



An Islamic Appraisal of Deficiencies in Pakistan's Intellectual Property Framework

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Abstract

Pakistan has made notable progress in the development of intellectual property (IP) laws; however, significant gaps emerge when these laws are assessed in light of Islamic principles. While Article 227 of the Constitution requires that all legislation conform to the Qur'an and Sunnah, Pakistan's IP framework remains heavily influenced by Western legal traditions and international agreements such as TRIPS. This creates tensions between global legal obligations and Islamic values, particularly in relation to monopolies, equitable access to knowledge, and the ethical dimensions of ownership. Moreover, the enforcement of IP rights is hindered by weak institutional capacity, limited public awareness, and insufficient engagement with Islamic jurisprudence. These shortcomings underscore the need for comprehensive legal reforms aimed at harmonizing IP legislation with Islamic teachings, thereby fostering a system that is both just and contextually relevant.

Keywords: Intellectual Property, Pakistan, Islamic Law, Shariah Compliance, Legal Gaps, Law Reform, Islamic Ethics.

INTRODUCTION

Intellectual property rights are important for encouraging creativity and protecting inventions, but in Pakistan, these laws are mainly shaped by global standards rather than local religious values. While Pakistan is part of international agreements such as TRIPS and has established various Intellectual Property (IP) laws, these often lack reflection of Islamic teachings. As an Islamic republic, Pakistan is constitutionally bound to ensure its legal system follows the principles of the Quran and Sunnah. However, there are clear gaps in how intellectual property laws meet this requirement. The growing concern is whether current IP rules support public benefit, ethical fairness, and ownership principles found in Islamic law. Understanding and addressing these gaps is necessary for aligning the country's legal framework with its religious foundations.

Concept of Intellectual Property IP: A Global Overview

Definition and Categories

Intellectual Property (IP) is the term which means the rights which individuals possess on their mental work and the creative one.¹ It is a kind of property, which is not tangible (as land or a building), but touched on concepts, inventions and expressions. By writing a book, a person has a logo, finds a machine, or discovers a new variety of a plant, the law permits such an

¹ Londres. "Integrating intellectual property rights and development policy.", September (2002).



individual to possess and run how other individuals put to use the work.² The primary aim of intellectual property rights is to safeguard the work and the creativity of people and companies and encourage more discovery, art, and science.³ The major ones are as follows:

i. Copyright

Copyright is a right that gives protection to original work of authorship. This can be in the form of books, songs, paintings, films, software, poems, plays even the architectural designs. Copyright automatically entitles an individual or organization which produces something original to regulate utilization of the copy, exchange, sale or variation of a piece of work. The creator has a right to permit others to use the work, however, they have to give their consent or accept a retribution in most cases. Copyright never covers the ideas that have been developed but it covers the actual expression of the ideas.⁴

ii. Patents

Patent is a special right to an inventor.⁵ It grants them the legal right to prevent others without their permission to make, use, sell or copy their invention during a certain limited period usually of 20 years.⁶ The inventor is expected to provide a detailed explanation of the invention in return of this protection. This assists the community to learn the invention and spread the same among people so that they improve on it. Patents are applied to the new machines, chemical processes, medical treatments, or other technical solutions which are new, useful, and not evident.⁷

iii. Trademarks

They are symbols, names, words, slogans or designs that are used to distinguish the origin of goods or services called trademarks.⁸ The most famous one is the symbol of a famous soft drink, or the name of its famous shoe brand. Consumers are made aware of which company is dealing with the product or service and trademarks safeguard the name of companies. They also avert confusion of the market by seeing to it that similar marks are not shared by competitors as well.

iv. Industrial Designs

The visual appearance of a product is called an industrial design. This is its form, the color, the surface patterns and the general appearance that will make it appear appealing. The protection of the industrial designs relieves of the risk of having their product copied by the non-wondering parties. It is particularly critical in particular industries like fashion, automobiles

² Koboldt, Christian. "Intellectual property and optimal copyright protection." *Journal of Cultural Economics* 19 (1995): 131-155.

³ Strathern, Marilyn. "Potential property. Intellectual rights and property in persons," *Social Anthropology* 4, no. 1 (1996): 17-32.

⁴ Will Kenton, "What Is Intellectual Property and What Are Some Types?" Investopedia, June 7, 2024 <https://www.investopedia.com/terms/i/intellectualproperty.asp>

⁵ Spinello, Richard A. "Intellectual property rights." *Library hi tech* 25, no. 1 (2007): 12-22.

⁶ Islam, Muhammad Wohidul. "Al-Mal: The Concept of Property in Islamic Legal Thought." *Arab Law Quarterly*. Vol. 14. BRILL, 1999. <https://zulkiflihasan.wordpress.com/wp-content/uploads/2008/06/concept-of-mal.pdf>.

⁷ Davis, Lee. "Intellectual property rights, strategy and policy." *Economics of innovation and new technology* 13, no. 5 (2004): 399-415.

⁸ Davis. "Intellectual property rights, 399-415.



and household appliances where the look of the product is key towards attracting the consumer market.⁹

v. Geographical Indications (GIs)

Geographical signs are special marks possessed by products originated in a specified place, which possess special features, or great reputation because of the place. Things like cheese produced in particular areas of France, tea produced in particular valleys in India or hand-made carpets produced in a particular area of Iran all come to mind. Such signs assist in safeguarding the traditional knowledge, methods, and reputation of the communities involved in the production of such good.¹⁰

vi. Plant Breeders' Rights

Plant breeders rights are granted to individuals or establishments that come up or uncover new plant varieties. It is through those rights that they reach control on the way those plants are to be grown, sold or used within specific years. Such rights will stimulate innovation in the field of agriculture, allowing to obtain crops that will resist the diseases better or in which case give more yields.

vii. Trade Secrets

Trade secrets entail things that put a firm at an advantage over the other through information that is considered to be confidential. It might be some sort of a secret recipe, a formula, a production technique or even a list of customers. Trade secrets differ with other forms of intellectual property in that they do not have a government registration. They are ensured with the help of contracts and security arrangements. When a trade secret is stolen or leaked, this is perceived to be a criminal act.

Historical Development

The concept is not new to have creative work and inventions. It has evolved gradually within several centuries. There were different methods in various civilizations of realizing and rewarding the creativity but legal frame as we know it nowadays was worked out over several substantial steps.¹¹

Ancient and Medieval Recognition of Authorship

People in the early days of the society already experienced some ownership of their art work. To take an example, in ancient Greece, cooks have reportedly been granted the exclusive rights of their specialized recipes over sometime. This goes to demonstrate that even during those days, society appreciated the importance of creativity among individuals. Early cultures like Egypt, China and India valued contributions of artists and inventors, but they did not have (or preserve) the level of development of the concept of legal rights.¹² Authors and inventors were usually identified by their names in ancient Rome and Greece and this accorded them

⁹ Strathern, Marilyn. "Potential property. Intellectual rights and property in persons." *Social Anthropology/Anthropologie sociale* 4, no. 1 (1996): 17-32.

¹⁰ Koboldt, Christian. "Intellectual property and optimal copyright protection." *Journal of Cultural Economics* 19 (1995): 131-155

¹¹ Maskus, Keith Eugene. "Intellectual property rights in the global economy," *Peterson Institute*, 2000.

