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Keywords	Rights, Intellectual Innovation Rights in Islamic Fiqh, Intellectual Innovation Rights in Law, Differential Fiqh.
Abstract If differential jurisprudence is considered as the science that examines the comparison between states and situations, the differentiation between different conditions, the balance between benefits and harms in the short and long term, both at the individual and collective levels, and the selection of what the jurist considers less in bringing benefits and repelling harms, as expressed by some contemporary scholars. And if the issue of intellectual rights to innovation is considered one of the most important contemporary jurisprudential issues, the importance of which has become evident with the scientific, commercial, industrial and technological progress that the whole world is experiencing, and which has a clear impact, whether positive or negative, on the economy of individuals and nations alike. With the progress of civilisation and the spread of modern means, scientific and literary theft, commercial and industrial imitation and fraud in various forms have spread. As a result, many questions have arisen, disputes have arisen, and scholars have disagreed on many aspects of the issue, such as whether one has the right to innovate and whether there are corresponding acts such as selling, and whether these are private rights that should be protected only for their owners, or public rights that represent the nation's right to this product, along with its scientific and practical benefits that bring material and moral benefits to the nation, including using and reading it, the prohibition of concealing knowledge, and the use of these innovative scientific products in various fields, as well as quoting from publications.	
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Introduction

Section 1: Definition of Differential Jurisprudence or Jurisprudence of Revelation

First aspect: Definition of Differential Jurisprudence or Revelation Jurisprudence

The jurist Al-Shatibi defined jurisprudence through the conclusions of his researcher Abdullah Draz, stating: "Jurisprudence is the exertion of effort and the utmost endeavour, either in understanding the Islamic legal rulings or in applying them". Thus, deducing rulings from textual evidence is a form of jurisprudence known as deductive jurisprudence. Determining the specific application of these rulings is another form known as applied jurisprudence, or the realisation of goals, as Al-Shatibi called it.

Among contemporary scholars, this form of jurisprudence is known as differential jurisprudence (ijtihad al-tanzil). It involves a great deal of effort to apply a legal ruling to a specific situation in a way that fulfils the intended purpose of the revealed ruling¹.

Some scholars also refer to it as the jurisprudence of revelation and define it as the application of derived or inferred legal rulings in a way that achieves their objectives, whether in general or in specific contexts². It can also be understood as a profound understanding of the practical application of Islamic jurisprudence in a way that realises the intention of the legislator³.

The Definition of Differential Jurisdiction

The second aspect: Definition of Differential Jurisprudence

Differential jurisprudence is derived from the root word, which means comparison, preference and weighing between different situations. It is also called the jurisprudence of balancing.

Linguistically, it conveys the meaning of equivalence, equality and balance. It is said: "The balance between two things is mawāzana⁴, and it is balanced when it corresponds to its weight or when it is aligned with something." And it is also said: "Balance, justice, measure, and its balance is fairness, acceptability, and conformity⁵."

In technical terms, Al-Shatibi said: "The benefits and harms related to worldly matters are understood on the basis of what predominates. If the benefit predominates, it is the understood benefit. If the other side predominates, it is the understood harm. Therefore, an action with two aspects is attributed to the predominant side... This is the perspective of worldly benefits and harms in ordinary actions⁶."

Thus, from Al-Shatibi's words, it is clear that the concept of balancing is about weighing the benefits and harms based on the predominance.

Imam Al-Azz Ibn Abd al-Salam mentioned a principle for balancing benefits and harms, indicating that balancing is the act of preferring one benefit over another, or one harm over another, or between benefits and harms⁷.

Among contemporary scholars, one who discusses the definition of balancing states: "In the light of the jurisprudence of balancing, we find a method for comparing one situation with another, for distinguishing

¹ Approvals, Al-Shatibi, Vol. 4, pp. 64-65.

² Abdul Razzaq Warqia, Principles of Tenzile Ijtihad in the Light of Maqasid Principles, p. 30.

³ Farid Al-Ansari, The Usuli Terminology according to Al-Shatibi, Al-Najah Press, Morocco, 1st edition, 2004, p. 297.

⁴ Waseela Khalafi, Tenzile Jurisprudence, Dar Al-Awa, Algeria, 1st edition, 2009, p. 102.

⁵ Mukhtar Al-Sahah, Al-Razi, volume 1, p. 337.

⁶ Al-Qamus Al-Muhit, Fayruzabadi, vol. 1, p. 1238.

⁷ Admissions, Al-Shatibi, vol. 2, pp. 45-46.

⁸ See, Principles of Judgments, Al-Azz Ibn Abdul Salam, vol. 1, p. 60.

between different conditions, for weighing gains and losses in the short and long term, on an individual and collective level, and then choosing what is perceived as the least harmful and the most beneficial".

It is clear that the jurisprudence of balancing is the jurisprudence of preference and prioritisation.

The third topic: Intellectual property rights and their types

First branch: Definition of Intellectual Property Rights

Intellectual property rights refer to "the intellectual creations that have emerged from the solid intellect of a person in the world of literature, authors and the like, which they have innovated and in which no one has preceded them"⁹.

