' jurisdiction as also is the Red Sea. There are important Muslim outposts in the Atlantic and the Pacific, too. Over 50 percent of the known petroleum reserves are believed to lie in the Muslim world. It also has large amounts of other natural and agricultural resources and constitutes a considerable portion of the world production (WP). For instance:

Entity	Percentage of World Production
Barley	75
cocoa	25
copra	30
cotton	40
dates	93
groundnut	25
jute	48
livestock	40
natural rubber	70

Rice	40
Pepper	40
Coal	Huge reserves
Natural Gas	Tremendous reserves
Phosphate	35
Tin	52
Iron Ore	Heavy reserves

No doubt, the Muslim world is rich in natural resources. They have been explored, trenched, and refined, regrettably though, by the technically advanced Western countries. The Muslim world on its own is unable to benefit adequately from the bounties of nature.

**Manpower Resources:** Another argument being extended for the economic cooperation of the Muslim world relates to manpower. It is noted that the population of the lower income economies of the Muslim world is large:

Bangladesh	110.6 million
Indonesia	181.3 million
Pakistan	140.0 million
Egypt	53.6 million
Sudan	25.8 million

The population of the lower-middle-income countries of the Muslim world is also quite large. For example, Morocco has a population of 25.7 million, Turkey 57.3, Algeria 25.7 million, and Iran, 57.7 million. On the whole, the Muslim world has a surplus of human resources, which is not being utilized even at a fraction of its actual potential.

**Land Resources:** The Muslim world occupies vast land reserves. Land being a factor of production can be used for increasing output. The vastness of the landmasses of the Muslim world can be understood by having a glance at statistics. For example, Chad has an area of 1,284,000 sq. km., Indonesia 1,905,000 sq. km., Sudan 2,506,000 sq. km., Algeria 2,382,000 sq. km., and Saudi Arabia 2,150,000 sq. km.

**Economic Structure:** Majority of the Islamic countries have economies based on agriculture. Although recently the industrial and manufacturing sectors' share of the GDP has considerably increased, the agricultural sector still remains dominant. Except in a few countries, the backbone of the economy is either agriculture or services. Nearly all Muslim countries of the African continent are primarily agrarian. Some have significant services sectors, too. The Asian Muslim countries have a little more industrial base than the Muslim African countries, especially those that are members of ASEAN-Malaysia and Indonesia. The accumulated share of industrial and manufacturing sectors to GDP in Indonesia is estimated at around 65 percent, while in Malaysia, it is nearly 40 percent. In the South Asian region, Pakistan and Bangladesh have recently augmented the contribution of their industrial and manufacturing sectors to GDP. In both countries, services and agriculture are the two biggest sectors, but the industrial and manufacturing

sectors are sizable, too. In terms of capital-intensiveness, financial reserves, and mining resources, the countries of the Middle Eastern region have a distinct advantage. The members of the Gulf Cooperation Council (GCC) mainly rely on their oil reserves. The economic position and structural distribution of the economies of Turkey, Iran, Algeria, Morocco, Syria, and Jordan are satisfactory. In fact, in these countries prospects for further improvement are fairly high. The countries of the Muslim world are based either on agriculture, industry cum service, or oil exports. Looking at their diverse potentials, one may conceive of economic integration and cooperation among the Muslim countries. In any case, their dependence on the West may be scaled down in terms of trade and commodity assistance. Manufacturing distribution indicates that most Muslim countries have attained capable manufacturing levels in:

- a) consumer products including food items, beverages, and tobacco; and
- b) Textile and clothing.

This is particularly true of Pakistan, Egypt, and the six Central Asian republics, which have an abundance of cotton. In a striking contrast to this, their technical know-how in the field of manufacturing is limited. They therefore export sizable quantities of raw cotton with no value addition to speak of. Almost all of them spend large sums of foreign exchange to import medium and heavy machinery.

**Strategic Importance:** The Muslim belt is strategically located. It begins from Morocco and ends in Indonesia, almost touching Australia. The region can be more closely linked

together by the principal arteries of communications, i.e., by air, rail, road, and sea. This natural benefit gives it an overriding edge over other regions.

## **Globalization**

### **Overview**

With the advent of the era of globalization, this world cannot avoid its effects, either positive or negative. It is here to stay. This borderless globalization has innovatively resulted in a very high degree of competition. It is therefore of paramount importance that all the countries in the global village should be geared up and be ready to accept the competition. The countries that fail to do so would lose this competition and the stronger ones would prevail over them by taking advantage of this unique situation.

The World Trade Organization was established for the main reason to liberalize trade and to provide a platform to all member nations to jointly and severally endeavor to help each other and in turn the world to alleviate poverty. Sustainable development cannot be achieved if the rich countries of the world do not consciously emphasize and put their weight behind the efforts to support the free use of public goods and the management thereof in such a manner that all citizens of the globe can benefit from such goods. It is simultaneously the duty of the powers that be in the least developed countries in general and Muslim countries in particular, to protect and safeguard the rights of its own citizens.

The UN Development Program estimated that in 1991, Northern protectionism cost the Southern countries \$30 billion in lost export alone. The GATT agreement viz. a viz. TRIPS, requires the members to legislate a regime of intellectual property protection, including patents, that discourages innovation and invention, and at the same time

sanctions old, established monopolies. Less than 5 percent of the world's 30 million or so patents originate in the South. "This will mean innovators in the South are effectively barred from putting to use novel ideas and processes, however appropriate they might be to their societies or economies, on the ground that they are already patented elsewhere, and that even the importation of patented products from North to South amounts to the 'working' of the patent."

Trade liberalization and improvement, and accordingly the amendment of trade distorting measures, as they exist today, would raise the efficiency of the world economy and consequently help better the living standards in the nations so involved in trading thus. However, the pertinent questions that arise are these:

- a. *Are the benefits liable to be reaped by all nations, or would they be selective?*
- b. *Are some nations better off at the expense of others?*

### **TRIPS Agreement**

The TRIPS Agreement, effective 1 January 1995, sets out the minimum standards of protection for each category of intellectual property rights. The categories included in the Agreement are: Copyrights and Related Rights, Trademarks, Geographical Appellations, Industrial Design, Patents, Layout Designs (Topographies) of Integrated Circuits, Protection of Undisclosed Information, and Control of Anti-Competitive Practices in Contractual Licenses. The Agreement also allows members to provide more extensive protection of intellectual property if they so wish. Besides, members have freedom to

decide on the appropriate method of implementing the provisions of the Agreement matching their own legal system and practice.

The basic role of Intellectual Property Rights is to protect the rights of nationals and foreigners, in any particular country, in the field of intellectual property. Every natural or legal person that suffers injury resulting from trademark, copyright and patent law violations has a right to claim damages. Judicial proceedings regarding such violations are permissible, and damages for trademark and patent infringements are punitive and provide compensation for the aggrieved.

Providing patents for 20 years and copyrights for 50 years has protected the owners of intellectual property. The Agreement provides for improved levels of protection for the rights of the owners of all types of intellectual property. These levels are achieved, principally, by requiring countries to:

- i) *grant national treatment,*
- ii) *provide certain minimum standards of protection for all types of intellectual property, and,*
- iii) *Institute procedures and remedies under national laws so that foreigners can enforce their rights*



## **APPROACH OF THE STUDY**

Undeniably, liberalization of world trade provides countries an opportunity to better themselves by specializing in the production of goods and services that they can produce relatively cheaply and in which they have a comparative advantage and almost all economists, on this issue have reached a consensus among them.

A study of intellectual property illustrates that its roots and source of motivation are respectively intrinsically linked with the fundamentals of Capitalism. The capitalist perception of reality is the driving force and basis of the capitalist economic system, which influenced them to advocate that man's material needs were exposed to an inherent shortage of commodities. The value of any commodity, they argued, was intrinsically linked to its benefit to man. Hence anything, which was perceived as beneficial, could also be subject to ownership. The criterion therefore, for satisfying man's needs, determining ownership, or judging the distribution of these apparent scarce commodities was "price", the cornerstone of the capitalist economy.

The issues go much beyond trade and directly concern long term policies on investment, agricultural growth, food subsidies for the poor, intellectual property rights and patents, and the potential for development itself. It is not simply a matter of the issue of the sovereign rights of governments to make domestic policies, but also the biased nature of the prevalent foreign trade regime, with its inherently strong, built-in protectionist bias.