¹² Candelin-Palmqvist, Hanni, Birgitta Sandberg, and Ulla-Majja Mylly. "Intellectual property rights in innovation management research: A review." *Technovation* 32, no. 9-10 (2012): 502-512.



recognition and social respect. As the author of the written piece of work, people nonetheless appreciated the original author despite the free copying. In medieval Europe, the manuscripts were copied extensively by hand in monasteries. These imitations usually contained the names of the original writers and this indicated that authorship was significant even without enactment of the legal rights.¹³

Rise of Modern Intellectual Property Systems

The emergence of printing technology in the 15th century made tremendous changes. The discovery of the printing press allowed ideas and books to be transferred to a large audience within a short period. This led to the increase in the need of protecting authors and publishers. Governments started making laws to control the copying of things and also award the original creators.¹⁴ In the 18th and 19th century, most nations started to develop complete patent protection legal systems to guard patents, copyrights and trademarks. Among the first to give rights to the author, and not printers, was the British Statute of Anne 1710. It created the basis of the current copyright law. With the growth of global trade, there was a realization to have international cooperation in the intellectual property. The international agreement in the 19th century was formed, and it included the Paris Convention (1883), the Berne Convention (1886). The agreements made countries apply respect to one another in the area of intellectual property rights and gave countries common set of laws. It was also observed during this time that industrialization had been on an upward rise and this argument had all the more reason to preserve inventions, industrial designs and trademarks.¹⁵

IP in the Industrial and Digital Age

The industrial revolution came with a lot of innovations and technologies including machineries, chemicals, and transportation among others. These changes had increased the significance of the protection of intellectual property. The protection of creative work since the 20th century, intellectual property laws have expanded as other industries such as pharmaceuticals, electronics and media became established. The increasing growth of television, radio and later the internet, presented new challenges in the copying as well as unauthorized use of creative work. In the digital era, the intellectual property arena has become even more complicated. It is one of the major players in spurring innovation, promoting creative industries and driving the economies that grow and compete in the world.¹⁶

¹³ May, Christopher, and Susan K. Sell. *Intellectual property rights: A critical history*. Boulder: Lynne Rienner Publishers, 2006.

¹⁴ Islam, Muhammad Wohidul. "Al-Mal: The Concept of Property in Islamic Legal Thought." *Arab Law Quarterly*. Vol.14. BRILL, 1999. <https://zulkiflihasan.wordpress.com/wp-content/uploads/2008/06/concept-of-mal.pdf>.

¹⁵ Correa, Carlos, and Jorge E. Vinuales. *Intellectual Property Rights*. 2000.

¹⁶ Pandey, Neeraj, and Khushdeep Dharni. *Intellectual property rights*. PHI Learning Pvt. Ltd., 2014.



Global Importance of IP

There are numerous reasons as to why intellectual property is significant. It is a key factor of the contemporary economy, promotes creativity and innovations, and influences culture, trade, and even social progress.¹⁷

Innovation, Creativity, and Economic Growth

By making individuals understand that their ideas and creations will easily be defended by laws in case there is any violation, people will be willing to spend much time, money, and work on the creation of new products, technologies, and works of art. Intellectual property rights allow the inventors, artists, companies an opportunity to earn by their work and, therefore, make more of it. As a result, the economic growth in such countries is quite rapid.

International Global Markets

Nowadays, with the globalized world, one cannot avoid associating intellectual property with international trade. Traded goods and services usually rely on secured technologies, designs, trade marks or creative content. Good IP protection can also ensure that business are sure of not having their ideas stolen or copied in other markets. IP can also be used by countries in order to receive foreign investment. Firms become more ready to invest in those nations where their intellectual property is taken seriously. This increases employment generation, technology transfer and economy.¹⁸ Also, the international treaties and agreements assist to make IP laws, which are fair and similar in various countries. This encourages companies to do business in various corners around the world and minimizes conflicts and misunderstandings.¹⁹

Social and Cultural Implications

Intellectual property is also a factor to influence the culture and society. Copyright laws facilitate the production of book, music, movies and art work that enhance the rich culture and activities in the entertainment world. Trademarks create a confidence relationship between consumers and companies, and patents can support the evolution of medicine, energy, communication. The IP rights are also used to guard the cultural expressions and traditional knowledge.²⁰ Most of the native societies are distinctive in terms of their practices, craftwork, and natural resources that will be easily exploited. The preservation of these traditions and assigning credit as well as benefits to the communities

International Legal Instruments

To assist countries in collaborating in the protection of Intellectual property (IP) rights, numerous global agreements have been formulated in the past one century. These international laws also minimize the issues related to international trades and facilitate the level of exchange

¹⁷ Stiglitz, Joseph E. "Scrooge and intellectual property rights." *BMJ* 333, no. 7582 (2006): 1279-1280.

¹⁸ David, Matthew, and Debora J. Halbert. "Intellectual property & global policy." *Global Policy* 8, no. 2 (2017): 149-158.

¹⁹ Maskus, Keith Eugene. *Private rights and public problems: The global economics of intellectual property in the 21st century*. Peterson Institute, 2012.

²⁰ Lazariuc, Cristina, and Ecaterina Lozovanu. "Intellectual property in the context of global ethics." (2021).



of commodities and knowledge amongst countries.²¹ Here are some of the most prominent international law instruments where intellectual property is handled and safeguarded in most of the countries:²²

TRIPS Agreement (WTO)

The Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) is one of the most influential and widely embraced IP international agreement. It is also the part of the World Trade Organization (WTO) and it is applicable to each country that is the member of the WTO.²³ TRIPS discusses a great number of intellectual property fields, which include copyrights (such as books, films and music, inventions (patents), trade marks (such as logos and names of brands), commercial secrets (business secrets), The looks and style of products (industrial designs).

It also offers guidelines on how countries are supposed to overcome problems or conflicts that might arise between them in case any issues occur with regard to intellectual property (IP).

²⁴As an example, when a country considers the other country is not honoring its IP it can bring the issue to the WTO to be resolved.²⁵ The significant feature of TRIPS is that it ties international trade with intellectual property (IP). This implies that nations should not ignore intellectual property in the event that they wish to be freely trading with other nations. TRIPS protects innovation, creativity and brands identity in a uniform manner in the majority of the world.²⁶

Paris Convention

The oldest and most influential of international treaties to do with IP is the Paris Convention on the protection of industrial property, signed in 1883. It focuses primarily on industrial property that encompasses patents (inventions), trademarks (commonly referred to as a brands identity), industrial designs (the look of a product), geographical indications (products which are associated with a place). The national treatment is one of the most important skills of the Paris Convention. This implies that any individual belonging to one of the member countries applying to receive IP protection in a member country should be treated in the same way as the citizens of such country.²⁷

²¹ Maskus, Keith Eugene. *Intellectual property rights in the global economy*. Peterson Institute, 2000.

²² Lehman, Bruce A. "Global Intellectual Property in the Twenty-First Century." *Fordham Intell. Prop. Media & Ent. LJ* 7 (1996): 9.

²³ Lehman. "Global Intellectual Property," 9.

²⁴ Slade, Alison. "The objectives and principles of the WTO TRIPS agreement: a detailed anatomy." *Osgoode Hall LJ* 53 (2015): 948.

²⁵ Taubman, Antony, Hannu Wager, and Jayashree Watal, eds. *A handbook on the WTO TRIPS agreement*. Cambridge University Press, 2020.

²⁶ Yueh, Linda Y. "Global intellectual property rights and economic growth." *Nw. J. Tech. & Intell. Prop.* 5 (2006): 436.

²⁷ Sunder, Madhavi. *From goods to a good life: Intellectual property and global justice*. Yale University Press, 2012.



