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Criminal Liability for Infringement of Intellectual Property Rights: A Comparative Study in Islamic Jurisprudence and Afghan Law

Bakhtullah Ahmadzai

Master of Laws (LLM), Department of Judgment and Prosecution, Nangarhar University, Jalalabad, Afghanistan

* Corresponding Author: **Bakhtullah Ahmadzai**

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Abstract

This research examines the provisions related to the infringement of intellectual property rights in Islamic jurisprudence and Afghan law. With the increase in scientific and creative production and the expansion of the digital environment, intellectual property has gained special importance as an intangible yet valuable right. The need for this study arises from the fact that comparative and analytical research between jurisprudential and legal perspectives—particularly regarding violations and their consequences—is relatively limited. This study employs a qualitative, analytical, and comparative methodology. Data were collected from principles of Islamic jurisprudence, Afghan laws, and relevant academic literature, and analyzed through descriptive and inferential approaches. The findings of the research indicate that intellectual property is recognized in both systems as a legitimate and protectable right. In Islamic jurisprudence, the legitimacy of this right is based on general legal maxims such as “There should be neither harm nor reciprocating harm” (la darar wa la dirar) and “Liability accompanies gain” (al-ghurm bil-ghunn). In contrast, Afghan law explicitly regulates this right and provides specific legal and criminal mechanisms for its protection. Similarly, infringement of intellectual property is considered unlawful in both systems. In Islamic jurisprudence, it is addressed through compensation (Daman) and discretionary punishment (ta'zir), while in Afghan law, it is dealt with through criminal penalties. In conclusion, although there are differences in the mechanisms of implementation between the two systems, they are fundamentally aligned in principle. It is recommended that the enforcement of laws be strengthened, public awareness be increased, and further research be conducted on digital intellectual property rights.

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Introduction

Intellectual property is considered one of the fundamental elements of the development of human civilization, as human intellectual, scientific, and creative efforts are protected within its framework. Although the concept of intellectual property is explicitly addressed in modern legal systems, its roots can be traced throughout human history, particularly when human innovations in the fields of science, literature, and industry began to be recognized as valuable. In Islamic jurisprudence, although the term “intellectual property” is relatively new, jurists have paved the way for its legitimacy through general principles such as the protection of wealth, the prevention of harm, and respect for rights. Likewise, at the level of modern states—particularly in Afghan law—intellectual property rights are regulated through specific legislation that provides a legal framework for the protection of intellectual productions (Jalal & Momand, 2024) ^[12].

The value of intellectual property rights lies in the protection of human intellectual output and in creating a foundation for innovation, invention, and scientific progress. When the rights of a writer, inventor, or artist are protected, they are able to continue their scientific and creative efforts with confidence (Akhtar & Niazi, 2024). In the present era, due to technological advancement and the rapid dissemination of information, violations of intellectual property rights have increased. Unauthorized copying, publication, distortion, and improper citation are among the issues that lead to the infringement of these rights. Therefore, it is necessary to examine these violations from the perspectives of Islamic jurisprudence and Afghan law in order to raise legal awareness in society and prevent such crimes.

The main objectives of this article are as follows: to clarify the concept of intellectual property and explain its types; to examine the legitimacy and support of intellectual property rights in Islamic jurisprudence; to analyze intellectual property rights in Afghan law; to describe the types of infringement against intellectual property and their rulings; and to highlight similarities and differences between Islamic jurisprudence and Afghan law. Intellectual property refers to legal rights that arise from a person's intellectual and mental activities, such as authorship, invention, artistic works, and trademarks. These rights enable the owner of a work to benefit materially and morally from it and to prevent others from unauthorized use. Intellectual property is generally divided into two main categories: industrial property (such as inventions and trademarks) and literary and artistic property (such as authorship and artistic works) (Wasiq, 2023)^[23].

In the present time, although intellectual property rights are legally recognized, there is still insufficient public awareness regarding their importance. Many people lack adequate knowledge about the significance and legal protection of intellectual property, which results in widespread violations of these rights (Pakeeza, 2025)^[18]. On the other hand, various forms of infringement, such as theft, usurpation, unauthorized publication, and distortion of works, are observed in practice, yet public understanding of the legal rulings related to these crimes remains limited. Furthermore, the extent of harmony and application between Islamic jurisprudence and positive law in this field is an important issue that has not yet been sufficiently clarified. Therefore, this study seeks to examine these issues and provide a scientific and legal analysis for their resolution (Amarkhil, 2025).