This assignment focuses on the agreement from this angle and is being written by approaching the issue from a broader perspective. The approach is therefore philosophical and not scholarly.

### **Significance of the Study**

Under the prevailing circumstances, the Muslim world, as already discussed above is trailing behind in the areas of almost every discipline, be that science, technology, education, research, arts etc. The Muslims are also quite reluctant to accept any change and any new concepts are looked upon with suspicion. The inevitable “conspiracy theory” proponents, more out of ignorance than for any other reason, try to keep the general masses away from anything which originates from the West. Globalization, as already observed earlier, is here to stay. Rather than to fight it out and try to stop it, the need of the hour is to accept it and try to improve it by suggesting ways and means to make it more conveniently acceptable to the peoples of the world. In order to achieve this end it is felt that the rich heritage of culture, politics, administration, learning and traditions of the Islamic civilization coupled with the guiding principles of the Quran and Sunnah (saw) could help the Muslim world to contribute thus. It would also help to alleviate the fears of the Muslims that globalization, per se, is not un-Islamic rather, as would be seen that the IPR regime as it exists today is not totally alien to the true spirit of the Islamic way of life. The Hadith of the Prophet, (SAW), about wisdom as a lost property of the Believer is an authentic Hadith. It is mentioned by At-Tirmidhi and Ibn Majah. But this Hadith also means that the Believers should be open-minded and should learn from all sources. They should be more concerned about what is being said, not about who said or from where they receive the message. `Ali, may Allah be pleased with him, is reported to have said, "Take wisdom and it would not harm you from what bag it came." (Al-Sakhawi, *Al-Maqasid Al-Hasanah*, p. 192).

## INTELLECTUAL PROPERTY RIGHTS: DIFFERENT PERSPECTIVES

### Historical Perspective

In ancient times, in a Greek colony named Sybaris, an inventor who found a new food recipe was granted an exclusive right for his invention. Coming on to the Renaissance period in Italy, it became an endeavor for the nobility to give financial support to inventors to develop their creativities. In 1474, the first patent law was acknowledged in Venice, Italy. This law provided that inventors would be entitled to an exclusive right for a fixed period, so it gave the people an incentive to invent and greatly promoted the development of technology and craftwork.

Under this law, Galileo Galilei was given a patent for his invention "irrigation pump" in 1594. Pleading his grounds he described;

*"Your Majesty, I have invented a highly-profitable machine that pumps up water to irrigate arable lands extremely easily at a low cost. The machine ejects water continuously from its 20 nozzles by merely using the power of one horse. However, it has taken a considerable amount of trouble and expenses to invent the machine, so I do not wish to make it a common property for all people. Therefore, I would like to ask Your Majesty respectfully to kindly grant me a favor that Your Majesty would grant to any producer in a factory. That is, to ensure that all people, except for me and my posterity or those who obtained the right from me or my posterity, would be prohibited from producing that new machine,*

*and even if they did produce it, they would be prohibited from using it or applying it for a different purpose by changing its shape and by using water or other materials, for either a period of 40 years or a period that Your Majesty deems appropriate. And, I would like Your Majesty to fine those who violate this with an amount that Your Majesty would deem appropriate, and grant a part of that amount to me. If Your Majesty would kindly grant me this favor, I will serve Your Majesty faithfully by making more diligent efforts to create new inventions for the welfare of society.*

The importance of protecting humans' inventions in order that they develop their creativity because they will feel appreciated can be adjudged from the above discourse. Of course with those new inventions, humans could improve their standard of living. The main purpose of TRIPS is therefore, to protect inventors' rights.

### **Psychological Perspective**

Since the early days, society and civilization both have developed considerably, not the least because of the psychological urge and through emphasis of the individuals residing in such a society on personality and creativity as well as efforts to create a society that is more developed. In doing so, certain individuals excelled in the efforts through sheer hard work and inspiration thereby creating and giving inventions and ideas, both intellectual and scientific, to the society they lived in. Such inventions and ideas etc. were then taken on by successive individuals to create a range of entirely new things for the benefit of the contemporary society and for posterity. The creativity of human beings

will live on for the benefits of the society forever. In this connection these individuals in turn sought recognition on the one hand, and secondly, were also interested in safeguarding their individual financial interests in so far that they sought to be compensated for the time and effort they had put in.

It is through each citizen's high emphasis on personality and creativity as well as on efforts to create a society that develops such qualities that the processes associated with science begin to gain sufficient recognition as a form of learning. Just like the former US President Abraham Lincoln who stated that:

*"The patent system added the fuel of interest to the fire of genius".*

### **The Other View**

Patents must be seen as an economic inefficiency, by the mere fact that they allow a monopoly over an idea to be exercised for such a long period. Such economic inefficiencies are already evident in the biotechnology industry. The ability for innovators to introduce new innovations is being hindered by the fact that there are so many patent holders that they have to negotiate with before they have the right to use the patent. It has the effect of raising the cost of innovation and serves as a disincentive to innovation.

The effect of patents, where its earlier intention was to protect the right of the inventor, and to ensure the inventor was not exploited, has been sabotaged by monopolistic tendencies. Greed has come in. They have in effect become monopoly goods. This has, sometimes resulted in least developed countries paying a higher price for a drug, and

therefore in effect subsidising the research and development cost of rich countries and their consumers. In general, developing countries lack effective anti-trust mechanisms to protect them against monopolistic pricing.

Both the developed and the developing countries are quite emotional on the subject of IPRs. The one arguing that developing countries have contributed considerably to this pool of global knowledge, and feel that they have not been fairly rewarded as result of innovations being exploited during the colonial era and present exploitation of indigenous knowledge. Developing countries have pointed out that sustainable development goals in their own country cannot be achieved without developed countries offering significant concessions in terms of their willingness to share more freely and in affordable manner their technological and scientific expertise.

Increasingly, global benefits from a global knowledge have favoured developed countries because of the manner in which the IPR system has worked to their advantage. As the Economist Joseph Stiglitz notes: “I have argued that knowledge is one of the critical keys to development and that knowledge is complementary to private and public capital. Knowledge is a global public good requiring public support at the global level.” The preservation of the ideal of knowledge as a global public good still faces persistent threats. The latest is the attempt by the World Intellectual Property Organization’s (WIPO) to establish a central global patent system that will do away with national patent systems and laws. (Grain, July 2002). As GRAIN-an advocacy group notes, that the implications are that by removing sovereign responsibility over patents, patent policy

cannot be used to pursue national development strategies. In fact, powerful countries and corporations outside of the realm of national democracies and legislative powers will determine patent policy, and the rights associated with it. National authority will be superseded by an international regime, without possible proper avenues for appeal if a decision is unfavourable.



## INTELLECTUAL PROPERTY

### **What is Intellectual Property?**

It is important to define Intellectual Property and understand its reality in order to entertain its deep implications namely in the socio-economic, political, intellectual spheres of life.

Intellectual property, very broadly, means the legal rights, which result from intellectual activity in the industrial, scientific, literary and artistic fields.

The laws of protecting intellectual property give the individual the right to protect his invention, grant him the power to dispose of it and prevent others from using this invention without his permission.

In simple language, this means that one man cannot come along and take the science forward from where it is. He has to re-design and re-invent from scratch, rather than building on what's there. The reality for any thought to occur is that it inherently and essentially requires a previous thought. In other words previous information is sine qua non to any new thought. Without previous information seldom has man progressed.

We can see the obstacle this places today, for example, Microsoft alone can develop the operating system of the majority of the world's personal computers, and no-one else can collaborate and build on the technology already there.

Or, if a person buys a book or a disk which is copyright protected, or if a life saving drug for cancer or HIV is discovered, all rights belong to the patent holder and he has the right to impose restrictions on the sale, consumption, or utilization of the product as he wills.

### **Need for Intellectual Property?**

The Industrial revolution from the 18th century onwards was a significant landmark for the elevation of the western ideological nations. Advances in the fields of technology, engineering, medicine, and science influenced all aspects of life, symbolizing the transition of an artisan society towards one of mass production and the transformation of industry.

Although these developments have been, more or less, restricted for the use of the West alone and of little use to the vast majority of the world, it was within this environment that essentially a dilemma arose.