One more key rule, which was presented by the Paris Convention, is the right of priority. This implies that when patent or trademark is applied in one member country, then it can be applied within a stipulated reasonable time (usually 6 to 12 months) in other member countries but still retains the date of the initial application. Paris Convention enables inventors and companies to obtain protection in a great number of countries in an effortless and equitable manner.²⁸

Berne Convention

In 1886, the Berne convention on the protection of literary and artistic works got signed. It deals with defending creative activities such as: Books, Poems, Paintings, Music, Films, Plays and other works of artistic art. The Berne Convention main strengths include that it provides automatic protection. This implies that once an individual has created a new work like writing a book or a song, copyright immediately has a hold on it across all the member countries. The individual in question is not required to register the work so as to be granted copyright protection. The Berne Convention provides the creators with great rights as well which include:

- I. The right on how their work is utilised.
 - II. The right to authorize translation, performance and adaptation.
 - III. The right to state one as an author.
 - IV. The right to prevent people and alter the work in a damaging manner.
- With this convention, countries will accept to provide authors with a minimum level of protection regardless of whether the local laws differ. The Berne Convention plays a part in making sure that writers and artists are rewarded and respected over their work wherever it is presented.²⁹

WIPO Treaties

The World Intellectual Property Organization (WIPO) is an international organization, and a special agency of the United Nations (UN) which assists nations all over the world in collaborating to deal with IP concerns. WIPO administers over 25 international treaties touching on various forms of intellectual property.³⁰ The WIPO treaties most important treaties are:

i. WIPO Copyright Treaty (WCT):

The treaty is concerned with the protection of copyrights in the digital-based entertainment involving the internet and the web-based entertainment. It allows the creators to take greater control of the way their work is shared and utilized on the digital devices.³¹

ii. WIPO Performances and Phonograms Treaty (WPPT):

This treaty safeguards the interest of performers (including actors and musicians as well as the producers of sound recordings). WIPO also assists the countries by offering training,

²⁸ Ghosh, Rishab, and Luc Soete. "Information and intellectual property: the global challenges." *Industrial and Corporate Change* 15, no. 6 (2006): 919-935.

²⁹ Archibugi, Daniele, and Andrea Filippetti. "The globalisation of intellectual property rights: four learned lessons and four theses." *Global Policy* 1, no. 2 (2010): 137-149.

³⁰ Dinwoodie, Graeme B., and Rochelle C. Dreyfuss. "Designing a Global Intellectual Property System Responsive to Change: The WTO, WIPO, and Beyond." *Hous. L. Rev.* 46 (2009): 1187.

³¹ Sheinblatt, Julie S. "The WIPO copyright treaty." *Berkeley Tech. LJ* 13 (1998): 535.



consultation, legal, and technical assistance. It makes a nation enhance its IP systems particularly the developing nations who are still in the process of developing legal and administration systems. Countries also collaborate in standardization of laws and trade information through WIPO as well as address developing issues in IP instances artificial intelligence, biotechnology, and global online trade.³²

iii. Patent Cooperation Treaty (PCT)

Patent Cooperation Treaty (PCT) was signed in 1970; it simplifies and streamlines the process of seeking patent protection in many locations simultaneously by inventors. Rather than filling patent application in every country an inventor needs to fill a one international application that is recognized in over 150 countries.³³ Several are the advantages of this process as it saves time and energy to the inventors, it postpones the requirement to pay expensive filing fees in most of the countries immediately, it ensures that there is some spare time spent looking through the potential of an invention in the market before investing additional money and Provides foreign inventors with the international search report in order to determine the likelihood of patent.³⁴

Madrid Protocol

Madrid Protocol, also referred to as the Madrid System, assists business and individual to register trademarks in multiple countries through a single application. Under the Madrid Protocol, trademarks had to be registered by individual application in each country of interest; prior to the Madrid Protocol. The Madrid Protocol also allows trademarks to be renewed, information to be updated (such as a name or address) or countries to be added on a later date much more conveniently. Over 100 countries use this system which is administered by WIPO. Nevertheless, the international legal instruments are critical in creating the global system on intellectual property. Treaties such as TRIPS, Paris and Berne Conventions, WIPO treaties, PCT and Madrid protocol, enable the countries to collaborate, cooperate, and observe each other laws and IP rights. These agreements help the inventors, artists and businesses to operate with safety and fairness abroad.³⁵ They also develop criteria and mechanisms that make legal proceedings nearer and provide greater assurance to international investors, creators and entrepreneurs. Such agreements offer a mutual legal background, ease trade barriers and encourage equitable treatment of the creators and inventors across the borders.³⁶

Legal Framework of Intellectual Property in Pakistan

Pakistan has been able to come up with fairly modern and evolving regime on the protection of intellectual property (IP). A number of laws have also been enacted in the past to align Pakistan IP environment with the international standards. They are laws that guard various types of

³² Dinwoodie, Graeme B., and Rochelle C. Dreyfuss. "Designing a Global Intellectual Property System Responsive to Change: The WTO, WIPO, and Beyond." *Hous. L. Rev.* 46 (2009): 1187.

³³ May, Christopher. *World Intellectual Property Organization (WIPO): Resurgence and the Development Agenda*. Routledge, 2006.

³⁴ Walters, Carlisle E. "The Madrid Protocol." *Fordham Intell. Prop. Media & Ent. LJ* 4 (1993): 407.

³⁵ Blay, Samuel KN. "New trends in the protection of the Antarctic environment: the 1991 Madrid Protocol." *American Journal of International Law* 86, no. 2 (1992): 377-399.

³⁶ Baeumer, Ludwig. "The Madrid Protocol: "The View from the World Intellectual Property Organization." *Int'l Intell. Prop. L. & Pol'y* 1 (1996): 279.



intellectual possessions such as inventions, artistic works, brand names, products designs, and also plant varieties.³⁷ A coordinated office, which is the Intellectual Property Organization of Pakistan (IPO Pakistan) was also established to handle all the IPs under a single authoritative outfit.

Statutory IP Laws

Some particular laws have been pass by Pakistan to guard various forms of intellectual property. All the laws are subjected to specific forms of IP and the way it is to be registered, shielded, and enhanced.

i. Copyright Ordinance, 1962

This legislation covers original creative products like books, music, movies, programs, art and photographs. The creator of the work is granted with some exclusive rights by this law. Such rights are the right to reproduce the work, sell or distribute it, perform or display it publicly or authorize other people to use it.³⁸ This legislation covers published as well as unpublished works. This law protects the works first published in Pakistan, or in case the author is a Pakistani citizen or resident. The law also explains what can be termed as copyright infringement like professionally copying or selling pirated CDs. The legislation provides protection in form of civil and criminal punishment when an individual copies work illegally. It is also explicitly stated that the copyright remains valid for the rest of the author life and another 50 years after death.

ii. Patents Ordinance (2000)

This act was developed to address the provisions of WTO and TRIPS Agreement. It grants the right to inventors on any new innovation which is beneficial, novel and not a foregone conclusion. The invention could be either a product (e.g. a new machine or chemical element), or a process (e.g. mode of production of a product). The law is very explicit that the invention should be new and be used in industry. Patents Ordinance enables issuance of a patent which has a 20 year lifespan dating back to the filing time. At this period, no one else will be able to make, use, sell, or import the patented invention without giving the consent.³⁹

iii. Trademarks Ordinance (2001)

The Trademarks Ordinance superseded the then aged trademark legislation and introduced the system to international standards. This legislature guards the names, logo, and symbols among other distinctive marks that the businesses attach to their products or services to identify them. It also covers protection of service marks, colors, sounds and even the shapes that identify a product.⁴⁰ Acknowledgement of well known trademarks is one of the main enhancements in

³⁷ Islam, Muhammad Wohidul. "Al-Mal: The Concept of Property in Islamic Legal Thought." *ArabLaw Quarterly*. Vol. 14. BRILL, 1999. <https://zulkiflihasan.wordpress.com/wp-content/uploads/2008/06/concept-of-mal.pdf>.