Literature Review

The issue of intellectual property rights occupies a significant place in contemporary legal literature, and numerous researchers have attempted to examine its various dimensions. According to the SPIDER framework, most of these studies, in terms of *Sample*, focus on intellectual property in general. The *Phenomenon of Interest* is mainly centered on definition, types, and legal recognition, while the aspect of infringement and its legal consequences has received comparatively less attention.

Fazli (2017)^[7], in his work, provides a general analysis of intellectual property rights. The sample of his study includes intellectual property in general, while the phenomenon of interest revolves around its definition and classification.

Methodologically, he employs a library-based and analytical approach, and his evaluation is primarily conceptual. However, his study is limited in that it does not extensively address the aspect of infringement and punishment. Nasih (2012) also focuses on the definition and classification of intellectual property rights. According to the SPIDER framework, his study is theoretical in nature, and the evaluation is conceptual. Although he provides a clear explanation of the fundamental concepts of intellectual property, he does not conduct a comparative analysis between Islamic jurisprudence and positive law, nor does he examine the legal rulings on infringement.

Naizi (2010)^[13], in his earlier work, explores the definition, types, and characteristics of intellectual property. His research design is analytical, and the evaluation is general in nature. While he clarifies the conceptual foundations of the topic, he does not provide an in-depth discussion of criminal aspects or penalties related to infringement. In another work, Nasih (2012)^[14] examines intellectual property rights from both Islamic jurisprudence and positive law perspectives. According to the SPIDER framework, this study is also theoretical and analytical; however, its evaluation remains largely descriptive. Although both legal systems are addressed, the analysis of infringement rulings is limited.

Irfan (2004)^[11] focuses specifically on trademarks and trade secrets. The sample of his study is narrow, and the phenomenon of interest is limited to a subfield of intellectual property. The limitation of this study is that it does not address the broader framework of intellectual property rights or issues related to infringement. Shahrani (2008)^[21] examines the rights of invention and authorship exclusively from the perspective of Islamic jurisprudence. According to the SPIDER analysis, his study is jurisprudential and theoretical in nature, and its evaluation is based on Shariah analysis. However, it lacks consideration of positive law and does not provide a comparative perspective between legal systems.

Zuhayli (2012)^[24] also studies intellectual property rights from an Islamic jurisprudential perspective. His work is deeply rooted in fiqh analysis, and the evaluation is strong in terms of legal reasoning; however, it does not incorporate modern legal frameworks or address practical criminal sanctions for infringement. Shams (2013)^[22] analyzes the rights of authors and inventors from an Islamic jurisprudential perspective. According to the SPIDER framework, his study is also theoretical and fiqh-based, but it does not clearly establish a connection with contemporary legal systems, and its treatment of infringement issues remains limited.

Hashimy (2024)^[9] focuses solely on trademarks and trade secrets. His study has a narrow scope and does not cover other dimensions of intellectual property. This highlights the need for a more comprehensive study of the subject. Sattar (2014)^[20] examines authorship and related rights primarily from a jurisprudential perspective. The SPIDER analysis shows that his evaluation is limited, and its applicability to modern legal systems is relatively weak. From the overall review of the above studies, it becomes evident that most research has focused on the definition, types, and legitimacy of intellectual property rights, while the analysis of infringement and its legal consequences remains weak.

Furthermore, the majority of studies either focus solely on Islamic jurisprudence or positive law, without providing a comparative analysis between the two systems. Therefore, this article seeks to address these gaps by examining both Islamic jurisprudence and Afghan law in an integrated manner and by providing a detailed analysis of the legal rulings on intellectual property infringement, in order to present a comprehensive and scholarly perspective on the subject.