In the words of the WIPO itself, *"the need for international protection of intellectual property became evident when foreign exhibitors refused to attend the International Exhibition of Inventions in Vienna in 1873 because they were afraid their ideas would be stolen and exploited commercially in other countries."*

This is to say that, the very history of Intellectual property emanated from an attempt to curtail the knowledge and science of innovation for the western intellectuals and their sponsors namely the Capitalists.

The following questions arose:

1. *Does an idea belong to anyone?*
2. *Can someone benefit from someone else's idea?*
3. *Is there any inherent value in an idea?, and;*
4. *Can any individual control the use, or non-use of an idea or invention?*

The notion of this argument epitomizes absurdity per se as a dissection of the arguments advocated can essentially be attributed to two fundamental sources:

Firstly, the right to freedom of ownership. The Capitalists consider any commodity that has a benefit for man as wealth, i.e. having a particular value. Its value is determined by supply and demand and bought by the exchange of a price. Therefore they considered the individual's knowledge as wealth that is subject to ownership for a specific price. Therefore the one who comes to know or learn someone's knowledge cannot use it except by paying a price.

Secondly, the socio-economic and political implications. Altruistic attitudes towards intellectual property contradict the very principles of Capitalism and its method of carrying its ideology namely Colonialism.

## Types of Intellectual Property

Intellectual property is divided into two categories:

- a. **Industrial property:** This includes inventions (patents), trademarks, industrial designs, etc.
- b. **Copyright:** This includes literary and artistic works such as novels, poems and plays, films, musical works, etc.

### 1. Inventions (patents)

A patent is a monopoly given by a government that confers exclusive rights upon the creator of an invention the sole right to make, use, and sell that invention for a set period of time.

It is intended to prevent mechanical inventions or chemical processes from being copied.

A patent allows the holder to exclude anyone else from making, using or selling the 'invention' for up to 20 years, although this can be extended by clever maneuvering for up to 30 years or even longer

A patent provides protection for the invention to the owner of the patent. Patent protection means that the invention cannot be commercially made, used, distributed or sold without the patent owner's consent. These patent rights are usually enforced in a court, which, in most systems, holds the authority to stop patent infringement.

A patent owner has the right to decide who may - or may not - use the patented invention for the period in which the invention is protected. The patent owner may give permission to, or license, other parties to use the invention on mutually agreed terms.

## **2. Trademarks**

A trademark is a distinctive sign, which identifies certain goods or services as those produced or provided by a specific person or enterprise.

The system helps consumers identify and purchase a product or service because its nature and quality, indicated by its unique trademark, meets their needs.

A trademark provides protection to the owner of the mark by ensuring the exclusive right to use it to identify goods or services, or to authorize another to use it in return for payment. Trademark protection is enforced by the courts, which in most systems have the authority to block trademark infringement.

## **3. Copyright and Related Rights**

Copyright is a legal term describing rights given to creators for their literary and artistic works. It deals with printed publications, sound and television broadcasting and even computerized systems for the storage and retrieval of information.

The original creators of works protected by copyright, and their heirs, have certain basic rights. They hold the exclusive right to use or authorize others to use the work on agreed terms.

## **The Implications of Intellectual Property**

WIPO argues, "Intellectual property plays an important role in an increasingly broad range of areas, ranging from the Internet to health care to nearly all aspects of science, technology, literature and the arts."

There are two sides for every argument, so the proverb goes. However the reality is irrevocably one. Inevitably there must be a correct and an incorrect viewpoint towards it.

The discussion on the origins and reality of intellectual property has already brought this statement into disrepute, however let us place the key areas of development post intellectual property under the microscope and see their consequences.

### **Science and Medicine**

Discoveries surrounding science and medicine during the last century have been numerous. Penicillin, the double-helix structure of DNA, cloning, transgenic technology, plant and human genomic sequencing, vaccines and others just to name a few.

Medicine has been defined as, "The science of diagnosing, treating, or preventing disease and other damage to the body or mind."

However, the adherents of Jeremy Bantham, Adam Smith and other forefathers of Capitalism like Richard Sykes, David Brennan, or Robert Shapiro, sitting on the board of directors of such industries have very little concern for such values.

As Dr. Sue Meyer of the research group, Genewatch UK concurs, *"Science is driven by private interest, aiming at maximizing their shareholder values, rather than addressing public health issues."*

Even the WTO Director-General Mike Moore, admits that medical research for some types of diseases is not even financially worthwhile.

To quote, *"There are no effective treatments for some ills that affect people in poor countries only, because developing them is not commercially viable."* He is right; the companies are too busy developing money-spinners like Viagra and obesity drugs.

## **Aids**

A report projected that the number of aids victims is greater than all the combatants killed in World War I, World War II, Korea and Vietnam combined.

However, according to WHO none of the countries with high infection rates (ninety-five percent of people with HIV in the world live in developing countries) can afford the per-patient \$10-15,000 price tag of non-generic HIV drugs. What this means is that the African countries face a social, economic and political devastation of apocalyptic proportions because of intellectual property enforcement.

Yet the WTO aims to restrict the right of developing countries to produce cheaper drugs for their own people, forcing them instead to accept private ownership of brand-named medicines through long patents. In 1998 the WTO ruled that the Indian government must



amend its national legislation in line with the TRIPs agreement to give greater rights to pharmaceutical companies' patents.

### **The Value of Human Life**

Some strange thinking has prompted officials from the population and human resources department at the World Bank in a June 1992 report, to conclude that there may be a silver lining in the plague.

Quote, *"If the only effect of the AIDS epidemic were to reduce the population growth rate, it would increase the growth rate of per capita income in any plausible economic model,"* argued one, In other words, like the 14th-century bubonic plague in Europe, AIDS in Africa might propel an economic rebirth!

### **Aid Relief**

The Clinton administration pledged \$1 billion to fight AIDS in Africa, rather similar to Blair and his current mission to save Africa.

However, Clinton's money turned out to be in the form of Export-Import Bank loans, at commercial interest rates, to buy American drugs at market price. This initiative was hailed by American pharmaceutical companies, which looked forward to more profits for their \$1 billion-a-year industry. But there were no takers.

## Patenting Life

Patenting genes is set to be one of the most significant issues of this century. Research commissioned by the Guardian reveals the awesome scale of the gene rush.

Alongside human genes, patents are being sought by organizations, overwhelmingly from rich countries, on hundreds of thousands of animal and plant genes, including those in staple crops such as rice and wheat.

The Guardian's research found that patents are pending on genes controlling processes in the human heart, teeth, tongue, colon, skin, brain, bone, ear, lung, liver, kidney, sperm, blood and immune system 9,364 patents relating to the human body have been filed for so far. The applications made cover 126,672 genes or partial gene sequences. 21 patents covering HIV genes. 152 patents have been applied for on rice, these patents cover 584 genes.

The implications of these multi nationals holding the patents are inconceivable. Granting patents on genes gives an exclusive monopoly of the human body over new treatments, medicines, research, and technologies to the capitalists.

To quote Thomas Schweiger, of German Greenpeace, which is campaigning against gene patenting *"It's like someone buying a street and taking a toll from everybody passing through."*

### **Biological Advancements**

Biological information can also now be claimed as intellectual property. US courts have ruled that genetic sequences can be patented, even when the sequences are found "in nature".

This has led companies to race to take out patents on numerous genetic codes. In some cases, patents have been granted covering all transgenic forms of an entire species, such as soybeans or cotton, causing enormous controversy.

The consequence is that international corporations are patenting genetic materials found in Third World plants and animals, so that some Third World peoples actually have to pay to use seeds and other genetic materials that have been freely available to them for centuries.

### **Technology & Engineering**

This past century was witness to extraordinary strides in technology that has radically changed western lives through the discoveries of computers, Internet, etc.

From its beginning in 1875, the US Company AT&T collected patents in order to ensure its monopoly on telephones. According to analysts, it strategically slowed down the introduction of radio for some 20 years.

In a similar fashion, General Electric (GE Capital) used control of patents to retard the introduction of fluorescent lights, which were a threat to its sales of incandescent lights.

All aspects of technology from Business-to-Business Software, Graphical Software, GUIs, Audio Software and File Formats, Internet Search Engines, Web Standards etc are all patented.