³⁸ Schoen, Robin A., Mary E. Moguee, and Mitchel B. Wallerstein, eds. *Global dimensions of intellectual property rights in science and technology*. National Academies Press, 1993.

³⁹ Ordinance, Patents. "Chapter: 514 PATENTS ORDINANCE Gazette Number Version Date." (1997).

⁴⁰ Port, Kenneth L. "The Expansion Trajectory: Trademark Jurisprudence in the Modern Age." *J. Pat. & Trademark Off. Soc'y* 92 (2010): 474.



this law. A ten year different protection is given to a registered trademark, but this can be renewed repeatedly provided the owner continues using it.

iv. Registered Designs Ordinance (2000)

This legislation guards a visual design or looks of any product. This may be the shape, design, lines or ornamentation of objects like bottles, furniture, jewels or clothing. The design should be unique and should have the potential of being used in an industrial process in order to be given protection under this law. A design does stand to be registered but can be renewed after some time in case it is necessary. This law is aimed at safeguarding the investment that corporations have made regarding creating an attractive and distinct product.⁴¹

v. Geographical Indications (GI) Act (2020)

Geographical Indications are special signs or names to be put on products that have their origins in a particular place that give them particular qualities. As an example, this law can protect such names as *Multani Sohan Halwa* or *Sindhri Mango*. The GI Act offers an appropriate mechanism to ensure the registration of such names and securities against failure. Under this act, it is the duty of IPO Pakistan to maintain a GI registry. The registered GI can be used by only those individuals or companies that belong to the right region and by doing the right thing.

vi. Plant Breeders Rights Act (2016)

This policy allows individuals who come up with new varieties of plants their rights. It establishes exclusive rights to breeders thus that they can regulate the usage, merchandizing, and propagation of their vegetation varieties. In order to receive protection the new variety of plants should be distinct, uniform and stable. This implies that it must differ conspicuously with the available varieties, demonstrate uniformity, and it must be not different after multiple plantings.⁴²

Role of IPO Pakistan

Intellectual Property Organization of Pakistan (IPO Pakistan) was established in 2005 and was established by a special law namely the IPO Ordinance. Until now, various IP classes were treated at various offices. There were patent, copyright and trademarks respective offices. All of these offices used to work in isolation thus creating confusion and delay.⁴³ Today, IPO Pakistan is the central body that is in charge of any kinds of IP in the nation. It plays a number of roles:

i. Centralized Structure

IPO Pakistan unites the entire offices of the IP in one roof. This assists in the better coordination and gives a common ground where the businesses and individuals can have a singular location that registers their IP rights.

ii. Registration and Processing

⁴¹ Tanweer Abdullah, Muhammad, and Khadija Nowaira Abdullah. "Health Regulation Ordinances 2000-2001: Critical Comments on the Scope and Potential Challenges." *JL & Soc'y*

⁴² Rangnekar, Dwijen. "Intellectual property rights and agriculture: An analysis of the economic impact of plant breeders' rights." *London: Action Aid* (2000).

⁴³ Mehmood, Waqas, Rasidah Mohd-Rashid, Chui Zi Ong, and Yasir Abdullah Abbas. "Factors driving IPO variability: evidence from Pakistan stock exchange." *Journal of Economics, Finance and Administrative Science* 26, no. 52 (2021): 300-316.



The organization receives the application to register patents, copyrights, trademarks, industrial designs and geographical indications. It includes a separate wing of each of these which is however controlled by a central authority.

iii. Public Outreach and Education

IPO Pakistan is also involved in raising sensitization among people on the relevance of IP rights. It runs training sessions, produces education material and conducts media campaigns to inform students, professionals and the rest of the population about the importance of protecting their creative work and respecting the rights of others.⁴⁴

iv. Policy and Legal Advice

IPO Pakistan provides counsel to the government on the way forward in the improvement of IP system. It also assists to ensure that the laws in Pakistan are consistent with the international protocols. In case a person is discriminated against by an IP office, IPO Pakistan is also capable of investigating the issue.⁴⁵

International Commitments

Pakistan is a WTO member which is also a party to the international standards of IP protection established through TRIPS Agreement. Pakistan has altered a huge number of its laws in view of the, TRIPS necessities. The world Intellectual Property Organization (WIPO) is also joined by Pakistan. This implies that it has accepted to be governed by the rules and the treaties which are administered by WIPO. These comprise very significant conventions, like, the Paris Convention and the Berne Convention.⁴⁶ Pakistan however still suffers a couple of issues when it comes to application of these international regulations:

i. Delays in Treaty Adoption

There are some of the more recent WIPO agreements that are not signed yet by Pakistan yet particularly those concerned with the digital copyrights and works through the internet. This complicates the process of safeguarding web based services of software, digital books and streaming media.⁴⁷

ii. Weak Implementation

Although the laws and regulations are as per international standards there is at times poor implementation. Judges and customs officers might not necessarily be trained appropriately to read IP laws. This brings about the challenges of importing fake or pirated goods and the cases becoming too lengthy in court.

⁴⁴ Mehmood, Waqas, Rasidah Mohd-Rashid, Abd Halim Ahmad, and Atia Hussain. "Unlocking IPO success in Pakistan: the power of institutional quality, sponsor ownership and smart pricing." *South Asian Journal of Business Studies* 14, no. 1 (2025): 90-114.

⁴⁵ Javid, Attiya Yasmin, and Henna Malik. "Performance and capital structure of IPOs in Pakistan from 2000 to 2015." *Financial Innovation* 2 (2016): 1-19.

⁴⁶ Mehmood, Waqas. "Unlocking IPO Success," 90-114.

⁴⁷ Islam, Muhammad Wohidul. "Al-Mal: The Concept of Property in Islamic Legal Thought." *ArabLaw Quarterly*. Vol.14.BRILL.1999.<https://zulkiflihasan.wordpress.com/wp-content/uploads/2008/06/concept-of-mal.pdf>.



iii. Lack of Resources

Not every time, Pakistan can be confident of the sufficient level of skilled personnel to process IP applications or to settle a dispute within a short time. This leads to backlog in awarding patent, trademarks or settling copyright suits.

iv. Enforcement Framework

The protection of intellectual property (IP) is just the beginning of protecting intellectual properties by passing the law. Even more important is the ways how effectively these laws are implemented. In Pakistan, there is also a big problem of implementing IP laws. Although the country has good laws that guard inventions, arts works and brand names, a lot of issues are pending in terms of bringing lawbreakers to book and giving victims of violations their justice.⁴⁸

v. Civil Remedies

The actions taken in the form of filing a case in a civil court are called civil remedies which may be taken by the IP owners. This is normally the commonest method of settling IP dispute in Pakistan. In case they reproduce your product, logo, invention, book, or music without your blessing, you as an individual can proceed to court and seek assistance.⁴⁹ The most frequently offered types of help that can be provided by the court are:

- **Injunctions:** It is a form of court order informing an individual or business that violate your rights to cease doing so immediately. An example is that when a person is selling your trademarked item in a different fake name the court can prevent further sales.
- **Damages:** The court may as well direct the violator to transfer money to the original rights holder on behalf of the losses it suffered. This is referred to as financial compensation. The sum of money will rely on how much the initial owner lost due to violation.
- **Accounts of profits:** In other instances, the court may also demand the violator to prove an amount of profit they gained by using a stolen or copied work and may compel them to pay that amount of money to the actual owner.⁵⁰

vi. Criminal Penalties

There are forms of IP violation that are criminalized in Pakistan. This implies that the individual who breaches the law may be fined, put in jail or even punished. More severe cases are normally criminal in nature. For example, selling or printing pirated software, movies or music, counterfeited branded goods (such as shoes, clothes or electronic devices) or deliberately using another person or company registered mark or copyright. Under such circumstances, the guilty individual may find himself in jail and serve up to three years, and pay hefty fines. These punishments aim at preventing individuals to plagiarize other people and companies to earn money

⁴⁸ Mehmood, Waqas, Rasidah Mohd-Rashid, Norliza Che-Yahya, and Chui Zi Ong. "Determinants of heterogeneity in investors' opinions on IPO valuation: evidence from the Pakistan stock market." *Review of Behavioral Finance* 13, no. 5 (2021): 631-646.