Concepts and Foundations of Intellectual Property

Linguistically, “intellectual” refers to something non-material that is related to thought and the mind, while “property” refers to a person’s right of control and disposal over something (Amid, 2010; Nezamuddin, 2011) ^[6, 17]. In technical terms, intellectual property is the legal relationship that arises between a person and their intellectual or creative work, through which the owner of the work is entitled to benefit from it both materially and morally, and to prevent others from unauthorized use (Nasih, 2012) ^[14].

In Islamic jurisprudence, a “right” refers to an entitlement granted by the Lawgiver (Shari’ah) to a person, enabling them to exercise authority or privilege over something (Fazli, 2017) ^[7]. From a legal perspective, a right is a competence or privilege recognized and protected by law, allowing a person to benefit from a specific object (Niazi, 2010). According to both definitions, a right is a legally and religiously protected entitlement with enforceable validity. Therefore, intellectual property is also considered a complete legal right. Intellectual property is characterized by several key features: intangibility (Nasih, 2010) ^[14], exclusivity (Niazi, 2010), economic value (Nazir, 2010), limited duration (Nasih, 2012) ^[14], transferability (Irfan, 2004) ^[11], and a personal/moral dimension (Zuhayli, 2012) ^[24]. These characteristics demonstrate that intellectual property is a multidimensional right with both economic and moral significance.

The differences between tangible and intellectual property can be summarized as follows: tangible property is physical, whereas intellectual property is intangible (Nezamuddin, 2012) ^[17]; tangible property is consumed or diminished through use, whereas intellectual property does not perish (Nasih, 2010) ^[14]; and intellectual property is often time-limited, whereas tangible property may be permanent (Naizi, 2010) ^[13]. These distinctions indicate that intellectual property requires specific legal regulation due to its unique nature compared to material property. Based on the above analysis, intellectual property is a legitimate, intangible, and valuable right that is recognized as protectable under both Islamic jurisprudence and modern legal systems (Zuhayli, 2012; Nasih, 2012) ^[24, 14].

Legitimacy of Intellectual Property (Jurisprudential and Legal Perspective)

The legal maxim “La darar wa la dirar” (no harm shall be inflicted or reciprocated) is one of the fundamental principles of Islamic jurisprudence (Zuhayli, 2012) ^[24]. According to this principle, no one has the right to cause harm to another person, whether material or moral. In the context of intellectual property, unauthorized copying or publication of another person’s scientific or artistic work constitutes harm to the economic and moral interests of the original owner.

Therefore, such actions are prohibited under this principle, which provides a strong Shari’ah-based foundation for the protection of intellectual property.

The maxim “al-ghurm bil-ghunm” (liability accompanies gain) means that benefit is justified by effort and responsibility (Wasiq, 2023) ^[23]. In other words, whoever exerts effort is entitled to the outcome of that effort. In the context of intellectual property, a writer, researcher, or inventor who invests intellectual labor deserves exclusive rights to the benefit of their creation. If another person unlawfully benefits from it, such an act contradicts principles of justice. This maxim, therefore, affirms the legitimacy of intellectual ownership and supports exclusive rights over intellectual products (Jalal & Momand, 2024) ^[12].

In classical Islamic jurisprudence, “property” was generally limited to tangible assets. However, contemporary jurists have expanded this concept to include anything that has value and utility (Zuhayli, 2012) ^[24]. According to this broader definition, intellectual productions such as books, articles, inventions, and artistic works are also considered property because they have economic value, are usable, and can be owned. This conceptual expansion allows intellectual property to fall under Shari’ah protection (Nazeer, 2014) ^[16]. Article 47 of the Constitution of Afghanistan explicitly states that the state shall support scientific, literary, and artistic works and guarantee the rights of authors, inventors, and innovators (Constitution of Afghanistan, 2004, Art. 47). This provision establishes the primary constitutional foundation for the legitimacy of intellectual property in Afghanistan. The Afghan Copyright Law provides a specific legal framework for the protection of intellectual property rights. It grants the owner of a work the right to control its reproduction, publication, and distribution (Saidi, 2021) ^[19]. This law plays a crucial role in practical enforcement by defining rights, identifying violations, and establishing penalties.

In addition, other legal instruments also support intellectual property protection, such as the Afghan Penal Code, which considers intellectual property infringement a criminal offense (Naizi, 2010) ^[13], and the Civil Code, which regulates the principle of compensation for damages (Saidi, 2021) ^[19]. Together, these laws form a comprehensive legal system that provides both civil and criminal protection for intellectual property.