Today, experts estimate that Microsoft controls about 90% of the market for the operating system software (OS), which is used to run personal computers. Moreover, Microsoft controls nearly the same 90% market share for popular applications such as Word Processors, spreadsheets, presentation graphic programs and relational databases

Copyright and intellectual property enforcement has resulted in staggering multi billion monopolies usurped by the likes of Bill Gates, Jack Welch (GE) and other CEOs.

### **Intellectual Stagnation**

WIPO states quote, "Intellectual property promotes as a deliberate act of government policy, creativity and the dissemination and application of its results."

However, the advocates of Intellectual property & the capitalist philosophy have not only monopolized the very concept of thoughts & ideas, but created a vacuum and intellectually colonized the developing world by creating a severe inhibition on research by non-patent holders.

The use of intellectual property has been a tool that has been used to curtail development for the economic interests of the patent holder. The scientific advancement has been despite of, rather than because of, the way the West has applied itself since the industrial revolution, as research by Gene Watch UK concurs.

In effect this has only served to relegate the third world nations as the consumer markets for their products and also subjected to their influence, stealing their wealth and resources in the name of intellectual property & patents.

### **Enforcing Intellectual Property**

The pharmaceutical lobby in the last 2 years has spent \$246 million lobbying the congress, and gives millions in campaign donations to the US political establishment, to constantly push the U.S. trade office to file cases against developing countries at the World Trade Organization e.g. South Africa, Brazil.

The US has been acting as the industry's policeman, threatening trade sanctions against countries such as Thailand, the Dominican Republic, and more than 15 other developing countries unless they abandon manufacturing, exporting, or purchasing generic copies of drugs that American firms have patented.

Under its "Special 301" trade law provision, the United States can unilaterally impose trades sanctions on countries that differ with her wishes and refuse to endorse patented drugs. In November 1999, the US used this arm-twisting tactic to force Thailand to stop using generic drugs.

The foundation of WIPO was initialized as early as March 20 1883 at the Paris Convention for the Protection of Industrial Property, the first major international treaty designed to help the people of one country obtain protection in other countries for their intellectual creations.

WIPO today is a specialized agency of the United Nations system of organizations, with a mandate to administer intellectual property matters recognized by the member States of the UN.

In 1995 the World Trade Organization adopted the idea of protecting intellectual property and so WIPO became part of the WTO. On January 1, 1996, an agreement between the

World Intellectual Property Organization and the World Trade Organization entered into force.

The Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), which forms part of the overall Agreement establishing the World Trade Organization (WTO), requires the members of the WTO to ensure that effective enforcement procedures are available.

Until the creation of the WTO in 1995, few poor countries had intellectual property laws and countries like Egypt, Thailand and India developed thriving generic drugs industries.

However, under the new WTO rules, strict US intellectual property rights rules, which the US pharmaceuticals industry was extremely influential in drawing up extend patent rights for 20 years, have become standard.

All 140 WTO member countries, even the poorest member states in Africa, must change their laws to conform until 2006.

Under this agreement, the WTO aims to restrict the right of developing countries to produce cheaper drugs for their own people, forcing them instead to accept private ownership of brand-named medicines through long patents.

Patents are a new frontier of exploitation and control, for the paradoxical reason that as the world becomes more service orientated and globalises it becomes more knowledge dependent. Knowledge will hold a premium value in the future, and the manner in which it is shared and disposed off will be limited by the commonality of international IPR rules. OECD countries hold 90% of the world's patents, and therefore exercise a monopoly over a good that limits the development potential of other countries. Patent

holders can exercise a monopoly over the use of the knowledge for 20 years. Once the 20 years is over, when the knowledge is made public, other innovations and technologies may have superseded the patented technology. In recent years the most disturbing trend has been in the biological sciences, where genetic sequences have increasingly been subjected to patents.

Governments often give exclusive rights to innovators to produce a product; however, this system could discourage competition. The issue of patent is closely linked with intellectual property rights. What is the Islamic position on it? We do not find any explicit discussion on this issue in the primary sources of Islam; generally Islamic law considers intellectual property rights as sacred as private property rights. The person who has an idea and invested effort and money into developing it has the right to get benefit from it. If his right is not protected, it would, in the long run only serve to discourage innovation in society. As a result, society will become deficient intellectually. Non protection of patent rights can also encourage freeloaders.

Let us see a glaring example of such misuse. This example typifies the good intentions of the collective against its exploitation and misuse by individuals by manoeuvring the conditions to suit personal ambitions and objectives.

The Human Genome Project was funded by public funds. An individual by the name of Craig Venter misused it. He established a parallel organisation through his own company to basically do the same thing, namely “gene sequencing programme”. In the process he



patented a considerable amount of processes, thus limiting scientific access and use. The countries involved in the Human Genome project had decided that after the genes had been sequenced they would deposit the data on public database for the benefit of the global community. The participating countries and companies drafted the Bermuda agreement (the agreement was made in Bermuda), and advocated the principles of free availability, scientific co-operation, and recognising that humans were special, decided that the material would not be the property of any individual, group or country. The Bermuda agreement depicted wholly and solely a global public good sentiment. What the collective tried to achieve the individual infringed thereby restricting access to this knowledge.

### **Problems for the West**

Enforcing intellectual property in the international world markets has brought its problems for the west, not least epitomized by the recent fiasco involving the South African government.

In the face of the worst plague to face humanity since the Middle Ages the HIV/AIDS epidemic in Africa has brought Africa into the limelight.

Earlier this year 39 pharmaceutical companies tried to sue the South African government (with the help of the US) in order to prevent them importing affordably cheap medicines for South Africa's HIV-positive population.

Brazil, about five years ago, began to produce its own generic versions of the AIDS triple therapy drugs and importing others at low cost. Since then Brazil has halved its AIDS death rate and reduced hospitalization for the disease.

The Indian pharmaceutical company Cipla is making triple therapy available at \$600 per year. It is providing HIV drugs for use in Africa. The patented cocktail costs between \$10,000 and \$15,000 for a year's treatment. Cipla has offered its substitute at cost: \$350 a year.

## Ownership in Islam

In Islamic economy, individuals do not have an unrestricted freedom to use, manipulate, transfer, or destroy property. The right to own comes with obligations. One of the obligations is that no owner may waste or squander his property. The jurists have inferred from the Quran (4:3) that a person who wastes his property through extravagance should be restrained from doing so. This is known as the law of *Hajr*. If the government finds out that the owner of a property does not have the ability to use it prudently or intends to waste it intentionally, the government may restrain the owner from using or transferring it. The Islamic government could, for example, put a limit on such owner's right to withdrawal from his bank account or his right to sell some property. This type of discretion is not available to capitalist governments where the individual's right to property is completely inviolable

Islam has organized the private ownership by considering it an aspect of the survival instinct. Thus, it legitimized ownership for the Muslim to satisfy this instinct which will insure survival and a respectable life. Therefore, it allowed him to own most assets such as cattle, houses and the produce of the land. It forbade him from owning certain assets such as alcohol, pork and drugs. Similarly, Islam encouraged him to use his intellect and seek knowledge and permitted him to receive payment for teaching others. It legislated means that permit ownership such as selling, hiring and inheritance. It forbade him from other means such as usury, gambling and sale by speculation.

Therefore, ownership in Islam is the permission of the Legislator to benefit from an asset. Private ownership is determined by the Shariah rule; this ascribes an asset or a benefit to an individual, thus enabling him to benefit from the asset itself. Hence, ownership cannot be asserted unless proven by the Shariah rule. Thus, the right to own a thing does not arise from the thing itself or from the fact that it is beneficial as for the capitalists. It only arises from the permission of the Legislator to own it by one of the legitimate means of ownership, such as selling or receiving a gift.

Ownership in Islam means the right of disposal. The individual has authority over the thing that he owns. It enabled him to freely dispose of it and benefit from what he owns according to the Shariah rules. It also obliged the state to protect private ownership and laid down punishments to deter those who infringe upon the ownership of others

The new definition of intellectual property includes two types of private ownership. One of them being tangible such as a trademark and a book. The second is sensed but not tangible such as a scientific theory and an idea of an invention stored in the brain of a scientist.