⁴⁹ Javid, Attiya Yasmin, and Henna Malik. "Performance and capital structure of IPOs in Pakistan from 2000 to 2015." *Financial Innovation* 2 (2016): 1-19.

⁵⁰ Islam, Muhammad Wohidul. "Al-Mal: The Concept of Property in Islamic Legal Thought." *Arab Law Quarterly*. Vol.14. BRILL, 1999. <https://zulkiflihasan.wordpress.com/wp-content/uploads/2008/06/concept-of-mal.pdf>.



by means of criminal acts.⁵¹ To enhance criminal enforcement, there must be increased coordination among IP owners, the lawyers, police, and courts.⁵²

vii. Specialized IP Tribunals

Realizing that IP disputes need to be dealt with faster and more efficiently the government of Pakistan has established special courts referred to as IP tribunals. The tribunals are assigned with cases that involve intellectual property only and this will help minimize the cases that normal courts have to deal with. These tribunals are aimed to:

- Alleviate the process of IP disputes
- Try to offer professional opinion of technical issues such as patent claims.
- Establish a more business-friendly environment to the investors and entrepreneurs.

These tribunals mark a step in the right direction, nonetheless, this does not resolve several problems that remain unsolve.⁵³

viii. Custom and Broader Measures

The other role of the enforcement structure is to regulate importation and exportation of counterfeits through the Pakistani borders.⁵⁴ As an example, when a company learns that an individual is bringing counterfeited versions of their branded products into Pakistan, they could report it to the customs department. The company should prove it, with either a sample of the products, or the document of the trademark registration and in some cases a security bond can be set in case the goods are seized falsely.⁵⁵

1.2.17 Institutional Weaknesses

Weak and poorly structured institution is one of the major issues in the IP system of Pakistan. As an example, it does not have sufficient examiners to verify and grant a patent or trademark. Due to this shortage, applicants can at times take over 3-5 years to even get a decision on their IP application. Such a delay puts off the inventors and the businesses to seek protection.⁵⁶

1.2.18 Slow Enforcement

Although the intellectual property of an individual may be legally established then another large problem is to enforce that right. Legal system in Pakistan is slow and prone to being overburdened and it takes many years in courts to end the IP cases. The panel of judges which submit to intellectual property law is very insufficient and many generic judges are ill prepared

⁵¹ Murtiza. "Intellectual property organization of Pakistan," 36-46.

⁵² Jan, Junaid. "The Development of Intellectual Property Laws in Pakistan: Challenges and Suggestions." *Pakistan Journal of Criminal Justice* 2, no. 1 (2022): 36-44.

⁵³ Murtiza, Ghulam, and Ghous Muhammad. "The implementation of intellectual property laws in Pakistan-impediments and suggestions for solutions." *Pakistan Vision* 20, no. 1 (2019):

⁵⁴ Mehmood. "The variability of IPO issuance," 1025-1040.

⁵⁵ Pakistan Enforcement of Trademarks Ordinance 2001 as of April 12, 2004. *Newsletter*.

<https://njqip.com/newsletters/2004/04/pakistan-enforcement-of-trademarks-ordinance-2001-as-of-april-12-2004/>

⁵⁶ Murtiza, Ghulam, Qamar Abad, and Muhammad Amir Shahzad. "Intellectual property organization of Pakistan (IPO-Pakistan): an analysis of its performance from 2014-2017." *Pakistan Languages and Humanities Review* 2, no. 2 (2018): 36-46.



to deal with such technical cases. Due to this, the court process becomes complex and time consuming.⁵⁷

Low Public Awareness and High Piracy

The other major problem facing in Pakistan is that a good number of people lack mind knowledge of intellectual property rights or are unaware of its significance. It can be observed at every socio economic status not just the students and shopkeepers but also small business owners, and even creators of content. Due to this, it is so highly popular that there is software piracy, movie piracy, illegal photocopying of books, and selling of fake branded goods.⁵⁸

Legal Conflicts and Overlaps

Conflicting laws, and lack of definitions, and overlapping of jurisdiction are also some of the issues being experienced in the legal system of Pakistan on the issue of intellectual property litigation. There is confusion in that various laws apply different terms or definition to the same IP rights such as design or trademark in certain jurisdictions. As an example, one design can be covered by both copyright and trademarks and there can be no clarity about which law is more relevant to the case.⁵⁹

Alignment and Tensions Between Pakistani IP Laws and Islamic Thought

The laws on intellectual property (IP) in Pakistan are created in the crossroads between the Western legal systems and Islamic traditions grounded on the Quran, Sunnah, and traditional Islamic law (fiqh). This bicultural background usually leads to harmony and conflict in terms of property rights, social good, and morality in the context of intellectual productions.⁶⁰

Compatible Aspects

These are the compatible aspects:

i. Recognition of Ownership and Authorship

The Islamic law embraces the principle of mal (property) and covers such intangible resources as intellectual works. This is in line with the contemporary IP legislation that provides the natural rights of authors and inventors. Legislations in Pakistan such as Copyright Ordinance and Patent Act reflect this fact and provide creators with exclusive rights over their creations.

ii. Prevention of Harm and Injustice

Sharia is based on the theory of darar, which means avoiding monetary loss due to piracy and plagiarism. The point of not being authorized to use a creative work is considered ghasb (usurpation), this is against the rights of the creator and therefore an injustice in the society. In line with the imperatives of Islamic ethics, the legal structure of Pakistan criminalizes the infringements.

⁵⁷ Gujjar, Muhammad Waqas, Syad Arslan Hussain, Attiya Anees, and Tahir Mahmood Gondal. "Intellectual property laws in Pakistan." *Bulletin of Business and Economics (BBE)* 13, no. 3 (2024): 282-289.

⁵⁸ Rana, Laiba Afzal. "Navigating Legal Challenges as a New Startup in Pakistan: An Analysis of the Regulatory Framework." *Pakistan JL Analysis & Wisdom* 1 (2022): 93.

⁵⁹ Javid, Attiya Yasmin, and Henna Malik. "Performance and capital structure of IPOs in Pakistan from 2000 to 2015." *Financial Innovation* 2 (2016): 1-19.