The previous definition can be summarized as follows:¹¹

The term innovative production refers to mental creations that are included in the definition in order to bring out the eye in which they have settled, such as a book or the like. Mental images are not perceived by the senses, but only by the mind. The element of creativity also requires the negation of repetition and usurpation, but it is not necessary for it to be entirely characterized by innovation. Innovation is relative, not absolute.

The reference to the scientist, author and the like is intended to include the production of all experimental sciences, literature and the humanities.

Second branch: Types of intellectual property rights

Intellectual property rights cover various types of rights, including

- Authors' and inventors' rights, known as intellectual property rights, which relate to intellectual products. They have both a literary aspect, closely linked to the individual, and a financial aspect.
- Rights relating to moral and commercial values, which relate to the intangible elements of the business. They are known as customer rights. The rights of authors in their scientific, literary and artistic works are commonly referred to as literary and artistic property rights. Similarly, rights relating to inventions, designs, models, trademarks, commercial data and trade names are known as industrial property rights¹².

Second topic: Contemporary Economic Principles between the Public and Private Spheres and the Importance of Differential Jurisprudence in These Principles

First theme: Contemporary economic principles between the public and private spheres

The divisions of the realization of the spheres have varied according to the considerations that have emerged from them, and each division has its importance and position in the process of jurisprudence.

First branch: The general scope

Legislation is characterized by abstraction and generality, whereas punishment is usually specific. It is characterized by abstraction because it exists in the mind, depending on its perception. Its generality lies in the fact that it applies to all its addressees without exception, without being limited to a specific time, environment or person¹³. The achievement of the general scope refers to the consideration of the application of the scope to its branches and details, without taking into account the circumstances and conditions surrounding it¹⁴. According to Ad-Darini, in this context he states: "Therefore, the legislative ruling precedes its application stage, and the

⁹ Priorities of the Islamic Movement, Al-Qaradawi, p. 36.

¹⁰ Fathi Al-Dreni, Comparative Islamic Jurisprudence, pp. 223-224.

¹¹ Fathi Al-Dreni, *ibid*, pp. 223-224.

¹² Ibrahim Fadel Al-Dabu, *ibid*, pp. 347-348.

¹³ See, Comparative Research in Jurisprudence and Its Principles, Al-Dreni, vol. 1, p. 127.

¹⁴ See, Admissions, Al-Shatibi, vol. 5, p. 23.

achievement of its scope in the details is general and abstract"¹⁵. Ash-Shatibi has given many examples of this type of reasoning, and through the examples given by Ash-Shatibi, it becomes clear that some examples are specific to the diligent scholar, while others are not specific to him, but rather to experienced individuals¹⁶. Furthermore, Ash-Shatibi conveyed the general agreement of the scholars on this matter by stating: "And the achievement of the scope in its types and the agreement of people on it in general is witnessed"¹⁷.

From the above, it is clear that in this type of reasoning, the diligent scholar applies the legal ruling based on its abstraction and generality to facts and details in a general way and under normal circumstances, without taking into account the specific circumstances surrounding them.

Ad-Darini states: "Even if the reasoning is applied to its relevance to a specific event or person, if its scope is reached in both, the applied ruling in this case is the legislative ruling. There is no doubt that the diligent scholar will make his best scientific efforts to achieve this "equality" between the abstract and general legal ruling and the applied reasoning or fatwa based on the specific facts presented that are related to that abstract legal ruling, even if the circumstances and conditions surrounding the event give rise to other evidences of obligation that are not applicable to that abstract legal ruling, but rather require appropriate rulings based on those evidences. This is referred to as "the fulfilment of specific scopes"¹⁸.

Second branch: Specific Considerations

The term "specific considerations"¹⁹ refers to the consideration of each accountable person in relation to the evidences of accountability that apply to him. The careful scholar looks at the specific situation itself and what is appropriate for each accountable person individually, according to time, circumstance, and individuality. People are not equal in their acceptance of certain actions to the same degree. For example, a righteous act may cause harm to one person, but not to another. Similarly, the influence of personal inclinations and the devil may be stronger in one action than in another, while being innocent in some actions²⁰. Ash-Shatibi considered this type of reasoning to be the most advanced and precise form of reasoning²¹.

Second issue: The Importance of Balancing Jurisprudence in Economic Matters and the Relationship between Achieving Specific Considerations and Considering the Consequences

First branch: The Importance of Balancing Jurisprudence in Economic Matters

The need for balancing jurisprudence becomes more pronounced in the presence of contemporary issues and variables, including economic issues, which require a thorough examination of reality and the complexities surrounding it in the absence of explicit texts. Often, the interests and harms clash before the jurists and experts, or the interests clash with each other, or the harms clash with each other. This is where contemporary issues need the jurisprudence of balancing, and the jurisprudence of contemporary issues urgently needs the jurisprudence of balancing because of its relevance to the approach of implementation and the mechanisms of implementation of legal decisions.