According to Article 11 of the Law on the Protection of the Rights of Authors, Composers, Artists, and Researchers, moral rights remain exclusively with the creator and are non-transferable. Furthermore, any use of the work that contradicts its integrity or reputation is prohibited, including distortion or modification (Copyright Law, 2008, Art. 11). Article 47 of the Constitution guarantees support for intellectual production and protection of authors’ rights (Constitution of Afghanistan, 2004, Art. 47), while the Copyright Law provides detailed mechanisms for protection and sanctions against violations.

Article 31 of the Afghan Copyright Law states that any person who, without the written consent of the author, prints, reproduces, publishes, translates, or distributes a work—whether in their own name or another’s—shall be punished with one year of imprisonment and a fine of 100,000 Afghanis (Copyright Law, 2008, Art. 31). Although intellectual property rights are not explicitly and directly

mentioned in the 1355 Hijri-Shamsi Civil Code of Afghanistan, indirect references exist in Articles 45 and 491 under the categories of moral and personal rights. This demonstrates that the law complements Islamic principles, provides practical enforcement mechanisms, and ensures justice.

Types of Intellectual Property

Intellectual property is generally divided into two main categories: industrial property and literary/artistic property, each of which has distinct legal and economic characteristics. Industrial property refers to rights associated with technical innovations and commercial activities, playing a significant role in market competition (Nazeer, 2014)^[16]. An invention is a new technical solution that provides a practical answer to a specific problem. The inventor is granted exclusive rights for a limited period by law, enabling them to obtain economic benefit from their innovation (Nasih, 2012)^[14]. Inventions are an important driver of economic development, as they promote innovation and enhance the value of scientific production. A trademark is a sign, name, or symbol that distinguishes a company or product and facilitates its identification from others (Irfan, 2004)^[11]. Trademarks are of vital importance in market trust and competition, as they build consumer confidence. Literary and artistic property refers to rights related to the creative works of authors, artists, and researchers, such as books, articles, music, and other artistic productions (Nasih, 2012)^[14]. This type of property is known as copyright, which grants the owner control over reproduction, publication, and distribution of their work. Literary and artistic property not only has economic value but is also closely linked to moral rights, such as attribution.

Types of Intellectual Property Infringement

Infringements of intellectual property refer to acts carried out without the permission of the rights holder, thereby violating their legal rights. This area is a crucial part of the study, as it forms the basis for criminal liability. Unauthorized copying occurs when a person reproduces another's work without permission, thereby violating the economic rights of the owner (Saidi, 2021)^[19]. This is one of the most common forms of infringement, particularly in educational and digital environments. Unauthorized publication occurs when a work is distributed or published without the consent of its owner, reducing its market value and harming the owner's source of income. Distortion refers to the alteration or modification of a work in a way that changes its original form (Zuhayli, 2012)^[24]. This not only causes economic harm but also violates the moral rights of the author (Shahrani, 2008)^[21]. Plagiarism is the act of attributing another person's intellectual work to oneself. It is a violation of academic integrity and is considered both an ethical and legal offense. Unauthorized commercial use occurs when someone uses another's intellectual work for commercial gain without permission. This type of infringement causes significant economic harm and undermines fair competition (Nazeer, 2014)^[16]. From the above discussion, it is clear that intellectual property exists in various forms, each with its own legal framework. Similarly, infringement takes multiple forms, some of which because economic damage while others violate moral rights. Therefore, accurate identification of these infringements is essential for determining criminal liability (Amarkhil, 2025).

Criminal Liability, Islamic Jurisprudence Perspective, and Afghan Legal Perspective

Although the term "intellectual property" is not explicitly mentioned in classical Islamic jurisprudence, violations of it give rise to liability based on general legal principles. Theft (sariqah) in Islamic law refers to the secret taking of another's property. While classical definitions were largely limited to material objects, contemporary scholars argue that if intellectual property is included within the broader concept of "wealth (māl)," then its unauthorized appropriation may be analogous to theft (Zuhayli, 2012; Shams, 2013)^[24, 22]. However, since the conditions for hadd punishment (such as protected storage and minimum value) are usually not met in intellectual property cases, discretionary punishment (ta'zīr) is applied instead (Sattar, 2014)^[20].