⁶⁰ Murtiza, Ghulam. "Intellectual property organization of Pakistan," 36-46.



iii. Moral and Economic Incentives

The Islamic traditions encourage innovation (ijtihad) and acknowledge that safeguarding intellectual output adds development to the society. Exemptions The Pakistani IP laws give time-constrained monopolies, like 20 year patents, which will be within the scope of Shariah in encouraging the welfare of the community (maslahah).⁶¹

Points of Tension

These are the points of tension:

Duration of Rights vs. Perpetual Communal Benefit

The Islamic law involves community interest rather than private ownership indefinitely. Whereas, the Pakistani patents have a specified expiry time after a definite time frame, the Shariah prescribes that the vital information, such as the knowledge, could not be covered by the guidelines of the patent. The formulas of medicine must end up serving humanity in general. Such as in the case of insulin patents in Pakistan, people cannot use insulin even though diabetes is very common across the population in this country.⁶²

Commercialization of Religious Knowledge

The whole copyrighting of Islamic works, including the translation of the Quran or religious decrees (fatwah), generates controversy. The classical Islamic jurisprudence does not represent religious knowledge as the personal possession but as a trust (waqf) in common good. In Pakistan commercial publishers copyright such texts, and televangelists sell sermons, which bring up the question of what is ethical. The Federal Shariat Court has censored the practices as misuse of religious teaching in the name of money.⁶³

Ownership of Public Interest Information

Concerns have been expressed about the patenting of basic commodities including seeds, medicines, and environmental technologies that can get into conflict with the principle of maṣlahah (public welfare). According to Shariah worldwide necessities such as food and health needs should not be inaccessible. Pakistan patent laws, however, permit corporations to commercialize the development of genetically enhanced crops and life saving drugs, which is strictly unethical as corporation hoard valuable resources .

Use of Custom (Urf) and Public Welfare (Maslahah)

The Islamic law is not extreme. It is known to be adjusting to various times, places, and needs of the society. In Islamic jurisprudence, two significant devices which are adopted in order to accomplish this flexibility are the use of urf (custom) and maslahah (public interest or public welfare). The above two tools enable the Islamic law to be applicable in contemporary challenges, such as the protection and control of intellectual property (IP).⁶⁴

⁶¹ 257 Malkawi, Bashar H. "The alliance between Islamic law and intellectual property: Structure and practice." *U. St. Thomas LJ* 10 (2012): 618.

⁶² David, Matthew, and Debora J. Halbert. "Intellectual property & global policy." *Global Policy* 8, no. 2 (2017): 149-158.

⁶³ Beltrametti, Silvia. "The legality of intellectual property rights under Islamic law." *The Prague Yearbook of Comparative Law* (2009): 55-94.

⁶⁴ Meirison, Meirison, and Zerly Nazar. "Intellectual property rights and monopoly in the perspective of Islamic jurisprudence." *Al-Ahkam* 31, no. 1 (2021): 49-68.



Flexibility Through ‘Urf

The Arabic term, urf refers to custom or local practice. They are the practices and traditions accepted and embraced by a certain society which does not contradict the Islamic teachings in Islamic legal reasoning which are called urf in Islam. When they are of good and do not contravene the Sunnah or the Quran then such customs are permissible and at times they actually become like law. It is therefore indicated that the concept of urf makes the Islamic law embrace and uphold traditional knowledge, cultural expression and community based creativity even when they are not patented according to the present day law system.

Legal Support for Urf in Islamic Thought

Following are the legal support for urf in Islamic thought:

Maslahah as a Balancing Tool

The term Maslahah is translated as the welfare of the community or the public interest. In Islamic legal thought, it is one of the most critical principles in the state where there is no direct text (Quranic verse or Hadith) regarding a particular matter. Maslahah has been applied in fashioning the intellectual property in balancing the private rights (such as the rights of the inventors or businesses) and the informational public needs (such as health, education, and religious enlightenment).⁶⁵

Major aspects of the use of maslahah in the context of IP include the following:

i. Access to Medicine and Healthcare

There have been examples in Pakistan of foreign drug companies having patents on life saving drugs e.g on hepatitis C or insulin. The prices charged on these drugs were too high for the mere mortals to afford. What Islamic scholars and activists noted is that this contravenes the postulate of public welfare. According to maslahah and *darurah* (necessity), Pakistani courts condoned compulsory licensing that is the government permitted the local firms to manufacture the drug that sold at a cheaper rate, even at the expense of patent right.⁶⁶

ii. Education and Public Knowledge

The other case is the use of copyrighted books in learning. In most of the poor schools and other religious bodies (madaris), students are not able to buy costly textbooks and other sources of Islamic literature. Copyrighting in a stricter way will not allow people to learn. According to Islamic principles, knowledge is meant to be shared and not restricted particularly where benefits accrue to the whole of the ummah (Muslim community).

iii. Legal Technology and Internet Access

During the modern period, much intellectual property is digitalized, including software programs, mobile applications, e-book, and online lecturing platforms, etc. Most of the valuable information in Islam as Quran applications, Hadith collections, the libraries, and

⁶⁵ Malkawi, Bashar H. "Intellectual property protection from a Sharia perspective." *Southern Cross University Law Review* 16 (2013): 87-121.

⁶⁶ Beltrametti, Silvia. "The legality of intellectual property rights under Islamic law." *The Prague Yearbook of Comparative Law* (2009): 55-94.



courses, among others, are usually available as paid subscriptions that people in poor neighborhoods or developing nations cannot access.⁶⁷

iv. Food and Agriculture Patents

The intellectual property rights to knowledge in the agricultural sector and in particular to genetically modified (GM) seeds or new-fangled farming technologies have been a matter of grave concern in terms of ethics. In case seeds in crops such as wheat or rice are patented by big companies, then patents owners can demand high prices which are above the capability of small farmers to pay.⁶⁸ According to the principles of *maslahah* (public welfare), Islamic scholars believe that such IP rights may be reduced or skirted around to safeguard poor farmers and ascertain continuity of food supply.⁶⁹

v. Protection from Religious Exploitation

There have been attempts in recent years by certain companies to attempt to trademark words such as *halal*, *shariah* compliant or Islamic and then copyright these words so that anyone did not use them unless they paid licensing fees. This has raised a great concern among researchers and the masses in Pakistan since it seems to subject religious terms to personal property. Pakistan Courts have reacted to this by referring to the concept of *maslahah* to inform its rulings. They do not protect the trademarks to prevent fraud only or to make sure that the *halal* products possess adequate standards, not to make money.⁷⁰

vi. Combining Urf and Maslahah in Legal Decisions

The cooperation of *urf* and *maslahah* is one of the most excellent aspects of Islamic legal thinking. *Urf* assists in getting to know what is generally accepted as good and fair by people and *maslahah* assists in knowing what is in the interest of the population. Such a combination is highly beneficial in contemporary issues such as intellectual property which was not prevalent in the first few centuries of Islam.⁷¹ As an illustration, the creation and distribution of digital Quran apps can be discussed in terms of *urf* as a well-established and legitimate means of acquiring knowledge in our day and age and in the context of *maslahah* as a method of religious teaching and education. Any such statute thus restrictions of such access must be revisited based on these two principles.⁷²

Scholarly Support for These Principles

The role of *urf* and *maslahah* in making Islamic law responsive to the needs of the modern world is written by many Islamic scholars. In Pakistan, the Council of Islamic Ideology (CII),

⁶⁷ Khan, Javaid Iqbal, and Naveed Ahmad. "Intellectual property rights in Islam: A perspective." Available at SSRN 2576931 (2013).

⁶⁸ Beltrametti, Silvia. "The legality of intellectual property rights under Islamic law." *The Prague Yearbook of Comparative Law* (2009): 55-94.

⁶⁹ Elmahjub, Eziuddin. "An Islamic perspective on the theories of intellectual property." *In Copyright perspectives: past, present and prospect*, pp. 51-84. Cham: Springer International Publishing, 2015.