Second sub-branch: The Relationship between Considering the Consequences and Achieving Specific Considerations

First sub-branch: The importance of balancing jurisprudence in economic matters

The need for balancing jurisprudence becomes more pronounced in the presence of contemporary issues and variables, including economic issues, which require a thorough examination of reality and the complexities surrounding it in the absence of explicit texts. Often, the interests and harms clash before the jurists and experts, or the interests clash with each other, or the harms clash with each other.

¹⁵ - Comparative Research in Jurisprudence and Its Principles, Al-Dreni, vol. 1, p. 128.

¹⁶ - See, Ijtihad and Taqleed according to Imam Al-Shatibi, Walid bin Fahd Al-Wudai'an, vol. 1, p. 196.

¹⁷ - Admissions, Al-Shatibi, vol. 5, p. 37.

¹⁸ - Comparative Research in Jurisprudence and Its Principles, Al-Dreni, vol. 1, p. 128.

¹⁹ - Admissions, Al-Shatibi, vol. 5, p. 24.

²⁰ - See, Approvals, Al-Shatibi, vol. 5, p. 25.

²¹ - The Usluli Terminology according to Al-Shatibi, Farid Al-Ansari, 1st edition, 1424 AH - 2004 AD, p. 375.

This is where contemporary issues need the jurisprudence of balancing, and the jurisprudence of contemporary issues urgently needs the jurisprudence of balancing because of its relevance to the approach of implementation and the mechanisms of implementation of legal decisions.

Second sub-branch: The Relationship between Considering the Consequences and Achieving Specific Considerations

Consideration of consequences refers to the effects that result from the actions of accountable persons. It refers to the results and fruits produced by the cognitive, verbal or practical actions of the responsible individuals²². There is a relationship between considering the consequences and achieving specific considerations, as considering the consequences becomes a criterion for the process of achieving specific considerations in order to achieve the intended goal of the Shari'a.

Third branch: Academic Perspectives on the Financial Aspects of Intellectual Property Rights

First sub-branch: Financial Aspects of Intellectual Property Rights

Scholars have disagreed on this issue and have presented three perspectives:

First opinion: The view of Imam Al-Qarafi

This view can be summarised as follows: Moral rights are rights that cannot be quantified in monetary terms because their basis is intellectual. Al-Qarafi stated: "Know that it is narrated from the Messenger of Allah, peace be upon him, that he said: 'Whoever dies leaving behind a right, it shall be inherited. This statement is not general, but it applies to certain rights that can be transferred to the heirs, and among them are rights that cannot be transferred. The decisive factor is what is transferred to the heir, whether it be property or the person of the deceased. However, his intellect is not transferred to the heir, and his intellectual ideas, opinions, positions, authorities, efforts and religious actions are part of his religion and are not inherited, because the heir did not inherit his intellect and its foundation'²³.

From this perspective, Al-Qarafi established a general principle that everything whose original basis is not wealth or related to wealth has a financial value and can be inherited on the basis of its original basis. On the other hand, anything that does not fall into this category is not subject to inheritance. As an application of this principle, he believed that anything related to the intellect of the deceased, such as efforts or what is now called intellectual property or intellectual innovation rights²⁴, has no pecuniary value and therefore cannot be inherited because its basis, which is the intellect, is not inheritable. Nor can moral rights be inherited.

Second opinion: The view of some contemporary scholars

Some contemporary scholars argue that preserving copyrights and patents is a means of preserving knowledge.

They refer to the authentic hadith of the Prophet, peace be upon him, which says: "Whoever hides knowledge, Allah will bridle him with a bridle of fire on the Day of Resurrection.

Third branch: Scholarly Perspectives on the Financial Aspects of Intellectual Property Rights

Most contemporary scholars²⁵ have disagreed with Al-Qarafi on this issue and have argued for the financial nature of intellectual property rights. They raise the following objections:

²² - Consideration of the Consequences of Actions and Their Jurisprudential Impact, written by Dr Walid bin Ali Al-Hussein, 2nd edition, 1430 AH - 2009 AD, Dar Al-Tadmuriyah, Kingdom of Saudi Arabia, Vol. 1, p. [page number not given].

²³ - Al-Qarafi, Al-Furuq, vol. 3, pp. 275-277.

²⁴ - Abdul Salam Dawood called them "intellectual or moral rights". See: Abdul Salam Dawood, Al-Milkiah, vol. 1, p. 196.

²⁵ - See: Fathi Al-Dreni, Comparative Jurisprudence, p. 256 and beyond, Abdul Salam Dawood, ibid, vol. 1, pp. 196-200, Sobhi Mahmasani, General Theory of Obligations and Contracts, p. 19, Fathi Al-Dreni, The Right and the Extent of State Authority in Restriction, p. 71 and beyond.

A. In our current era, economic, scientific and cultural progress has created new rights and benefits, including moral rights. These rights have been recognised and protected in modern national laws and international treaties. They have a monetary value that is recognised worldwide. Since there is no religious objection to this customary practice, moral rights should be considered as real interests, tangible benefits and financial rights that deserve protection under Islamic law.