Destruction (itlāf) refers to causing damage or loss to another person's property. The legal maxim states: "Whoever destroys the property of another is liable for compensation." In intellectual property, distortion, unauthorized publication, and commercial misuse are considered forms of destruction because they harm the economic value of the work (Zuhayli, 2012)^[24]. Denial (jahd) refers to the denial of another person's right or falsely attributing it to oneself. Plagiarism is a clear example of this, as it involves claiming ownership of another's intellectual work, which is both legally and ethically impermissible. Ta'zīr refers to punishments whose measures are not fixed in Islamic law but are determined by the judge based on discretion (Zuhayli, 2012; Saidi, 2021; Sattar, 2014)^[24, 19, 20]. Most intellectual property violations fall under ta'zīr because they: have no fixed legal threshold, vary in nature, and are regulated based on public interest. Compensation (damān) is also a fundamental principle in Islamic law, meaning that anyone who causes harm to another's property is obligated to compensate for the damage (Zuhayli, 2012; Shahrani, 2008; Hashimy, 2024)^[24, 9, 21]. In intellectual property violations, compensation is essential due to the economic harm caused to the rights holder.

Afghan law considers intellectual property infringement a criminal offense and prescribes specific penalties. The Afghan Penal Code recognizes violations of intellectual property rights as crimes and assigns criminal liability for them (Amarkhil, 2025). These provisions form the legal foundation for enforcement and play a deterrent role in preventing violations. The Copyright Law includes specific criminal provisions for unauthorized copying, publication, and use of protected works (Zuhayli, 2012; Sattar, 2014; Nazeer, 2014)^[24, 16, 20]. This law establishes a specialized legal framework for defining and addressing intellectual property infringement. Penalties include financial fines and imprisonment in serious cases. These punishments are designed to: prevent violations, strengthen the rule of law, and ensure justice for rights holders. In addition to criminal sanctions, offenders are also obligated to compensate for damages incurred. This principle aligns closely with the Islamic concept of damān, demonstrating harmony between the two systems (Amarkhil, 2025; Zuhayli, 2012; Shahrani, 2008)^[21, 24].

Materials and Methods

In this study, a qualitative research method has been employed due to the theoretical, legal, and analytical nature of the subject of intellectual property rights.

This topic requires the analysis of concepts, principles, and legal texts rather than numerical data. The research is primarily descriptive and analytical in nature. Relevant materials from Islamic jurisprudence and Afghan law have been collected, explained, and then subjected to comparative analysis. Through this method, the rulings on intellectual property infringement in both legal systems have been examined in a clear and documented manner.

For data collection, a library-based research method has been used. Both primary and secondary sources have been consulted. Primary sources include foundational texts of Islamic jurisprudence, applicable laws of Afghanistan, and official legal documents, while secondary sources consist of academic articles, books, and previous research studies. Efforts have been made to rely as much as possible on authentic sources. However, in cases where access to primary sources was not possible, reliable translated and secondary sources were used. A comparative method has also been applied to highlight similarities and differences between Islamic jurisprudence and Afghan law. This approach helps to identify the strengths and limitations of both legal systems and provides a comprehensive understanding of the subject. In addition, a deductive approach has been used in the analysis. First, general principles and legal rules (such as Islamic jurisprudential maxims and statutory provisions) were presented, and then specific rulings regarding intellectual property infringement were derived based on these principles. Throughout the research process, principles of objectivity, academic integrity, and fair evaluation of different viewpoints have been strictly observed to ensure that the findings are reliable and scientifically valid.

Result

After applying qualitative, analytical, and comparative research methods, the findings of this study are organized under the following thematic areas:

1. Findings on Legitimacy

The findings indicate that intellectual property is recognized as a legitimate right in both systems, although the method of justification differs. In Islamic jurisprudence, legitimacy is derived indirectly through general legal maxims such as “La darar wa la dirar” (no harm shall be inflicted or reciprocated) and “Al-ghurm bil-ghunm” (liability accompanies gain). In contrast, Afghan law explicitly recognizes this right through constitutional provisions and specific legislation. Thus, Islamic jurisprudence provides an indirect (principle-based) foundation, while law provides a direct (textual) recognition.

