

Impact of Islamic Law in the  
Contemporary Indian Legal System

Zubair Ahmed  
Faizanur Rahman

Impact of Islamic Law in the Contemporary Indian Legal System

Zubair Ahmed  
Faizanur Rahman



 [www.ababilbooks.com](http://www.ababilbooks.com)

**Ababil Books**

 15A/1, G. J. Khan Road, Kolkata,  
West Bengal, India PIN-700039

 [contact@ababilbooks.com](mailto:contact@ababilbooks.com)





# Impact of Islamic Law in the Contemporary Indian Legal System

Edited By

**Dr. Zubair Ahmed**

Assistant Professor and Head

Department of Law

Aliah University, Kolkata

&

**Dr. Faizanur Rahman**

Assistant Professor

Faculty of Law

Jamia Millia Islamia, New Delhi



**Ababil Books**

Kolkata

Published by  
Ababil Books  
Publishers & Distributors  
Indian Leather Housing Complex  
Ahmed Villa  
15A/1, Gulam Jilani Khan Road  
Kolkata-700 039  
West Bengal, India  
Phone: 9477508834  
E-mail: contact@ababilbooks.com  
Visit us: www.ababilbooks.com

© Reserved

ISBN: 987-81-950122-6-8

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, transmitted or utilized in any form or by any means, electronic, mechanical, photocopying, recording or otherwise without the prior permission of the copyright holder. Application for such permission should be addressed to the publisher.

First Published: 2021

A catalog record for this publication is available from the British Library.

#### Disclaimer

- The author and the publisher have taken every effort to the maximum of their skill, expertise and knowledge to provide correct material in the book. Even then if some mistakes persist in the content of the book, the publisher does not take responsibility for the same. The publisher shall have no liability to any person or entity with respect to any loss or damage caused, or alleged to have been caused directly or indirectly, by the information contained in this book.
- The author has fully tried to follow the copyright law. However, if any work is found to be similar, it is unintentional and the same should not be used as defamatory or to file legal suit against the author.
- If the readers find any mistakes, we shall be grateful to them for pointing out those to us so that these can be corrected in the next edition.
- All disputes are subject to the jurisdiction of Kolkata courts only.

Printed by: D. G. Offset, 96/N, Maharani Indira Devi Road, Kolkata-700 060

## CONTENTS

Preface	7
About the Book	13
Islam's Contribution to Huqūq al-Insān (Human Rights)	15
—Dr. Sumaiya Ahmed	
Islam: A Precursor to Address Against Climate Change	26
—Dr. Debashree Mukherjee	
Compatibility of Human Rights in Islamic Jurisprudence	36
—Dr. Faizanur Rahman and Mohd Amir	
Issues Relating to Unpaid Dower: An Analysis of the Judicial Approach	44
—Dr. Syed Mohammad Yawar	
Environmental Protection and Islam, A Study And Its Importance In Present Globalised World	59
—Dr. Susmita Dhar	
Islamic Dimensions On Nature Conservation—The Need Of The Hour	71
—Dr. Y. S. Kiran Kumar	
Stand of Islam on Intellectual Property Rights	82
—Dr. Zubair Ahmed and Amlan De	
Judicial Approach Towards Gender Disparities in Muslim Inheritance Rights	90
—Najla Pazhayakath	
Elucidating Gender Justice in India through Islamic Ethos	100
—Somnath Banerjee	
Understanding the Interface between Democracy and Islam: A Contemporary Dilemma—Urooj Fatema	114
Economic Potential and viability of the Institution of Waqf for the Socio-economic Development in the Light of Recent Legal Developments in India.	126
—Md. Enam Firdos	
Islamic Law and Surrogacy: A Legal Analysis	138
—Ersad Mirja	



## Stand of Islam on Intellectual Property Rights

—Dr. Zubair Ahmed<sup>1</sup> and Anlan De<sup>2</sup>

### Abstract

*Islam always shows support for the safety and protection of every individual and their rights upon property. But Holy Qur'ān or any other Sharia Law never directly speaks on intellectual property and rights arising out of it.*

*Because of this silent status of Sharia Law, one group of Islamic scholars thinks that Islam is against the protection of the intellectual property rights. But another group of Islamic scholars opines that proper interpretation of Sharia Law shows its support for any kind of property, whether tangible or intangible.*

*This article tried to understand the stand of Islam on intellectual property from every angle.*

### Keywords

Islam, Law, Intellectual Property Rights

### Introduction

Intellectual Property (IP) is an important topic in today's business world. One company/individual, who holds valuable intellectual property rights, will have a brighter future than others.

The concept of intellectual property is very old, though it becomes famous in present time. Original poems of poets of pre-Islamic times were recognized and they also got compensation for publication and distribution of their original poems. The society of that time also condemned those who tried to copy poems of a poet.

Early Arab society also followed and continued this pre-Islamic practice. During the Islamic era, Muslims were pioneers in preserving intellectual products. The companions of the Prophet Muhammad (PBUH) would buy original books from authors and make copies of that book after paying adequate amount as compensation to the authors. This shows that though there was no legal provision for the protection of the author's original creation, but there were social norms and moral rights which acted as silent protectors of every original creation.

1. Assistant Professor and Head, Department of Law, Aliah University, Kolkata

2. Doctoral Research Scholar, Department of Law, Aliah University, Kolkata

### Meaning of Intellectual Property

In today's time, intellectual property refers to creations of the mind; it includes inventions, literary and artistic works, symbols, patents, industrial designs, names and images used in commerce. Creator of an intellectual property gets limited exclusive rights for his creation which s/he can sale or give license(s) to others for consideration. Without prior permission of the creator of the intellectual property, one will be prevented by law from using or making copies of that intellectual product for commercial purpose, and even if one makes profit from it without taking permission from the creator, the creator of the intellectual product can demand the profit as compensation from him. This kind of strong legal protection with provisions of exclusive rights for the inventor encourages the creator to disclose his invention which will be beneficial for the upliftment of the society.

The intangible character of intellectual property makes difficulties when compared with any traditional property like land. Unlike conventional property, intellectual product is 'indivisible', since an unlimited number of people can 'consume' an intellectual good without it being depleted. Additionally, investments in intellectual goods suffer from problems of appropriation: a landowner can surround their land with a robust fence and hire armed guards to protect it, but an author of a literature or a writer of a computer program can usually do very little to stop their first buyer from replicating it and selling it in black market at a lower price. The main object of modern intellectual property is balancing rights so that they are strong enough to encourage the creation of intellectual goods but not so strong that they prevent the goods' wide use.

### Intellectual Property and Islam

In Islam, property is an important concept where defending one's property is equal to defending his honour. Prophet Muhammad (PBUH) also once said that property and honour are sacred to one another.

The concept of intellectual property and its protection from an Islamic point of view has been a subject of discussion between two groups of Islamic scholars. One group thinks that intellectual property rights is opposed to Sharia law whereas another group thinks that Sharia law strongly supports the idea of intellectual property and its protection.

The followers of Hanafi School only accepts tangible object as property and intellectual property is intangible property, so according to them, no legal right born from intellectual property.