In case of ownership of the first type such as a permitted trade mark, the state is obliged to protect this right of the individual and allow the individual to own it and benefit from it by utilizing it or selling it. He will be able to freely dispose of it, and others will be prevented from infringing upon this right. This is because the trademark has a material value in Islam since it is part of the trade allowed by the Shariah. The trademark is an invented sign placed by the trader or manufacturer on his products to distinguish them from the products of others, which assists the purchasers or consumers to recognize them.

This definition does not include the trademarks that have not been used yet. This is different from what some laws have defined them as: “Any mark that was used or was intended to be used”. This is because the value of the trademark results from it being part of an existing trade. It is allowed for a person to sell his trademark. If he sells it to someone else its benefit and disposal would transfer to the new owner.

However, if the intellectual ownership is of the second type such as a scientific theory or the idea of an invention, the owner has not written down on paper or recorded on a disk or cassette, then it is the individual ownership of its owner. It is allowed for him to sell it or inform someone else about it if it has a value in Islam. If he does that then it is allowed for the one who possesses it to legitimately dispose of it without any restriction from the first owner according to the rules of the Shariah. This rule also applies to anyone who buys a book, disk or cassette, which contains an intellectual subject, whether scientific or literary. He also has the right to read it and benefit from whatever information that may be in it. He has the right to dispose of it by copying, selling or donating it to someone. However, he is not allowed to ascribe the scientific subject to anyone other than the one who originated it, otherwise he would have made a lie and forgery both of which are prohibited by the Shariah. Thus, the right of respecting the intellectual property is an ethical right which is realized when the thought is ascribed to the one who originated it and not by preventing others from using it without his permission. This ethical right realizes a moral right.

## **ISLAMIC VIEWPOINT**

### **Islam & Intellectual Property**

Islam respects both private and public ownership. It does not allow any violation against people's rights, whether material or intellectual. Therefore, it does not allow that the efforts of others be taken away from them or be used without their consent. In order to explain this problem we should first ask ourselves why authors, tape producers and computer programmers register their copyrights. The fact is that some unscrupulous people are always ready to make pirated copies of these and sell them at a profit of which they give no share to the author. What someone has produced after putting a great deal of effort is thus used to bring financial gains to others who do not even bother to ask his permission. When a person knowingly buys a pirate copy, then he is aiding such people whose piracy is certainly prohibited in Islam. To be an accessory to piracy is also censurable.

The reality of intellectual property as defined earlier consists of two elements:

One of them is sensed and tangible such as a trademark and a book. The second is sensed but not tangible such as a scientific theory and an idea of an invention stored in the brain of a scientist.

Thoughts are not subject to ownership. However any idea originates from mans mind, hence his mind is the initial 'home' for any particular thought from the perspective of reality. Thus he can ignore it or dispense it seeking a material value. However, once dispensed it is haram to copyright it as this is an invalid contract, or patent it as this is not subject to ownership according to the Shariah and patents are an exclusive monopoly given to the patent holder and monopolies are haram.

On the other hand trademarks are sensed, tangible, and have a material value because it is a component of the trade.

Therefore, it is allowed for the individual to own it and the state is obliged to protect this right of the individual. He will be able to freely dispose of it, and others will be prevented from infringing upon this right.

### **Islamic Perspective: Needs & Instincts**

So what is the Islamic perspective towards Intellectual property?

Islam recognizes that man has needs & instincts which need satisfying. Hence within our context, it is man's biological needs and survival instinct that are under scrutiny i.e. man's need to eat, and his survival, which requires him to own certain amenities to ensure survival & a respectable life.

On this subject matter, Islam distinguished between man's needs/instincts, and the means of satisfaction.

In other words, the agitation of the needs/instincts requires a solution, namely an economic system, whereas the means of satisfaction is related to the subject of economic science.

Hence since the pivots of any economic system are based upon ownership, disposal and distribution, Islam being the system of the Creator, stipulated in the realm of possession/ownership, utilization and distribution.

On the other hand, man was given permission/recommended to explore the realms of the economic sciences, which are related to production.



## **Protection of intellectual property: Its reality and its Shari's rule**

The idea of protecting intellectual property arose in the shade of the capitalist ideology. The industrialist capitalist nations concluded the Paris agreement for the protection of intellectual property in 1883, and the Bern agreement of 1886. Following them were no less than twenty other agreements. Then the World Intellectual Property Organization (WIPO) was founded to oversee these agreements and guard them. In 1995 the World Trade Organization adopted the idea of protecting intellectual property and so WIPO became part of the WTO. Thus, the WTO stipulated to the states that wished to join it that they must comply with the protection of intellectual property and pass laws binding on their citizens so as to protect the intellectual property in their lands.

The laws of protecting the intellectual property, which the states have passed, give the individual the right to protect his invention and grant him the power to dispose of it and prevent others from using this invention without his permission. The states undertake the protection of this right and punish anyone who may transgress it during the lifetime of the individual, and tens of years after his death. The protection laws also include the “inventor” companies.

What is meant by the invented product is the idea or knowledge, which a person's mind has arrived at which, has not been discovered by anyone before. The most significant inventions are regarding the knowledge used in manufacture and production of goods and services, which is known today as ‘Technology’.

That is why the capitalists considered individual/private knowledge as wealth that is subject to ownership. It cannot be used freely by the one whom comes to know about it or learns it except by the permission or bequest of its owner according to certain measures. So if a person buys a book disk or cassette whose patent is protected, he has the right to benefit from only the copy he has bought within certain limits such as reading or listening. He will be warned, according to the laws of intellectual protection, from using them in other areas such as printing, copying, selling or trading.

**What are the Shari's rules relating to the private ownership of assets and thoughts?**

Islam has organized the private ownership by considering it an aspect of the survival instinct. Thus, it legitimized ownership for the Muslim to satisfy this instinct which will insure survival and a respectable life. Therefore, it allowed him to own most assets such as cattle, houses and the produce of the land. It forbade him from owning certain assets such as alcohol, pork and drugs. Similarly, Islam encouraged him to use his intellect and seek knowledge and permitted him to receive payment for teaching others. It legislated means that permit ownership such as selling, hiring and inheritance. It forbade him from other means such as usury, gambling and sale by speculation.

Ownership in Islam, generally speaking, is the permission of the Legislator to benefit from the asset. As for the private ownership: it is a Shariah rule valued by the asset or the benefit ascribed to the individual, thus enabling him to benefit from the asset itself or taking a compensation for it. Private ownership in Islam cannot be asserted as valid

unless proven by the Shariah rule, and approved of its means of ownership. Thus, the right to own a thing does not arise from the thing itself or from the fact that it is beneficial. Rather it only arises from the permission of the Legislator to own it by one of the legitimate means of ownership, such as selling or receiving a gift.

Islam has given the individual authority over the thing that he owns. It enabled him to freely dispose of it and benefit from what he owns according to the Shariah rules. It also obliged the state to protect private ownership. It laid down punishments to deter those who infringe upon the ownership of others.

## **VIEWPOINTS OF VARIOUS AUTHORITIES**

### **Fatwa issued by Al-Azhar Fatwa Committee:**

The committee is of the opinion that quoting portion(s) of a book, a magazine, or any other piece of writing is lawful on the condition that the original authors of these writings are cited. Copying others' writings and presenting them as one's own thoughts is a kind of plagiarism that is unlawful both in the Shariah and in man-made laws.

As for using others' thoughts by way of paraphrasing them and mingling them with one's own thoughts, there is nothing wrong about that. This applies also to using religious and scientific opinions and theories, but citing the original thinker or inventor in these cases is also a condition.

Intellectual theft, in Shariah, is not like stealing money or material property of others; this is to say, it does not require the penalty of theft prescribed in these cases. However, it may entail a disciplinary punishment, especially if it results in such negative effects as referred to in the question.

### **Sheikh Muhammad Hussein Fadl Allah, Shiite jurist:**

First, it is not lawful for one to quote another's piece of writing and present it as one's own creation, for this is a kind of cheating and dishonesty. As for considering it a theft in Shariah, it follows in this regard the intellectual property rights stated in the general law or accepted norms. This is to say, he who plagiarizes another's thoughts is to be regarded

as committing a crime, just as he who attributes a book of another author to himself or prints the book for his own interest without taking the permission of the author.

Second, the legal ruling to be applied to a plagiarizer in this case is the punishment stated in the law for crimes of such a kind if it is proved that the accused person has used exactly another's thoughts without this being a coincidence or without citing the source of these thoughts.