B. The financial nature of scientific production should not be disregarded simply because its original source is the human intellect. Once scientific production is separated from the human intellect and takes the form of a book, an invention, or other tangible forms, these items are generally recognised as property because of their financial implications. Sharia does not contradict the nature of things. Therefore, moral rights have a rightful place in the realm of property, and property can be inherited. Heirs do not inherit the intellect of the deceased, but they do inherit what is separable from it, such as books and similar items that can be disposed of immediately or in the future.

C. Failure to consider intellectual property rights as financial rights inevitably leads to the violation and piracy of the rights of scholars, thinkers, inventors and others. This in turn discourages them from continuing their research and innovation. As a result, the interests of the individual are compromised, the interests of the nation are hindered, and the rights of Allah, which are intertwined with the rights of the individual, are wasted. As Ash-Shatibi said, "Now every duty is a right of Allah. What belongs to Allah is His, and what belongs to the servant is subject to the judgement of Allah, both in terms of Allah's right over it and the fact that the servant's right is a right of Allah. Therefore, Allah has the right not to grant the servant an original right"²⁶.

D. Intellectual property rights can be considered as financial rights compared to manual labour and craftsmanship, which are unanimously recognised as property because of their utility, despite their human origin. As stated, "Every act has a use, and if the act is permissible, it is permissible to rent it. There is no harm in hiring teachers to teach the Qur'an"²⁷.

"On the contrary, intellectual property rights should be considered primary because they provide the greatest benefit and have a lasting impact. However, linking intellectual property rights to the rights of governance and employment is a flawed comparison due to the different nature of these rights.

E- As for Al-Qarafi's argument that legal opinions (ijtihād) are not financial rights because of their religious nature, which makes them acts of obedience, this contradicts the fact that the religious dimension in Islamic law is not separate from worldly acts, whether intellectual or sensual. Al-Azz bin Abdul Salam stated: 'A person is obliged to worship religion by acquiring throughout his life, in his heart, senses and limbs, what is necessary for his sustenance and needs, such as food, drink, clothing, marriage and other benefits. And this can only be achieved through the permissibility of actions driven by necessities and needs'²⁸.

As for Al-Qarafi's restriction of the issue to legal opinions, this contradicts the general claim. Moral rights concern legal opinions as well as the right to innovation in various sciences.

Fourth branch: Discussion and Preference

With the changing times, remarkable material progress, corruption of morals, and declining religious influence, ijtihād changes according to the circumstances of time, place, and situation. In order to protect people's rights from encroachment, the preferred and harmonious view in this era and practical reality is to consider moral rights as financial rights. This is to nurture people's talents and innovations and to protect their rights, which have become valuable assets according to international practice. It also serves to protect the rights of Allah and the interests of the nation, since every right of a servant is a right of Allah the Exalted, according to the principle stated by Ash-Shatibi. In fact, if Al-Qarafi were present in our era and witnessed the changes of time and the conditions of people, he would probably reconsider his stance.

Second issue: Copyrights

²⁶ - Al-Shatibi, Al-Muwafaqat, pp. 408-410.

²⁷ - Ibn Abdel Barr, Al-Kafi, p. 374.

²⁸ - Al-Az bin Abdul Salam, Al-Qawa'id, vol. 2, p. 69.

It has two aspects: literary and financial.

First branch: Literary right

First, its definition: Some scholars define it as follows: It is the result of the scholar's effort in writing, which involves literary peculiarities that require attributing the work to him and respecting it while retaining his right to modify and revise it²⁹.

Second, the nature of the author's literary right in Islamic jurisprudence

The author's literary right is a kind of expertise arising from the author's right to exploit his work and to attribute it to him in a way that serves literary interests by preserving his authorial work. It also seeks to protect the rights of Allah and the community in seeking and acquiring knowledge³⁰.

Third, the manifestations of expertise in the literary right of the author.

These manifestations can be summarised as follows³¹:

The first: The effect that authorship has on the status of the literary author, highlighting his position among his peers based on the efforts he has made and the goodness he has shown during his life and after his death. This is in accordance with what Abu Hurairah narrated that the Prophet, peace be upon him, said: "When a person dies, his deeds come to an end, except for three continuous charities or knowledge that benefits others or a righteous child who prays for him"³².

Second: Understanding the reality of the matter concerning religious rulings and worldly affairs, as the chain of transmission reveals the status of individuals in the field of knowledge and indicates the level of trust placed in them to acquire knowledge. Al-Nawawi stated under the title "Chapter on Clarifying that the Chain of Transmission is from Religion": "Narrations are accepted only from reliable narrators, and criticising narrators because of their mistakes is permissible, rather obligatory, and it is not considered as forbidden slander, but rather as defending the honoured Sharia. It is narrated from Abdullah ibn al-Mubarak that he said: "Verily, the chain of transmission is from religion. If it were not for the chain of transmission, everyone would say whatever he wanted. He also said: 'Between us and the people are the narrators,' meaning the chain of transmission. This emphasises the obligation to uphold scientific integrity and specifies its nature and manifestations"³³. "One of the most important manifestations is the attribution of a statement to its original source if it was previously mentioned by someone who preceded the jurist or a similar person who preceded him in authoring and writing in a specific context, and mentioning the statement attributed to its author if it is reliable that the book is known by the author's name. In this case, it is obligatory to attribute the knowledge to him... and other conditions"³⁴. This underlines the role of Muslim scholars in establishing the conditions, pillars and foundations of scientific research, with scientific integrity being one of the most important aspects, protecting the rights of others.