2. Expansion of the Concept of Property (Māl)

The study shows that in contemporary jurisprudential

analysis, intellectual property is included within the broader concept of “property (māl)” due to its economic value and usability. Afghan law has also practically adopted this concept by enacting specific regulations for intellectual property protection. Jurisprudence provides theoretical expansion, whereas law ensures practical implementation.

3. Findings on Types of Intellectual Property

The findings reveal that intellectual property in both systems is classified into two main categories: Industrial property, Literary and artistic property (copyright). There is full consistency between Islamic jurisprudence and Afghan law in this classification.

4. Types of Infringement

The study shows that unauthorized copying, publication, distortion, plagiarism, and commercial misuse are recognized in both systems as unlawful acts. There is significant similarity in defining infringements; however, Afghan law provides more precise mechanisms for identification and proof.

5. Criminal Liability

In Islamic jurisprudence, intellectual property violations are analyzed through the concepts of theft (sariqah), destruction (itlāf), and denial (jahd), and are addressed through discretionary punishment (ta‘zīr) and compensation (damān). In contrast, Afghan law classifies these violations as crimes and prescribes specific penalties such as fines and imprisonment. Thus, Islamic jurisprudence provides a flexible and interpretive system, while Afghan law offers a fixed criminal framework.

6. Enforcement Mechanisms

The study found that in Islamic jurisprudence, enforcement is based on judicial discretion (ijtihād) and general principles, whereas in Afghan law, enforcement is carried out through formal judicial institutions. The legal system is more structured and uniform in application, while jurisprudence allows flexibility for new circumstances.

7. Evaluation of System Strengths

The findings show that: Islamic jurisprudence is strong in its theoretical foundation, ethical dimension, and legitimacy; Afghan law is strong in practical implementation, clarity, and deterrent penalties; the combination of both systems provides the most effective solution. The final finding is that Islamic jurisprudence and Afghan law are not contradictory but complementary systems: one provides principles and legitimacy, while the other ensures enforcement and implementation.

Table 1: Comparative Analysis between Islamic Jurisprudence and Afghan Law

Aspect	Islamic Jurisprudence	Afghan Law	Comparative Analysis
Legitimacy of Intellectual Property	Derived from general principles such as “La darar wa la dirar” and “Al-ghurm bil-ghunm.”	Explicitly recognized in the Constitution and specific laws	Jurisprudence provides indirect legitimacy, and law provides formal recognition
Concept of Property (Māl)	Includes intangible rights in modern jurisprudential interpretation	Recognized and regulated through legislation	Jurisprudence expands the concept theoretically, and law applies it practically
Types of Intellectual Property	Industrial and literary/artistic property recognized	The same classification is adopted in law	Full consistency exists
Types of Infringement	Analyzed through theft, destruction, and denial	Defined as unauthorized copying, publication, distortion, etc.	Similar in essence, but the law provides precise definitions
Criminal Liability	Ta‘zīr (discretionary punishment) and compensation (damān)	Fixed penalties such as fines and imprisonment	Jurisprudence is flexible; law is structured
Enforcement Mechanism	Judicial discretion and jurisprudential principles	Formal courts and judicial system	Law is systematic; jurisprudence is flexible
Civil Liability (Compensation)	Obligatory under the principle of damān	Enforced under civil law	Full harmony between both systems
System Strength	Ethical, moral, and theoretical strength	Practical enforcement and legal clarity	Both systems complement each other
Overall Outcome	Principle-based system	Implementation-based system	The combined application is most effective

Discussion

The findings of this study clearly demonstrate that intellectual property, despite being an intangible and non-physical right, falls under the broader concept of “property (māl)” in both contemporary jurisprudential and legal systems, and is therefore subject to full legal and Shariah protection. This conclusion, supported by Nasih (2012)^[14], confirms the evolutionary development of legal thought in which the concept of property has expanded from material assets to intellectual and creative productions. As indicated by Zuhayli (2012)^[24] and Shahrani (2008)^[21], there is full consistency between Islamic jurisprudence and Afghan law regarding the legitimacy of intellectual property; however, the method of justification differs. Islamic jurisprudence derives this legitimacy through general legal maxims such as “La darar wa la dirar” (no harm shall be inflicted or reciprocated) and “Al-ghurm bil-ghunm” (liability accompanies gain), whereas Afghan law explicitly regulates this right through constitutional and statutory provisions. This reflects a complementary relationship between the two systems rather than a contradiction.