**Dr. Zaki Badawi, Dean, Islamic faculty in Britain:** Jurists have not dealt with intellectual theft. They have been, rather, concerned with tackling cases of stealing material properties whose penalty is mentioned in the Quran verse:

*“As for the thief, both male and female, cut off their hands.” (Al-Ma'idah: 38)*

The definition presented by jurists for theft in general does not apply to intellectual theft. Jurists defined theft as “a stealer's seizing someone's property in secret with the purpose of taking this property as his own.’ This is not the case with intellectual theft. On one hand, intellectual thoughts are not material property to be seized in secret; rather, they are plagiarized and presented in public. On the other hand, intellectual theft was confined to plagiarizing in poetry. Besides, scholars used to quote from others' writings without citing the source, for all would believe that knowledge is a common right for all people to the extent that some gave fatwa's to the effect that teachers of the Quran should not receive returns for this task. This was because it was a custom in the past that thinkers or intellectuals did not receive material rewards for their intellectual production.

This has changed today, as writers and intellectuals receive money for essays and books they produce. Hence, intellectual property has become parallel to material property, which requires, in turn, that it receives protection on part of Shariah.

Therefore, I see that he who commits a crime of plagiarism should receive a disciplinary punishment that is up to the judge to decide so that others may be deterred from committing similar crimes.

**Dr. Fadel Al-Milani**, Professor at the Islamic faculty, Member of the Council of Imam Al-Khaw'i's institution in London:

In spite of the fact that the description of theft in Shariah does not apply to the question in hand, yet one's copying others' thoughts and attributing them to oneself is a clear dishonesty, and flagrant breaching of others' rights to their intellectual properties.

Anyway, it is doubtless that dishonesty and breaching others' rights are forbidden in Islam. Hence, I believe that if the plagiarizer benefits from stealing others' thoughts and attributing them to himself, he is to compensate the original authors for his wronging them in this respect.

**Dr. Muzammil H. Siddiqi**, President, Islamic Society of North America (Former): "It is correct that the knowledge is a common property. But it does not mean that people cannot sell books or own books. It does not mean that people can go and steal books or take over other people's labs and libraries. It means that all people should be free to learn. No one group should have monopoly on knowledge.

The Hadith of the Prophet, (SAW), about wisdom as a lost property of the Believer is an authentic Hadith. It is mentioned by At-Tirmidhi and Ibn Majah. But this Hadith also means that the Believers should be open-minded and should learn from all sources. They should be more concerned about what is being said, not about who said or from where they receive the message. `Ali, may Allah be pleased with him, is reported to have said, "Take wisdom and it would not harm you from what bag it came." (Al-Sakhawi, *Al-Maqasid Al-Hasanah*, p. 192).

Thus the meaning of this Hadith is to seek knowledge from all sources, not to take over other people's possessions. Islam encourages Muslims to learn, but it also respects the laws of ownership. Plagiarism, piracy, misquotation, taking other people's property etc. are all nothing but theft, and deception. People have right to their material property as well as intellectual property. Just like there are rules in Islam for the use of material things, so there are also rules for the use of intellectual property. Computer programs are governed by the contracts that the owners or sellers make with the buyers. Allah says in the Quran:

*"O you who believe, fulfill the contracts." (Al-Ma'idah: 1)*

Also, the Prophet, peace and blessings be upon him, said:

*"Muslims must abide by their agreements, except an agreement that make Haram (unlawful) what is Halal (lawful) or make Halal what was Haram." (At-Tirmidhi, Hadith No. 1272).*

It goes without saying that it does not make any difference whether the contract is made between Muslims themselves or between Muslims and non-Muslims. Such programs should be used according to the terms of agreement or what is customarily accepted as a *Urf* (common custom) among the people of that business.”

**Sheikh `Abd Al-`Azeez Ibn Baz:**

That it is forbidden to make copies of programs if their owners do not permit doing so without their prior permission. The following Hadiths verify this view:

*"Muslims should abide by their stipulations."*

*"A Muslim's property is not permitted (to be taken by others) without his consent."*

*"Whoever precedes others in gaining a Halal (lawful) thing, will be more entitled to own it (than others)."* This is applicable whether the owner of these programs is a Muslim or a non-Muslim (who is not at war with Muslims, for the property of the non-fighting unbelievers is to be protected in the same way as that of Muslims).



**Sheikh Muhammad Ibn Salih Al-Uthaymeen**

“This question should be judged according to the custom of the people. However, if a person wants to make a copy for his personal use and the owner of these programs does not express objection for doing so, then there is nothing wrong. In contrast, if the owner of these programs expresses his objection to copying for personal and public use, then making copies of them is unlawful.”

**Dr. Mahmoud `Akam**, Professor at the Faculty of law and Education in Halab

“Copyright is like money, which no one is permitted to take except through Shariah-based contracts. This is the case whether the owner of these programs is a Muslim or non-Muslim individual, or a Muslim or non-Muslim state. However, if a non-Muslim state is engaged in fighting Muslims, it is permissible to take their property as spoils of war.

This stance is based on the following **Quranic** verses:

*"O ye who believe! Fulfill your undertakings." (Al-Ma'idah: 1)*

*"Wring not mankind in their goods." (Ash-Shu`ra': 183)*

*"O ye who believe! Betray not Allah and His messenger, nor knowingly betray your trusts." (Al-Anfal: 27)*

Likewise, the following **Hadiths** support this stance:

"(Keep and) pay back the trusts of those who entrust you."

"The true believer is the one from whom Muslims are safe regarding their blood and property."

**What do the Muslim fuqaha' say about intellectual property rights such as trade names, trademarks, copyright and patents?**

**Firstly:**

Trade names, trademarks, copyright and patents are all rights that belong exclusively to their owners. In modern times they have come to have a considerable financial value. These rights are recognized according to shariah, and they should not be violated.

**Secondly:**

It is permissible to buy or sell a trade name or a trademark, and to transfer any of them in return for monetary compensation, so long as there is no cheating or deception.

**Thirdly:**

Copyright and patents are protected by shariah. Their owners have the right to buy or sell them and nobody has the right to violate these rights.

## **Public Vs Private goods**

What are public goods? Public goods can be defined as such goods the consumption of which is not denied to anybody and no person or society is excluded from the ambit of its utilization. In the first instance, no person is denied a privilege that another person enjoys. In the second, a public good produces a benefit that is impossible to exclude or prevent anyone else from enjoying. In the natural resource sector, for example, the use of oceans, and the atmosphere are global public goods where the use is not limited to one nation but is open for all nations. The essential concept to remember is that a public good is that the use of which may benefit individuals, but the good can only be accomplished through the actions of a society in general.

Public goods, inherently, cannot be owned exclusively by a person where such exclusivity over a resource denies a right of access to other people. Public goods, such as, environment, knowledge, etc., require the mustering of collective effort in order that such a good be secured for everybody's benefit. Though some of such goods may, under certain circumstances, invariably end up benefiting some individuals or regions or groups more than others, but then they have to be regulated so that their use has limited negative impacts that are likely to go beyond the individual user to members of society that are either users or non-users of the resource. It is also natural or feasible that some people or countries may derive a greater benefit from a public good than others. For instance the eradication of polio in Pakistan would provide maximum benefits to Pakistan, but this still does not deny the availability and usage of the treatment for peoples outside

Pakistan. The experience would be available to others also. This experience would and could become a springboard for further research for the benefits of mankind. It may be emphasized that a public good has to be seen in a more global perspective; rather it acquires universal proportions than being limited to a particular interest group

Compared with this, private goods, on the other hand are exclusive, so to speak. The benefit can either be enjoyed by a few who have the right of usage or, it can be enjoyed by those who have acquired the right of usage due to some consideration, be that payment or some other kind.