Fourth: Boundaries of expertise in the author's literary right

If the author's literary right is based on the author's expertise in what he has written, which enables him to claim material and moral rights arising from his innovative scientific work, it is reasonable for him to prevent others from infringing this right. Therefore, expertise serves as the equivalent of physical property in many aspects of Sharia law. Moreover, the author's right includes both the right of Allah and the right of society³⁵.

²⁹- Abdullah Mabrouk Al-Najjar, Prescribed Protection of Literary Copyrights, Dar Al-Nahda Al-Arabiyya, Cairo, Egypt, 1st edition, 1411 AH, 1990, pp. 44-45.

³⁰- Abdullah Mabrouk Al-Najjar, *ibid*, pp. 46-47.

³¹- Abdullah Mabrouk Al-Najjar, *ibid*, pp. 46-47.

³²- Reported by Muslim, Book of Testaments, chapter: What Rewards Accrue to a Person After His Death, Hadith Number: 4223, Sahih Muslim, Vol. 4, p. 619, and see: Al-Nawawi, Explanation of Sahih Muslim, Dar Al-Ma'rifah, Beirut, Lebanon, 4th edition, 1418 AH, 1997, Vol. 11, p. 87, and narrated by Al-Tirmidhi, Book of Judgments, Chapter: On donations, and narrated by Al-Nasai, in the Book of Wills, chapter: The virtue of charity on behalf of the deceased.

³³- See: Al-Nawawi, Explanation of Sahih Muslim, Vol. 1, p. 87.

³⁴- Abdullah Mabrouk Al-Najjar, *ibid*, p. 86.

³⁵- Abdullah Mabrouk Al-Najjar, *ibid*, pp. 48-49.

Second branch: Financial Right

First, its definition: It is a person's right to the product of his mind and the result of his thoughts, whatever form that product or result may take³⁶. Financial right is an aspect of intellectual property that is the result of human intellectual work, and every individual has the right to own what he has acquired through his efforts and work. Allah says: "And do not consume each other's wealth unjustly" (Quran 2:188)³⁷. It is not permissible to confiscate or violate this property or to commit aggression against it^{38 39}.

Second: The nature of the author's financial right

As far as I know, many Islamic jurists, unlike positive law jurists, have not explicitly distinguished between intellectual property rights and author's rights, or intellectual and moral rights. Therefore, the discussion of the nature of intellectual, moral or spiritual rights also includes the financial rights of the author.

Fathi Al-Darini says: "The author's right to his innovative intellectual production is an established tangible financial right, not just a moral right. This is because the author's relationship with his intellectual production is a direct and obvious relationship from two perspectives. Firstly, it has a literary character as a scientific production, and secondly, it is a distinct result separate from his moral personality. It has acquired a material dimension, such as a book or the like, which can be obtained, valued, and its effect and existence can be observed in the future⁴⁰. Therefore, if the conditions are met, including innovation, the author's right includes, in addition to the literary right, a financial right, which is characterised by the possibility of monetary compensation".

Among the resolutions of the Islamic Fiqh Council⁴¹ regarding intellectual rights to innovation are the following:

First: Trade name, business address, trademark, authorship, invention or innovation are special rights of their owners. In today's practice, they have significant financial value on which people rely for financing. These rights are recognised and protected by Islamic law, and it is not permissible to violate them.

Second, it is permissible to dispose of and transfer the trade name or business address in exchange for financial compensation, since they have become financial rights.

Thirdly, the rights of authorship, invention and innovation are protected by Islamic law and their owners have the right to dispose of them. It is not permissible to violate these rights.

Fourth topic: The Protection of Intellectual Property Rights in International Practice

Countries around the world have recognised the importance of protecting moral rights in their various forms and their impact on the global economy. They have recognised that such protection is urgently needed to encourage scientific, literary and artistic production, as well as scientific and industrial discovery and innovation. As a result, international conferences were held, international agreements were made, and various systems and laws were enacted to protect these rights. These conferences and agreements developed as follows:

First, in the 14th century of the Hijri calendar (19th century AD), there was an international movement to regulate authors' rights, which led to several meetings and conferences, the most notable of which are:

1. The Brussels Conference (1858), which established the principle of universal recognition of literary and artistic property.
2. The creation of the Literary and Artistic Society in Paris in 1876, which successfully concluded the Berne Convention in Switzerland on 9 September 1886. This was the first international treaty for the protection of

³⁶ - Reda Matouli and Hidan, *ibid*, p. 12.

³⁷ - Surah Al-Najm (The Star), verse 48.

³⁸ - Surah Al-Baqarah (The Cow), verse 188.

³⁹ - Reda Matouli and Hidan, *ibid*, p. 8.

