



***Shari'ah* Compliance of Copyright Act of Sri Lanka**

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Abstract

Copyright is the right of creation, created by the human brain and this type of property is protected under copyright law just as physical property is protected by law. Copyright infringement is considered a punishable offence and can be said to be a violation of human rights in the eyes of Islamic Law. The main reason for these copyright violations is the lack of clarity among students about the Islamic Law's status of copyright protection. The primary objective of this study is to find out how copyright law is compliant with Islamic law. This is a qualitative study in the form of a library survey. According to the findings of the study, the Copyright Act No. 36 of 2003, which is in force in Sri Lanka comply with Islamic Law in most cases In some places the fundamentals of the Shariah appear to be inconsistent, such as the need to explicitly define rights within the law, such as providing legal protection for Musical works, art, photographs, paintings, and sculptures, as well as providing legal protection to the translation work lead to the apostasy of Almighty, as well as the need to explicitly define the rights to exchange and licensing copyright.

Keywords: Literacy Work, Copyrighted Works, Copyright Infringement, Islamic Law, Copyright Act of Sri Lanka

1. INTRODUCTION

The IntellectualPropertyRight (IPR) is the right granted to the creator of his creativeworks (Trade, 2020). It is like a right granted to a person's physical asset. The World Intellectual Property Organization (WIPO) classifies intellectual property into five types Copyright, Patent right, Trademark, Designs and Geographical Indications (WIPO, 2016). Copyright refers to the right of authors to the protection of their literary and artistic works by law(Trade Mark, 2020) whichcan be defined briefly as the legal protection of the authors' art and literary works in line with legal protection (Adam,2020).

The concept of copyright is found in ancient Roman civilization but the modern form of which originated in Britain in the 17th century (Malkawi, 2013). The British Statute ofAnne in 1710 and the statute of Monopolies in 1624, which have been reflected in the 19th century to draft bills and preserve the books. Moreover, it led to the emergence of the concept of "Intellectual Property Protection Rights (IPPR)" around the world. TheBritish Parliament passed the Statute of Anne in 1709. The official title of this statue is "Copyright Act 1709 8Anne C.21"(History of Information, 2021). Its brief description of what was then known as "An act for the encouragement of learning, by vesting the copies of printed books In the Authors or purchasers of such copies, during the times therein mentioned" (Jeremy,2021). It was abbreviated by the crown of British as "the British Statute of Anne".This is the first copyright law in the world that gives publishers 14 years of legal protection which is extended by another 14 years if the Author is a lived at the completion the first 14yearand 21years of legal protection for published literature if it was published before constituting the law concerned (Jermyn 2021).

Sri Lankan was colonized by the Portuguese (1505-1658), the Dutch (1658-1796) and the English (1796-1948) for about 443 years. During this period, the political, economic and various fields such as the culture of the country progressed. The change was in the legal field particularly significant. This is evidenced by the influence of Dutch law and English law in the constitution of Sri Lanka today, and one of the legal changes introduced by the British was the copyright law in force in Sri Lanka. A law that did not exist in Sri Lanka before the British brought Sri Lanka under Legal changes similar to those brought to Britain by the Copyright Act may have occurred in Sri Lanka. Particularly such as British inventors Ordinance -1859, Paten Ordinance-1906, Trade Marks Ordinance-1888 Design Ordinance- 1888.

Since Sri Lanka gained independence from the British colonial rules The First Copyright Law of Sri Lanka called Code of intellectual property Act No52 of 1979 was codified and in force Some changes have been made in the act from time to time.Finally, the Intellectual Property Act No. 36 of 2003 has been enacted and is in force up to now in Sri Lanka.The chapter 1, section-VI of the said Act has identified the following properties entitled for the copy right (Gazette of the Democratic Socialist Republic of Sri Lanka 2003).

- a) Books, pamphlets, articles, computer programs and other writings
- b) Speeches, sermons, speeches held in the stage, religious teachings and other oral discourses
- c) Drama, drama-musical works, stage performances and other creations.
- d) Folk tales, Poems, Puzzles, Songs, Musical instruments, Music, Dance and Folk arts
- e) Musical creations: (lyrical and non-lyrical)
- f) Audio-visual creations
- g) Architectural works
- h) Paintings, sculptures, lithographic and other fine arts
- i) Photo Articles
- j) Charts, drawings, plans, sketches; and three-dimensional images of buildings

The purpose of this research is whether there are any kind of acceptance as per the *Shar'iah* (Islamic Law) to the properties, which have been protected under the Act of copyright. Literary works, Musical works, Dramatic works, Pantomimes and choreographic works, pictorial, graphic, and sculptural works, Motion pictures and other audio-visual works, sound recordings, and Architectural works (Chamila & Talagala, 2013).

In the view of Islamic Law, Allah who is the creator of the human being and who has been sending his messenger in different periods to the different parts of the world obligating them to guide the people of the world. In the series of this process, The Prophet Mohamed (PUH) was provided the holy Quran and the tradition of Mohamed (PUH) (Sunnah) are considered as most important source of evidence and play a vital role in the field of Islamic law.

Islam is holy religion which provides the concrete and sustainable solution for human being suiting for the requirement of the time, place as well as environment consisting the teaching and the guidance which have the nature of the globe calling all human being throughout the world. Islam has identified the economic compliances to circulate the economy without breezing or accumulating in a particular place by introducing the obligatory and nonobligatory performances such as *Zakat*, *Sadaqah*, *Wasiyyah*, inheritance and Compensation, *Waqf*, Loans, Atonement and the mechanisms of economic cycle (Ashiq, 2019).