Here it would not be out of place to emphasise the role of the State, and international institutions such as the United Nations, to provide a conducive environment for the creation of public goods and the spreading of the welfare, which result from the creation of public goods. However, Turner's prognosis on the issue of rapacious liberalism is very insightful. He writes:

*“Global free trade cannot be pursued outside the context of other global issues, and Britain's (or preferably all of Europe's) export policies should not be pursued without moral concern for human rights and for the uses to which our exports will be put. To some free marketers and to some business interests these assertions will be anathema, an attack on market economics. But they are not. For market economics should never be a dogma, but a set of propositions about how we best achieve desirable ends. And free markets should never be thought*

*sufficient in themselves to meet the full range of human aspirations: they have to be managed and moderated, domestically and internationally, to offset imperfections, to achieve inherently collective rather than individual objectives, and to deal with distributional issues.” (Turner, 2001)*

The increasing privatization of knowledge, through the use of the intellectual property rights system is likely to impose constraints on economic progress and development in the future. Although IPRs are managed through the World Intellectual Property Organization (WIPO), they are enforced through trade agreements such as the Trade Agreement on Intellectual Property Rights (TRIPS), which falls under the World Trade Organization (WTO). A case in point is the determination of the South African government with which it thwarted the attempts of big multinationals who wanted to invoke the IPR regime by trying to force the South African government not to introduce a system of parallel importation and compulsory licensing. But due to its opposition by the South African government, it would now be able to make these drugs more cheaply available. Drugs companies, because they are concerned about declining shareholder profitability, use patents as a way of exercising monopoly and justifying high prices for drugs.

### **Islam & Intellectual Property**

The reality of intellectual property as defined earlier consists of two elements:

One of them is sensed and tangible such as a trademark and a book. The second is sensed but not tangible such as a scientific theory and an idea of an invention stored in the brain of a scientist.

Thoughts are not subject to ownership. However any idea originates from mans mind, hence his mind is the initial 'home' for any particular thought from the perspective of reality. Thus he can ignore it or dispense it seeking a material value. However, once dispensed it is haram to copyright it as this is an invalid contract, or patent it as this is not subject to ownership according to the Shariah and patents are an exclusive monopoly given to the patent holder and monopolies are haram.

On the other hand trademarks are sensed, tangible, and have a material value because it is a component of the trade.

Therefore, it is allowed for the individual to own it and the state is obliged to protect this right of the individual. He will be able to freely dispose of it, and others will be prevented from infringing upon this right.

## **Viewpoints on Public Goods in an Islamic Perspective**

Ownership rights form the basic and fundamental part of basic human rights. It goes without saying that the validity of this statement is not questioned either by Islam or Capitalism, but the similarity ends here. This is to say that the implementation, however, from both points of view is rather different. The capitalist system and community emphasizes private ownership rights and envisage it a prerequisite, rather a *sine qua non* of the free market system as described and advocated by John Locke and Adam Smith. In a striking contrast, the standpoint of ownership rights in respect of properties in Islam is different with that in the perspective, both, of free-market system (capitalism-materialism) and socialistic perspective (socialism).

Proponents of the Islamic viewpoint are of the view that the economic system of materialism stands up over endorsing the legitimacy of individual freedom and this freedom is essentially separated from all bindings. It envisages that each person is free to own, develop and spend the materials by any means it has without any rules and limitations.

The economic system of socialism, on the other hand, neglects the idea of individual ownership and freedom and considers all properties to be in the ownership of the state and the government.



## **Islamic Vs. Materialism Perspective**

Islam has an altogether different approach. This religion, rather this way of life derives its strength from the fundamental dictum that everything in the universe belongs to The Supreme Being, The Creator of everything. The Islamic perspective is visibly and logically different from the materialism perspective. It considers that the rights over properties have essentially social functions, *per se*, and that they are essentially ruled by the concept of "*amar ma'ruf nahi munkar*" (*do good deeds and prevent ill deeds*). This social function means that the use and exploitation of any property by the owners must create the benefits not only for the owners, but also for the society. The owner is also obliged to keep his property well and use it for the right purposes in Islam, because "property belongs to Allah whereas humans only have the rights/obligations to borrow.

Quran says:

*"Believe in Allah and His Messenger, and spend (in charity) out of the (substance) whereof He has made you Heirs. For, those of you who believe and spend (in charity) - for them is a great reward. " (QS. Al Hadiid : 7).*

It goes on to further clarify that;

*"Yea, to Allah belongs all that is in the heavens and on the earth: so that He rewards those who do evil, according to their deeds, and He rewards those who do good, with what is best. " (QS. An Najm : 31).*

## **Islamic Vs. Socialism Perspective**

The Islamic standpoint is also quite different from the socialism perspective. Islam is based on nature and does not prescribe anything to the contrary of human nature. The sense of individual ownership is innate to humans. It reflects and asserts the independence of a human being. In turn, by its very nature, Islam appreciates and recognizes this right to individual ownership. This individual ownership right eventually is basic to human nature because this individual ownership right is the strongest motivation, which fuels creativity and encourages and enhances ingenuity. In a striking contrast with Islam, whereas the socialism perspective is governed and nurtured by class contrast, in Islam it is otherwise in so far that the rules and philosophies are based on the idea of universal brotherhood among human beings and considering mankind as one big family and endeavoring to try to patch up relationships among them if problems do occur.

Based on that perspective, Islam gives equal position of individual rights and community/social rights. Individual right is recognized its freedom with certain limitations in which " all the limitations against individual right and the use of it are placed in a greater benefits for the community, just like its application in Zakat institution for example. On the other hand the interest of community/social (in communal rights) over properties is also acknowledged, but not directly neglect the individual right.

For the reasons that the description of ownership (including IPR), mentioned above, is based on western concept which is very individualistic and considers IPR as private rights, the question arises; is it against the Islamic stand point? How does Islamic

Economics protect the investors' rights of Ownership Right in the Islamic Perspective? It will be very interesting to analyze the topic of intellectual property right from an Islamic point of view, considering that Muslims, as of today, comprise of roughly a fifth of mankind. How are they going to protect their rights related to their positive law?

Based on Quranic verses and Hadith we can see that certain resources were regarded as public goods, viz: water, land and fire. Fire for contemporary purposes may well be equated with the idea of energy. Although, in Islam private property is accepted as a legitimate form of ownership, the general tendency is directional towards using property ownership as a way of achieving largely social ends by using an individual's entrepreneurial capacity and ingenuity. For example, land, which is dead, belongs to anybody who ensures productivity, thereby recognising the labour and investment put into it. It has to be used to achieve the ends of social justice. As Syed Mahmood Taleqani writes in "Islam and Ownership":

*"...from the Quranic text, man is neither the absolute owner nor the total possessor of the earth and its resources. He does not have the right to possess as much as he desires or to obtain material wealth in any way he may choose. Indeed, the earth's wealth belongs to God and man his vicegerent and servant. Indeed, because vice regency belongs to all people, each individual is a guardian of the public trust. And, this ownership should be limited for the public welfare."*

(1983)

There are many indications that the idea of public good and public good practices are central to an Islamic ethos. This principle is also extended to owners of private goods in circumstances where a good, like food, which is essential for the survival of humans, cannot be sold at monopolistic or exploitative prices, but at a fair price so that it is made accessible, and the private owner fairly compensated. In the case of need the State has a right to intervene for the sake of public interest and welfare. Another example is when the State-and this was the practice at the time of the Prophet Muhammad and his Caliph-land (called hima land) can be set aside for the purposes of public utility where the need arises. The use of the hima system is still prevalent in some Muslim countries today, especially in rural areas where himas are created to support animal grazing on a more communal basis.

In Islam poverty is recognised as breeding both indignities amongst the rich, and amongst the poor the cause of the feeling of the lost dignity. Both breed contempt, and conflict in society and erode the ability to create meaningful social contracts. It is for this reason that Islamic precepts and institutions have a strong social and distributive justice to them. A good example of this is prohibition on riba (interest) in the Quran in an uncompromising way. Riba is seen as the most pernicious form of exploitation and if encouraged leads to the erosion of social welfare by creating a set of dependencies in the economy. For the practices of distributive justice and its institutions to function there is a need for a State that is strong and willing to make interventions where there are clear distortions in the economy that undermines social welfare.

The ethical system that governs socio-economic policies in Islam centres around four main principles. They are:

1. Unity (Tawhid) in which individual actions must conform to an integrated whole.
2. Equilibrium (Al'adl wal ihsan) in which individuals have the freedom to act, but must do so with bearing the general well being of the present and future generations.
3. Free will (Ikhtiyar) individual freedom is guided by a broader framework of duty to community or society.
4. Responsibility (Fardh) individuals and society have the responsibility to use and dispose of possessions and wealth in a responsible way. It is not to be wasted but conserved.