Another important finding is that the rules governing intellectual property infringement in Islamic jurisprudence are general, principle-based, and flexible, whereas in law they are specific, detailed, and enforcement-oriented. This difference reflects the nature of both systems: Islamic jurisprudence is value-based and interpretive, while positive law is administrative and procedural in character. A comparison with previous studies shows that this research is consistent with the views of Nasih (2012)^[14] and Fazli (2020)^[8] in terms of conceptual understanding and classification. However, those studies were primarily descriptive, whereas the present study adopts a more analytical and comparative approach. Similarly, the works of Fazli (2017)^[7] were limited to conceptual clarification, while this study provides a deeper examination of both criminal and civil dimensions of infringement.

As confirmed by Zuhayli (2012)^[24] and Shahrani (2008)^[21], intellectual property is included within the broader definition of property (māl), as it has economic value, is the product of intellectual effort, and causes harm when violated. The

principle of “La darar wa la dirar” forms the legal foundation for its protection, while the principle of “Al-ghurm bil-ghunm” establishes the legitimacy of ownership over intellectual production. Furthermore, jurisprudential analysis shows that intellectual property infringement is related to the concepts of theft (sariqah), destruction (itlāf), and denial (jahd); however, instead of fixed hadd punishments, discretionary punishment (ta‘zīr) and compensation (damān) are applied. This flexibility demonstrates the adaptive capacity of Islamic jurisprudence.

On the other hand, Afghan law explicitly classifies such violations as criminal offenses and prescribes specific penalties, including fines and imprisonment. Additionally, civil liability in the form of compensation for damages is also recognized, which corresponds directly with the Islamic principle of damān. Overall, the comparative analysis indicates that Islamic jurisprudence provides a theoretical, ethical, and principle-based framework for intellectual property, whereas Afghan law provides practical, procedural, and punitive mechanisms. Therefore, the two systems are not contradictory but complementary in nature. In conclusion, intellectual property is not merely a legal issue but also has jurisprudential, ethical, and social dimensions. Its effective protection can only be achieved when the principles of Islamic jurisprudence and modern legal mechanisms are applied together, in order to establish a balanced, just, and comprehensive legal system.

Conclusion

This study aimed to examine, analytically and comparatively, the legal rulings on intellectual property infringement in Islamic jurisprudence and Afghan law. The findings of the study indicate that intellectual property, despite being an intangible right, is included within the broader concept of “property (māl)” in both contemporary legal and jurisprudential systems and is therefore considered worthy of protection. This right not only has economic value but also plays a fundamental role in scientific progress, innovation, and social justice. The study further revealed that Islamic jurisprudence affirms the legitimacy of intellectual property through general legal maxims such as “La darar wa la dirar”

(no harm shall be inflicted or reciprocated) and “Al-ghurm bil-ghunm” (liability accompanies gain), whereas Afghan law explicitly recognizes this right and provides specific legal and criminal mechanisms for its protection. Although the two systems differ in methodology, they are aligned in terms of purpose and objective. From a professional and academic perspective, this research makes an important contribution to the fields of law, Islamic studies, and social sciences, as it clarifies the relationship between Islamic jurisprudence and modern legal systems and provides a comprehensive comparative analysis of intellectual property rights. Such studies can contribute to legal policy development, standardization of judicial decisions, and the protection of scientific and creative production. However, the study also reveals certain gaps. The most significant limitation is the absence of a codified criminal system for intellectual property infringement in classical Islamic jurisprudence. In addition, the practical implementation of Afghan law remains limited in some areas. Furthermore, the lack of public awareness has contributed to the persistence of intellectual property violations. It is therefore recommended that universities and academic institutions organize public awareness programs on intellectual property rights to educate individuals about their rights and obligations. In conclusion, this study finds that the effective protection of intellectual property rights can only be achieved through the combined application of Islamic jurisprudential principles and modern legal mechanisms, in order to ensure both Shariah legitimacy and practical enforcement.