⁴⁰ - See: Fathi Al-Dreni, *Comparative Studies in Islamic Jurisprudence and Its Fundamentals*, vol. 2, pp. 5-83.

⁴¹ - Abdul Sattar Abu Ghudda, *Decisions and Recommendations of the Islamic Fiqh Council*, Dar Al-Qalam, Damascus, Syria, 2nd edition, 1418 AH, 1998, p. 96.

literary and artistic works. At its inception, it had 73 member states, all Western countries except Tunisia, Algeria, Morocco, Lebanon and India.

These conferences, together with the Berne Convention, have added regulations and other provisions that have recently extended the scope of protection to all literary, scientific, artistic and industrial productions, in all forms of expression, provided that these works are manifested in a specific format, such as books, paintings, apparatus, machines and the like.

Secondly, in the summer of 1952, UNESCO adopted a global agreement to regulate copyright internationally. It stipulated that this agreement was without prejudice to the Berne Convention and the Union created by it. Many countries from the Islamic, Arab and global world joined this agreement. The purpose of establishing this treaty was to facilitate the dissemination of intellectual creations and to promote international understanding in this regard.

Thirdly, the World Intellectual Property Organisation (WIPO) was established in 1967. It is a specialised agency of the United Nations and is commonly referred to as WIPO. Negotiations for its establishment date back to 1883. The Kingdom of Saudi Arabia is a member of this organisation.

The purpose of its establishment is the desire of the international community to promote the protection of literary, artistic and industrial property throughout the world. It deals with all aspects related to this field and is considered the most important source of documentation in this field. It is the main coordinator among countries in this field and is now one of the most important international organizations dealing with the protection of intellectual property.

Fourth: These international agreements have been followed by various bilateral and regional agreements between countries, all of which aim to protect intellectual property. Examples of such agreements include the Egypt-Germany Treaty of 21 April 1961, the Germany-United States Treaty of 4 September 1953, and other regional treaties.

The fifth topic: Using the Objectives to Assess Intellectual Innovation Rights

In the previous section, we discussed the methods used by countries around the world to protect moral rights, the international conferences and agreements held to this end, and the systems and laws enacted. But has the global community as a whole succeeded in achieving the desired protection for these various moral rights?

If one observes and follows what is happening in global markets, publishing houses, printing presses, industries and shops, it is with great regret that one witnesses the rampant violations of intellectual innovation rights, driven by material greed, unfounded justifications and fabricated lies. This includes the literary, intellectual and scientific theft of many works, innovations and scientific and commercial productions. There is also the counterfeiting of goods, merchandise, brands and logos. It is sometimes possible to believe that a certain product has been manufactured by a well-known international company, renowned for its quality and manufacturing excellence, only to discover that it is a counterfeit after some time or thorough examination. This is due to the fact that the original product and the counterfeit are very similar or even identical in shape, logo or sometimes name.

In the field of authorship and publishing, there is no hesitation in discussing the total appropriation of many works, attributing them to other authors by means of forgery and deception. There is also a strange and astonishing violation of many research papers and publications, falsely attributing them to people who are not their rightful owners. As a result, degrees, promotions, academic certificates and commercial editions of many works are obtained without consulting their authors or the specialised publishers responsible for their dissemination. These despicable thefts contradict academic integrity and undermine intellectual, literary and artistic production as a whole.

The Islamic Sharia, which is generous and comprehensive, has adopted important objectives and educational aspects in this field. It has linked this issue to faith in Allah, belief in the afterlife, integrity and the awakening of the conscience of the Muslim individual. In many directives in this field, Islam emphasises not only the imposition of painful punishments in this world, but also the establishment of a deterrent punishment in the hereafter and the declaration that such deception is forbidden and contrary to religion, ethics and integrity. This is evident in many directives and orders of Islamic Shari'ah, such as the narration of Abu Huraira (may Allah be

pleased with him) that the Messenger of Allah said, "Whoever deceives us is not one of us. They are derived from obligatory divine rulings based on faith in Allah, fear of His painful punishment and wrath, and preparation for the Day of Judgment, when just retribution and the settlement of disputes between people will take place. This is something that human systems and man-made laws have not yet achieved. Islamic Sharia considers these rights from the perspective of its legal objectives (maqasid), which include the following:

The first objective: The Objectives of Shari'ah in Intellectual Innovation Rights in Terms of Providing Benefits and Preventing Harm:

The First Branch: In Terms of Providing Benefits:

The deduction is based on the principle of "promoting benefits" in the field of private and public rights. This is manifested in two aspects:

1. In the case of moral rights, there are specific benefits which accrue to the author as well as to the publisher and the distributor.
2. There is an affirmed public benefit that concerns the whole of human society, namely the exploitation of intellectual values that have a significant impact on various aspects of life. This is a right from the rights of Allah that encompasses its benefits and its enormous potential harm. The established public interest in its two forms is considered by religion as the basis for legislation.