Wealth creation is not denied in Islam, it is rather encouraged, subject to the condition that it is strictly regulated in terms of its future distribution and system of taxation, as for instance zakat, sadqa, ushr and the inheritance system. While sadqa (the giving of alms) is seen as voluntary, its universal practice has acquired the status of 'urf' (custom) in Muslim societies all over the world. The system of taxation was also extended to agricultural goods, certain kinds of commerce such as mining, and taxation of goods of foreigners. The Baitul-mal (treasury), as a State institution would then redistribute the collection of zakat to two categories of poor, the fuqra (poor from Muslim communities) and masakin (poor from non-Muslim societies). Funds from treasury were used to build roads, maintain security, and support allies of the Islamic State.

In other cases mosques, universities, schools, libraries and scholarship was promoted to ensure general societal benefits because it was identified as an essential public good. It is also interesting to note that in the works of the classical Hanbali scholar, Ibn Taymiya, he also sees the necessity of the state to establish collective industries where certain essential goods have to be imported at great expense or where there is a shortage of such goods in the market. These goods could be clothing or food. From Ibn Taymiya's tract we also learn that with the creation of the Hisba, while the right of ownership was honoured, the Hisba ensured that it was not allowed to be abused. For instance the establishment of a flourmill or tanning factory in a residential area that led to pollution was disallowed. Places of public amenity could not become the exclusive privilege of an individual or a group. The benefits of these amenities were for both rich and poor alike.

As the Islamic empire expanded during the period of the Umayyads and Abbasids, the sponsorship of centres of knowledge and accumulation of knowledge around the world was not only of benefit to Muslim states and as historical research shows, such investments have been critical to the revival of lost traditions of science, mathematics and philosophy from amongst the Greeks, Indians, Persians and other ancient civilizations. In fact, this investment in knowledge as a public good by Muslim rulers has been of great benefit to modern civilization and the advancement of key sciences in the West. This investment in knowledge that was not confined to any discipline and crossed the bounds of culture and religion was an indispensable investment that is often underplayed by western scholars.

The giving of alms in these societies-which amounts to the sacrifice by the rich of a proportion of their wealth, was a way of creating a system of distributive justice through religious moral persuasion and in some cases like in Islam was also enforced by the State and certain religious rites. Given that the act of giving is seen as a supreme virtue, the idea of a gift becomes an essential ethos of both the Muslim social fabric and economic system. It is intrinsic to a Muslim's way of being. One of the virtues of giving is that the giver also prospers as a result of his/her giving. So what occupies the Muslim mindset is that wealth that is created is also given away soon after its creation. Wealth creation, while meeting individual needs, therefore also has a pure social objective, and not a private goal. This virtue is exulted by Allah:

*Verse 15: Your riches and your children may be a trial. Whereas God, with Him is the highest reward.*

*Verse 16: So fear God as much as ye can. Listen and obey; and spend in charity for the benefit of your own souls. And those saved from the covetousness of their own souls-they are the ones that achieve prosperity.*

*Verse 17: If ye loan God a beautiful loan, He will double it to your credit, and He will grant your forgiveness.*

[Surah Tagabun, verses 14-18.]

## **The Protection of Ownership Rights as the Consequences of Individual Ownership Rights Acknowledgement**

In Islam, the protection of individual ownership right is integrated in the acknowledgement against individual ownership right. It means that by the time the right is acknowledged to own properties as one of human nature then at the same time it creates the consequences for the protection against that right. The existence of protection against the ownership of properties is stated in Quran:

*"And do not eat up your property among yourselves for vanities, nor use it as bait for the judges with intent that ye may eat up wrongfully and knowingly a little of (other people's property)." (QS al-Baqqarah: 188).*

There are many experts who have been trying to formulate The Islamic Economic System as operational form in the real life practice. Just like Yusuf al-Qardhawi who stated the main principles to form the economic system in Islamic community, viz:

1. Property is considered an enjoyment if it is on good people's hands.
2. Property belongs to God, whereas humans are only borrowing it.
3. Preaching is creating better working environment.
4. Illegal way of earning money is forbidden.
5. Individual ownership rights are acknowledged and protected.



6. Someone is forbidden to own properties, which are needed by the community.
7. Property owning which could endanger other people is forbidden.
8. Property development could not endanger public interest.
9. Independency and existence of Islamic community.
10. Fair in giving charity.
11. Protect one another among community members.\

## **The Nature of IPR's based on Islamic Perspective**

IPR's has some natures.

### **Having a certain limited time**

The limited time of IPR's is decided clearly and surely in the law, e.g. patent is protected for 20 years and after the valid time is due, it can only be prolonged for 2 years then it belongs to the public.

In Islamic point of view, actually the inventor has two options. First, he could donate his invention to be used for public benefits (usually Islamic authors allowed their books to be copied and widespread used around the world) for some reasons like educating people and spreading the knowledge without being granted the right for his work because they only hope for a better God's mercy later in the after life. Second, the inventors can have the rights for his inventions and enjoy them because he has done something and earn something from his creation.

Either option is legal for the inventors to choose as long as they do not hold the right forever for themselves if they chose the second option. Related to this matter, one interesting question is occurred. Could the inventor deliver his right to his relatives/offspring in the middle of his valid time to hold the right if he passed away? According to Islamic Law, the inventors could do that, because they hold the right based on their own work/creativity.

But maybe it would be better for the inventor to give the right to public who will benefit his creation to have a better way of life so the invention is useful for many people. Of course this condition could take place if the inventor's relatives/offspring give the permission.

**Being of exclusive and absolute nature**

It means this right could be defended against anybody. Someone who has the right could sue any violence done by anyone. The owner or the holder of IP right has the monopoly right, that he can use his right to forbid anyone to copy or use his creation.

If we observe the previous nature, by making the analogy of protecting someone's ownership right over one thing and the appreciation for someone's creativity, then it is fair and natural if someone enjoys his hard work.

**Having intangible nature**

It means that the right is not concrete goods but abstract. That's why some jurists categorized this right as property not goods.

## **Conclusion**

In view of the foregoing, the maintenance of public goods that are not open to private exploitation is consistent and an intrinsic component of an Islamic ethos. Critical to this is the roles of the State in ensuring that how these public goods are created and maintained always promote the ends of social justice. Their main aim therefore would be to create a distributive system that leads to greater opportunity by individuals in that society wanting to maximise their own welfare. It is also clear from an Islamic ethos that any human activity that erodes a public good that is both natural and human will be viewed as inconsistent with the ends of social justice. It is for this reason that the institution of the Hisba has been an important institution in Islamic societies to monitor and regulate public life as far as it concerns economic activity. One of the crucial roles of the institution of Hisba was to regulate supply of goods, so that no hoarding or monopolistic prices manifested, especially as it concerns essential goods. Therefore the institution of Hisba represents a concerted attempt on the part of Islam to maintain a balance between private interests and the public good.

The history of IPRs in Islamic society has started a long time ago. If the western society says it started IPRs in the 15th century, Islam started long before that. From 6th century (Year 622) Medina Charter as the constitution of Medina State has acknowledged the individual ownership rights and protected them as stated in article 47 of this charter.

Then in the 9th century in Abbasiyah monarchy, keeping in pace with the fast growing of science and technology, there was a profession called warraq or a copywriter. In that

time, the author was collaborated with warraq to publish the author's books. Warraq was responsible to sell the books and the authors got the royalty.

Intellectual theft which means copying whole portions of a book or a journal without citing their author is unlawful in Shariah. But the penalty of theft mentioned in the Quran is not to be applied to this kind of theft. Rather, it entails a disciplinary punishment that is up to the judge to decide.

As for paraphrasing other's thoughts in a new form, this is not considered intellectual theft, but honesty requires citing the original author. Otherwise, it would be regarded as a kind of cheating which is forbidden, but does not entail a stated penalty or even a disciplinary punishment.

Islam is a balanced religion which standpoint is in the middle. Its doctrines, through its economic law never take side on each extreme pole. Although the doctrines state that all properties belong to God, but Islam still acknowledges the rights of human beings to enjoy the result of their hard work and creativity. Islam is protecting the individual ownership rights as well as guarding the benefits of public interest.

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