Reference

1. Afghanistan Ministry of Justice. Official Gazette: Civil Law (Multiple Vols. Nos. 2, 3, 353, 1 & 4). Government Printing Press; 1976.
2. Afghanistan Ministry of Justice. Official Gazette: Constitution of Afghanistan (Issue No. 818). Government Printing Press; 2003.
3. Afghanistan Ministry of Justice. Official Gazette: Copyright Law for Authors, Artists, and Researchers. Government Printing Press; 2008.
4. Afghanistan Ministry of Justice. Official Gazette: Penal Code. Government Printing Press; 2017.
5. Amarkhil S. Protection of famous trademarks in the legal system of Afghanistan. *Int J Law Soc.* 2025;8(3):177–183.
6. Amid H. *Farhang-e Amid* [Amid dictionary]. Rah-e-Roshd Publications; 2010.
7. Fazli FH. *Ayni Huquq* [Intellectual property rights]. Yar Publishing House; 2017.
8. Fazli FH. *Huquq-e-Ma'nawi-e-Milkiyat* [Intellectual property rights]. Yar Publishing House; 2020.
9. Hashimy SQ. The needs of geographical indications regulation: A missed opportunity in Afghanistan. 2024.
10. Imranullah Akhtar, Niazi N. Intellectual property rights and food security enhancement in Afghanistan: A human rights-based analysis. *JSS J Leg Stud Res.* 2024;10(2):33–48. Available from: [JSS Journal for Legal Studies and Research](#)
11. Irfan M. *Huquq-e-Tijarat* [Commercial law]. Daneshgah-e Tehran Publications; 2004.
12. Jalal M, Momand M. The duties of the guardian about the mentally retarded: Comparative study of Qur'an and Afghanistan civil law. *J High Educ Dev Stud.* 2024;4(1):41–51.
13. Naizi MM. *Ayni Huquq* [Intellectual property rights]. Yar Publishing House; 2010.
14. Nasih WM. *Huquq-e-Malikiyat-e-Ma'nawi* [Intellectual property rights]. Kabul University Press; 2012.
15. Nazeer DM. *Huquq-e-Malikiyat-e-Ma'nawi dar Fiqh-e-Islami wa Qawanin-e-Waz'i* [Intellectual property rights in Islamic jurisprudence and positive laws]. Risalat Publications; 2011.
16. Nazeer DM. *Introduction to intellectual property rights.* Risalat Publications; 2014.
17. Nezamuddin A. *Ayni Huquq* [Intellectual property rights]. Saeed Publications; 2011.
18. Pakeeza S. Intellectual property rights in Pakistan: Compatibility and conflict with Shariah perspectives. *Al-Qamar.* 2025;75–110.
19. Saidi Z. What we don't know about intellectual property: A comparative review of intellectual property in the United States and Afghanistan. *Univ Cincinnati Intellect Prop Comput Law J.* 2021;5(1):6.
20. Sattar Z. *Huquq-e-Malikiyat-e-Adabi wa Hunari* [Literary and artistic property rights]. SAMT; 2014.
21. Shahrani HM. *Huquq al-Ikhtira' wa al-Ta'lif fi al-Fiqh al-Islami* [Rights of invention and authorship in Islamic jurisprudence]. Dar Tayyiba; 2008.
22. Shams A. *Huquq-e-Malikiyat-e-'Alamat-e-Tijari wa San'ati* [Trademark and industrial property rights]. Endowment of Charitable Affairs Publications; 2013.
23. Wasiq MR. The evolution of WTO and vis-à-vis intellectual property right protection: A deliberation on Afghanistan's legal system. *SSRN Electron J.* 2023. Available from: [SSRN Abstract 4344003](#)
24. Zuhayli W. *Al-Fiqh al-Islami wa adillatuhu.* Tanoli MY, Hussain MI, translators. Dar al-Isha'ah Urdu Bazaar; 2012.

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