Branch Two: In terms of averting harm

Among the important principles to be relied upon in the protection of moral rights is the emphasis that the violation, waste and neglect of these rights is prohibited in Islam. This includes the prohibition of deception, fraud, cheating, falsification, lying, stealing, causing harm to others and interfering with their rights. All these things are considered forbidden and reprehensible in Islam, and some of them are counted among the great sins that lead to destruction.

The second objective: Closing the means and considering the consequences

The neglect of the financial aspect of intellectual innovation is a means that leads to the assassination of the rights of authors and scientists, which results in their being deprived of further research and innovation. This deprivation affects not only the nation, but also human society as a whole, depriving it of a confirmed and genuine benefit. This outcome should not be allowed to happen. Therefore, it is necessary to close the means that lead to this consequence.

The third goal: Contemporary Fatwas on the Right to Intellectual Innovation and the Consideration of Differentiation in Islamic Jurisprudence (Fiqh) through Analogical Reasoning

Thus, later scholars have issued fatwas permitting the charging of fees for teaching the Quran, leading prayers, giving the call to prayer, and other acts of worship such as prayer, fasting, and pilgrimage. This ruling contradicts the previous consensus among scholars, who had allowed it out of fear of being disqualified and in consideration of the issue of moral rights. Since the goal is the same, if we did not allow it, there would be an imbalance in the rulings.

Contemporary scholars have used analogical reasoning to achieve this balance in rulings. Al-Qaradawi states: "By applying analogy to matters that were previously controversial, such as the call to prayer, leading prayers, preaching and teaching, many of those who had previously prohibited them have later permitted them, including the Hanafis... in order to safeguard the interests of Muslims. This is similar to the present case, or rather, it is exactly the same".

This makes clear the aim of the Shari'a, which is to prevent religious rituals and scientific endeavour from being lost or neglected.

It aims to prevent the contributions of teachers, practitioners of religious rituals and researchers in the sciences from ceasing because they are engaged in agriculture or trade, which would lead to the loss of the Qur'an, knowledge and the neglect of these rituals.

This requires us to respond to some of the misconceptions, including:

1. Responding to the claim that retaining copyright is tantamount to concealing knowledge. This response is given by Fathi Al-Draini as follows:

a. Refuting the argument by examining the precise understanding of the meaning of concealment: The concealment of knowledge is similar to the monopolization of benefits, expertise and goods, where they are deliberately hidden and their prices are inflated while people desperately need them. No one has ever said that the prohibition of monopolization requires that the monopolized material be made available free of charge and without compensation. Therefore, the prohibition of concealment does not negate financial considerations. On the contrary, I have observed that jurists unanimously agree that the sale of monopolized material should be at reasonable prices that preserve the rights of both parties without exploitation or excess.

b. Refuting the argument by considering the context and purpose of the Hadith: The Hadith does not imply the denial of the author's right to remuneration for his innovative intellectual production. Therefore, the argument based on the hadith is invalid due to the numerous possibilities, including:

- Concealment of knowledge, which means spreading falsehood, hiding facts or distorting them in line with an existing political agenda or as an act of disbelief. Therefore, the ruling of the Hadith does not apply to the author's right to compensation for his scientific production.

- It is also possible to interpret the hadith as indicating the obligation to answer the questioner's request and provide guidance with sincerity and detachment, even if it is a matter of conveying a fatwa that has been transmitted and followed by scholars without any innovation or relevance to our subject.

- It is also possible to infer from the Hadith the prohibition of monopolizing knowledge, preventing its dissemination and distribution, so that no one else becomes knowledgeable, claims exclusive ownership of knowledge and exploits its material benefits.

Conclusion:

In conclusion, this claim is unfounded because authors do not hide knowledge but publish and distribute it, especially since the hadith states that the reason is concealment and not compensation, as the Prophet Muhammad (peace be upon him) said in the hadith "Whoever hides knowledge"

.Therefore, there is no concealment in this context, but rather dissemination and distribution. If the reason for prohibition, which is monopolization, is absent, then the ruling, which is prohibition, is also absent.

The conclusion:

The importance of legal differentiation or preference in contemporary economic issues is significant. Some fatwas in contemporary economic issues are not based on understanding the reality, considering the consequences or prioritizing matters, which hinders the intended purpose of Islamic law.

The ruling on the financial aspect of intellectual innovation rights in general and copyright in particular is based on the jurisprudence of balancing, which is based on the objectives of the Shari'ah, such as bringing benefits, preventing harm, closing loopholes and considering consequences.

Intellectual property information has economic value in society and is even bought and sold at high prices on the global market. Islamic law provides criminal and civil protection for these rights.

It is permissible to charge fees for teaching the Qur'an, leading prayers, giving the call to prayer and other religious duties. This ruling was established by scholars who allowed it out of fear that these services would be

discontinued, including the issue of moral rights. If the scholars had not allowed it, there would have been an imbalance in the rulings. Contemporary scholars have used analogy to balance the rulings.

It is essential to prevent the loss or neglect of religious rituals and scientific endeavor. This is because the contributions of teachers, religious practitioners and researchers would be interrupted in favour of agriculture or trade, resulting in the loss of the Qur'an, knowledge and neglect of these rituals.