⁷⁰ Naim, Nadia, and Noor Suhaida Kasri. "Intellectual Property and Islamic Finance Policy Framework: Opportunities and Challenges for a New Islamic Intellectual Property Finance Framework." *Thunderbird International Business Review* (2025).

⁷¹ Khan. "Intellectual Property Rights," 2013.

⁷² Malkawi, Bashar H. "The alliance between Islamic law and intellectual property: Structure and practice." *U. St. Thomas LJ* 10 (2012): 618.



and the Federal Shariat Court. There is an intense discussion in Pakistan whether the translations of Quran and its religious commentaries should be copyrighted. Publishers feel it is their right to get a reasonable pay (ujrat al-mithl) based on their efforts in writing translation and editing, whereas the main focus of most scholars is that no matter how good any publication is in terms of knowledge about Islam or anything relating to Islam, money should not be a factor.⁷³ The Islamic concept of maslahah (public benefit) is also applied in courts to ensure that the avenues of Islamic learning are not closed or barred to the students and the poor classes and yet honor the work of the authors.⁷⁴

Medicine Patents and Access

The cost of patent medicine in Pakistan has brought trouble as most citizens cannot afford to use the same despite the drug being necessary in saving their lives as in the case of the hepatitis C treatment drug.⁷⁵ Scholars applied such principles to Islamic law as *darurah* (necessity), *maslahah* (public welfare) that state that, in a case where patents prevent access to treatment, it is important to safeguard life and relieve one of hardship at all costs, even against the economic interests of a business.⁷⁶

Halal Trademarks and Exploitation

The trademarks applied on the halal products commercially create the issue of selling off religious symbols. Although it is vital to prevent the presence of near-like products in the market, the treatment of religious feelings (*tajassus*) by taking premium offers goes against the detroit ethical standards. Future legislative amendments might also help coordinate the IP regulation with the Shariah by incorporating the spirit of *maslahah* as a statutory balancing rule and by safeguarding the communal welfare in the nascent context of intellectual property⁷⁷

Analysis of Gaps in Pakistan's Intellectual Property Legal System Through an Islamic thought

The established intellectual property (IP) law system in Pakistan has expanded over the past few years but it lacks a number of gaps in the study in the light of Islamic doctrine and the Constitution of Pakistan. The existing laws are highly rooted in the western guidelines and have not been assessed using the Shariah prism.⁷⁸

Constitutional Non-Compliance

Article 227 in the Constitution of Pakistan says that every legislation in the nation will adhere to teachings of Islam. Such teachings can be found in Quran and Sunnah (the sayings and examples of the Holy Prophet Muhammad (PBUH)). This implies that when the government

⁷³ 269 Malkawi H. "The alliance between Islamic law," 618.

⁷⁴ Khan, Ali. "Islam as Intellectual Property." *Cumb. L. Rev.* 31 (2000): 631.

⁷⁵ Khan, Javaid Iqbal, and Naveed Ahmad. "Intellectual property rights in Islam: A perspective." Available at SSRN 2576931 (2013).

⁷⁶ David, Matthew, and Debora J. Halbert. "Intellectual property & global policy." *Global Policy* 8, no. 2 (2017): 149-158.

⁷⁷ Rana Ejaz Ahamd, Abida Ejaz. "Commercialization of Religion in Pakistan", *American International Journal of Pakistan in Contemporary Research*, 2, September 2011.

⁷⁸ Melendez-Ortiz, Ricardo, and Pedro Roffe, eds. *Intellectual property and sustainable development: development agendas in a changing world*. Edward Elgar Publishing, 2009.



comes up with new laws, it ought to ensure that the laws do not contravene Islamic rules and values. Patents Ordinance (2000), Trade Marks Act (1940) and (1962) where we notice that the laws were formulated without consulting the Islamic scholars.⁷⁹ These laws were developed on the basis of Western developed legal systems which are predominantly secular and this implies they are not founded on any religion. Consequently these laws lack significant Islamic principles such as:

- **Mal (مال):** This is something which is owned or something possessed. There are only a few things that qualify as lawful property in Islam.
- **Hikr (حكر):** This refers to the right to enjoy something without owning like renting a book or a house.⁸⁰

These are Islamic regulations that aid in the definition of ownership and the things that cannot be owned as well as ownership to be observed. The IP laws in Pakistan were not created taking into consideration these concepts hence are not completely Islamic in nature. This indicates the disobedience of the Constitution which explicitly states that every law must be guided by Islam.⁸¹

Secular Legislative Processes

The second significant problem is in the fact that the procedure of law-making in Pakistan in terms of IP does not involve any type of religious examination. This implies that when new laws or amendment are developed they are not screened by a Shariah committee or any other Islamic scholars. Intellectual Property Organization (IPO) of Pakistan does not have any official Islamic advisory board that considers these laws to ensure that they are in compliance with the Quran and Sunnah.⁸²

In an example, a company in Pakistan that deals with the selling of alcohol brands or offers gambling activities which are obviously haram (forbidden) in Islam, can still have their company being trademarked. This is a major issue as Islam never permits alcohol and gambling and since we are letting these businesses be legally allowed to protect their brands, this puts them at a greater advantage in the market.⁸³

Lack of Collaboration with Religious Scholars

Legislators as well as religious scholars do not have much collaboration and operate in different spheres. What it implies is that religious institutions lack awareness of contemporary legal matters and Islamic wisdom is not being used to the advantage of the legal system. Some

⁷⁹ Malkawi, Bashar H. "The alliance between Islamic law and intellectual property: Structure and practice." *U. St. Thomas LJ* 10 (2012): 618

⁸⁰ Khan, Ali. "Islam as Intellectual Property." *Cumb. L. Rev.* 31 (2000): 631.

⁸¹ Khan, Javaid Iqbal, and Naveed Ahmad. "Intellectual property rights in Islam: A perspective." Available at SSRN 2576931 (2013).

⁸² Ghosh, Rishab, and Luc Soete. "Information and intellectual property: the global challenges." *Industrial and Corporate Change* 15, no. 6 (2006): 919-935.

⁸³ Nayer, Kim. "Globalization of information: Intellectual property law implications." (2002).



of its provisions have been shared by the Federal Shariat Court.⁸⁴ Islamic views regarding intellectual property, although have not been incorporated into the legislations formally.⁸⁵

Missed Hybridization Opportunities

The existence of this gap has meant that Pakistan has failed to develop an ethical framework where both Islamic and modern concepts of the law can be merged together.⁸⁶ For example:

- Pakistan has no formal fatwa institutions to handle the conflicts of IP.
- Law schools fail to give conducive skills on Islamic perception of copyright, patents or trademarks.⁸⁷
- Such foregone avenues of action complicate the creation of a set up where Islamic values such as adl (justice), ihsan (excellence) and maslahah (public welfare) can be used to determine how the IP issues are handled.⁸⁸

Western IP Thought

Lack of Contextualization for Pakistani Values

The intellectual property (IP) laws of Pakistan were largely a copy of the developed nations such as the United Kingdom or the United States. The culture, the beliefs and the laws of these countries are not Islamic. These foreign laws which are adopted in Pakistan are not altered to suit our local values, traditions, and religious teachings.⁸⁹ Consequently, it is evident that there is a discrepancy between what such laws permit and what Islam promote. As an example, a content that can insult religion, encourage indecent conducts or propagate immoral thought can be safeguarded by copyright law. With no filters regarding Islamic teachings in the law, there is hence a possibility of such harmful contents to get full protection by the law. It may cause conflict among people and in the society as the people may feel religion says something that is legally safe to express.⁹⁰

Inadequate Moral Filtering

The other issue of Pakistan with regard to current IP laws is the absence of moral or religious filter. Nothing in the current patent, trademark, or copyright regulations prevents individuals to register or shelter things that are obviously incompatible with Islam.⁹¹ As an example, traders can trademark a product such as alcohol or pork although both are truly unforgivable (haram) in Islam.⁹² These examples indicate that the present legal system is not compatible with the objectives

⁸⁴ Jamar, Steven D. "The protection of intellectual property under Islamic law." *Cap. UL Rev.* 21 (1992): 1079.