The claim that retaining copyright is tantamount to concealing knowledge is refuted on the basis of the Hadith: "Whoever conceals knowledge will be tied with a bridle of fire on the Day of Resurrection", narrated by Ibn Hibban. This hadith is authentic, as confirmed by Al-Albani in his book "Sahih Al-Targhib".

This refutation is based on the following points:

- a. Refuting the argument by examining the exact understanding of the meaning of concealment.
- b. Refuting the argument by considering the context and purpose of the hadith.

Individuals can waive their rights regarding authorship and other matters under certain circumstances and conditions that justify it. And Allah knows best.

References:

1. Abdel Razzaq Warqiya. (2003). Guidelines of deductive reasoning in light of Maqasid Al-Shari'ah. Dar Lebanon for Printing and Publishing.
2. Abd al-Sattar Abu Ghuddah. (1998). Decisions and recommendations of the Islamic Fiqh Council (2nd ed.). Dar Al-Qalam.
3. Abdul Majid Muhammad Al-Sousoua. (2004). Jurisprudence of balancing in Islamic law (M. Al-Zuhaili, Intro.). Dar Al-Qalam.
4. Abdul Salam Al-Karboni. (2008). Jurisprudence of priorities in the shadow of the objectives of Islamic law (1st ed.). Dar Tayyiba.
5. Ahmad ibn Hanbal. (n.d.). Al-Musnad. Dar Sader.
6. Al-Bahuti. (1982). Kashaf Al-Qina. Dar Al-Fikr.
7. Al-Kasani. (n.d.). Al-Bada'i. Dar Al-Kutub Al-Ilmiyyah.
8. Al-Khatib Al-Shirbini. (1997). Mughni Al-Muhtaj Ala Matn Minhaj Al-Talibin (1st ed.). Dar Al-Ma'arif.
9. Al-Qalyubi, & Amira. (1997). Hashiyat Al-Qalyubi wa Amira Ala Kunuz Al-Raghibin Sharh Minhaj Al-Talibin (1st ed.). Dar Al-Kutub Al-Ilmiyyah.
10. Al-Qurtubi. (1989). Tafsir Al-Qurtubi (1st ed.). Dar Al-Ghad Al-Arabi.
11. Al-Razi. (n.d.). Tafsir Al-Razi (1st ed.). Dar Al-Ghad.
12. Al-Shatibi. (1997). Al-Muwafaqat (The Harmony of Objectives) (A. U. Mashhur bin Hasan Al-Salman, Ed.). Ibn Afan Publishing House.
13. Bayoumi Hajazi, A. F. (2002). Legal system for protecting electronic commerce. Dar Al-Fikr Al-Jame'i.
14. Fareed Al-Ansari. (2004). Usul terminology according to Al-Shatibi (1st ed.). Najah Press.
15. Hajazi, A. F. B. (2002). Legal system for protecting electronic commerce. Dar Al-Fikr Al-Jame'i.
16. Ibn Al-Qayyim. (1991). Informing the observers (M. A. S. Ibrahim, Trans.). Dar Al-Kutub Al-Ilmiyyah.
17. Ibn Qudamah. (1983). Al-Mughni. Dar Al-Kitab Al-Arabi.
18. Ibrahim Fadel Al-Dabou. (1997). Guaranteeing benefits: A comparative study in Islamic jurisprudence and civil law (1st ed.). Dar Ammar.
19. Jurjani. (1983). Definitions (Trans. & Ed. by a group of scholars). Dar Al-Kutub Al-Ilmiyyah.
20. Muhammad Hammam Abdul Rahim Mulhim. (n.d.). The foundation of the jurisprudence of priorities. Ministry of Awqaf and Islamic Affairs.
21. Walid bin Ali Al-Hussein. (2009). Consideration of consequences of actions and their legal impact (2nd ed.). Dar Al-Tadmuriyah.
22. Walid bin Fahd Al-Wudayan. (2009). Ijtihad and Taqlid according to Imam Al-Shatibi (1st ed.). Al-Tadmuriyah Publishing House.
23. Wasila Khalafi. (2009). Tanzil jurisprudence (1st ed.). Dar Al-Waie.
24. Yusuf Al-Qaradawi. (1996). Jurisprudence of priorities: A new study in light of the Quran and Sunnah (2nd ed.). Wahba Library.

25. Yusuf Al-Qaradawi. (n.d.). Priorities of the Islamic movement. Wahba Library.
26. Boutar, R. (2025). Regulations of Arbitrary Divorce in Light of Islamic Jurisprudence and Algerian Family Law. *Science, Education and Innovations in the Context of Modern Problems*, 8(3), 982-996. doi: 10.56352/sei/8.3.60.
27. Chahinez B. (2025). Applying Insurance Principles across Jurisdictions. *Science, Education and Innovations in the Context of Modern Problems*, 8(3), 767-774. doi: 10.56352/sei/8.3.48. <https://imcra-az.org/archive/358-science-educationand-innovations-in-the-context-of-modern-problems-issue-3-volviii-2025.html>