⁸⁵ Ebrahim, Tabrez Y. "Islamic Intellectual Property." *Seton Hall L. Rev.* 54 (2023): 991.

⁸⁶ Netanel, Neil, ed. *The development agenda: global intellectual property and developing countries.* Oxford University Press, 2009.

⁸⁷ Lehman, Bruce A. "Global Intellectual Property in the Twenty-First Century." *Fordham Intell. Prop. Media & Ent. L.J.* (1996): 9.

⁸⁸ Jamar, Steven D. "The protection of intellectual property under Islamic law." *Cap. UL Rev.* 21 (1992): 1079.

⁸⁹ David, Matthew, and Debora J. Halbert. "Intellectual property & global policy." *Global Policy* 8, no. 2 (2017): 149-158.

⁹⁰ Schoen, Robin A., Mary E. Moguee, and Mitchel B. Wallerstein, eds. *Global dimensions of intellectual property rights in science and technology.* National Academies Press, 1993.

⁹¹ Khan, Ali. "Islam as Intellectual Property." *Cumb. L. Rev.* 31 (2000): 631.

⁹² 287 Malkawi, Bashar H. "The alliance between Islamic law and intellectual property: Structure and practice." *U. St. Thomas LJ* 10 (2012): 618.



of maqasid al-shariah the higher objectives of Islamic law whose objective is to safeguard religion, human life, moral dignity and the general good.⁹³

Societal Issues and Misuse Widespread Piracy of Islamic Material

According to the minds of many people in Pakistan, there is no harm in copying, sharing or even using Islamic books, lectures or videos and not going to the author or the publishing company. The content is on Islam and since it is the free will of such people, they consider it should be accessible to anyone.⁹⁴ This issue is quite widespread and particularly in Islamic literature and media where entire books are printed and sold or distributed over the internet without giving credit to the original author. The other sever problem in Pakistan is software piracy, in which over 80 percent of the software in Pakistan is pirated. These are education, business, and even religious software.⁹⁵

Exploitation Through Monopolies

The other issue with the functioning of intellectual property laws in Pakistan is that at times it permits monopolies which imply a full control of a product or service by a single company or an individual and restrict the other people to use the same. This form of system derives its origin in western legal concepts, and it is not suitable to comply wholly with Islamic principles.⁹⁶ This makes it difficult to learn and benefit the knowledge of students, teachers, or the average people. In the same way, firms are able to patent the seeds and prevent the small farmers to use them freely. This may be disastrous to poor farmers, lead to food shortage and cause inequity in the society.⁹⁷ Islam refers to such harmful monopolies as ihtikar and they are forbidden in Islam. Islam instructs about equity, distribution of wealth, and assisting the individuals in need.⁹⁸ Therefore, when intellectual property rights are used to deny the provision of basic human necessities such as health, food, or knowledge, they are fighting the Islamic idea of fairness and societal benefit. Pakistan should re examine these legislations and ensure that they are not bringing pain and injustice to the citizens.⁹⁹

Need for a Dual Framework

We should have a system that protects the Constitution of Pakistan and the teachings of Islam so as to have better and more appropriate laws in Pakistan to ensure that our intellectual property (IP) are much better to serve their country.¹⁰⁰ It is possible to do it by making some essential steps. The first is that the government needs to establish a Shariah Review Board within the Intellectual

⁹³ Lewis, James Andrew. *Intellectual property protection: promoting innovation in a Global Information Economy*. CSIS, 2008.

⁹⁴ Mandel, Gregory N. "Leveraging the International Economy of Intellectual Property." *Ohio St. LJ* 75 (2014): 733.

⁹⁵ Ratnawati, Erna Tri Rusmala, and Rizqi Samera Al Farizi. "Protection of intellectual property rights in the perspective of Islamic law." *Millah: Journal of Religious Studies* (2023): 337-408.

⁹⁶ Yueh, Linda Y. "Global intellectual property rights and economic growth." *Nw. J. Tech. & Intell. Prop.* 5 (2006): 436.

⁹⁷ Jamar, Steven D. "The protection of intellectual property under Islamic law." *Cap. UL Rev.* 21 (1992): 1079.

⁹⁸ Helfer, Laurence R., and Graeme W. Austin. *Human rights and intellectual property: Mapping the global interface*. Cambridge University Press, 2011.

⁹⁹ David, Matthew, and Debora J. Halbert. "Intellectual property & global policy." *Global Policy* 8, no. 2 (2017): 149-158.

¹⁰⁰ Ghosh, Rishab, and Luc Soete. "Information and intellectual property: the global challenges." *Industrial and Corporate Change* 15, no. 6 (2006): 919-935.



Property Organization of Pakistan (IPO). All IP laws, rules and registrations should be passed through this board to ensure that their compliance with Islamic rules is maintained. Second, parliamentary committees that make decisions on new laws or change in old laws should include religious scholars.¹⁰¹ Such scholars are able to advise and tell whether the laws are in agreement with the Quran and Sunnah. Third, the law must be expressly prohibited to provide protection of the products or contents that are harams like the alcohol-related products, gambling related, pornography-related, or the content of indecency.¹⁰²

Learning from Other Muslim Countries

Pakistan is not left to cover these problems on its own. A lot of other countries that are mostly Muslim have already taken dramatic measure in making their IP systems more Islamic and we can learn through the experience of those countries. As an example, Iran prohibits genetic engineering patents in the case that they are contradictory to Islamic values or ethics. This indicates that science and religion are compatible provided attention is given when enacting law.¹⁰³ Special fatwa councils (councils which issue Islamic rulings on new cases of law including those that concern IP) are found in Malaysia.¹⁰⁴ These countries demonstrate that modern IP laws can take place in harmony with Islamic values. By studying and implementing similar strategies, Pakistan will have a better, more just, fairer and religiously sound IP system that will be socially and globally beneficial not only to creators but also to society.¹⁰⁵

CONCLUSION

The existing intellectual property system in Pakistan does not fully align with Islamic legal principles. While international treaties and modern legal practices have influenced the country's IP laws, they often overlook the ethical and religious values rooted in Islam. The absence of Islamic guidance in current IP legislation reflects a legal gap that needs attention. To ensure justice, fairness, and religious compliance, Pakistan must work towards reforming its IP laws by integrating Islamic values with modern legal requirements, thereby creating a system that benefits both creators and society as a whole.

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¹⁰¹ Khan, Ali. "Islam as Intellectual Property." *Cumb. L. Rev.* 31 (2000): 631.

¹⁰² Bird, Robert, Robert Bird, and Subhash C. Jain, eds. *The Global challenge of intellectual property rights*. Edward Elgar Publishing, 2009.

¹⁰³ Azmi, Ida Madieha BT. "Intellectual property laws and Islam in Malaysia." PhD diss., Queen Mary University of London, 1995.

¹⁰⁴ David, Matthew, and Debora J. Halbert. "Intellectual property & global policy." *Global Policy* 8, no. 2 (2017): 149-158.

¹⁰⁵ Helfer. "Human rights and intellectual property," 2011.



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