Meanwhile, Islamic Law has concentrated onthe property belonged to the private sector or a particular person which is to be secured properly. Al-Quran has revealed in this regard as “*O you who have believed, do not consume one another's wealth unjustly but only [in lawful] business by mutual consent. And do not kill yourselves [or one another]. Indeed, Allah is to you ever Merciful (Al Quran 4:29)*. Islam has concentrated on the protection of lives, properties and the honesty by which the social justices shall be confirmed.

2. PROBLEM STATEMENT

Today, Human has made progress in all fields such as science, economics, politics, law, medicine, astronomy, etc. Every day, new creative works and inventions emerge throughout the world.Both national and international lawmakers have been compelled to commit to providing legal protection to the creative works and innovations that emerge. Intellectual property is the pinnacle of human creativity. It was built using man's ideas and thinking. What is the position of the Islamic Shari'ah with regard to providing protection to human thought? Is copyright an economic property? Or right?, It involves a number of different rights. Some of these rights are transferred to the buyer, while the owner retains the remaining rights. Is such a trade permitted under Shari'ah? As far as copyright is concerned, the moral right is granted to the owner and the economic right is granted to the publishers and sellers. Does the Islamic Shari'ah accept such conditional trade? The period of consumption of copyrighted assets is limited.In Sri Lanka, this is 70 years. Can this be limited as such? An owner who has obtained a copyright has the option to sell it several times. In Islam, may a thing be sold more than once? These are the kinds of practical issues that arise.There is a need to provide clarity in this regard. Moreover, the failure to provide clarity in the shadow of the *Shari'ah* on this is the reason for the copyright infringement that is taking place among Muslim students today. Based on this background, this study has attempted to achieve the following objectives.

3. OBJECTIVE

This study seeks the ways and means to strengthen Sri Lankan copyright law by preventing copyright infringement, plagiarism of the Intellectual property by clarifying the *Shari'ah* compliance of Sri Lankan copyright law with such declarations furnished above.

4. MATERIALS AND METHODS

This study is descriptive and interpretive in nature and mainly uses secondary data collected from sources such as academic journals, reports, web publications, Sri Lankan Government Gazettes and Articles from the official website of the National intellectual property office these sources have discourses on copyright law of Sri Lanka in the form of direct quotations, summaries, authors' interpretation. In addition, primary sources of Islamic law such as Al-Qur'an and traditions of Prophet Muhammed (PBUH) have been used to proving the legal validity of copyrighted works in Islamic Law. Moreover, some legal ijihad have used for justifying shari'ah compliances. Results of the study are conveyed in the form of texts and sentences.

5. SHARIAH COMPLIANCE OF COPYRIGHT ACT OF SRI LANKA

This section clarifies the Shariah compliance of each of the copyright of the properties referred to the Intellectual Property Act No. 36 of 2003 under the shadow of Islamic *Shari'ah* where the suitable sub-headings have been placed for this area accordingly.

5.1. THE WORKS ARE PROTECTED UNDER THE INTELLECTUAL PROPERTY ACT, NO. 36 OF 2003

5.1.1. Literary Works

These properties include books, pamphlets, articles, computer programs and other man-made writing creations. These are called in detail as works of art, literature and science. Sri Lankan Copyright Act grants copyright to and protects such property. This type of property is the first intellectual property afforded the protection in the world. This work is attested by the Copyright Act No.1709, 8 Anne C21. The majority of Islamic scholars are of the opinion that these can be considered as an asset and be given the status of legal protection which was given the legal protection before the period of and during the time of the Prophet (PBUH) prior the Islam is introduced. Let's look into this in detail.

Poetry and song collections have been traditionally preserved among the Arab community before the advent of Islam. Also, the *jāhiliyyah* poetry was recognized by the Arab community as the right of poets. The abuse of such right was seen as an act of dishonesty. Some poets were involved in literary theft in many ways to improve their social status and wealth. Thus, the scholars of the time had the practice of reading their poems in the local market called "*Sūq 'Ukāz*" and hanging in the *Kaaba* which were the practice of obtaining copyright in the society of the time (Malkawi, 2013). Two practices were followed when the Poems and the songs were recited during the war and special events. They are:

1. A poem or song was sung by its own author and he was honoured with gifts on such occasions.
2. There was a practice of paying the title to the author of Poems and songs where they were read by third parties with the permission of their author.

The right was strongly enforced after the advent of Islam. The best example for such practice is the payment made by Representative President AbuBaker (Rali) sum of money to the book owners for copying their books (Raslan, 2007). This is equivalent to the amount paid to the owner's economic rights under copyright law.

There are some hadiths that have been misinterpreted to protect intellectual creations and it would be appropriate here to explain them at this juncture. In the view of Islam, knowledge and wisdom are seen as public property. Islam does not allow any restrictions or terms and conditions based on the evidencing hadith for this concept that "knowledge is a lost object of a believer and he should take it wherever he finds it" (Tirmidhi-2687). Thus the exercise of the individual in regard to the right of knowledge is an impediment to the divine existence of knowledge which implies that the provision of legal protection should be avoided. This hadith stands for the fact that knowledge is common to all, and Islam is a religion that encourages the acquisition and the exchange of knowledge with one another. Islam does not allow a Muslim to encroach on the rights of another Muslim (Muzammil, 2020). Islamic Sharia does not prohibit the sale of intellectual creations or generate income through bookstores. Rather Islam does not allow stealing or seizing the copy right that belonged to the other one aiming to ensure the protection of the copyright in the society. Islam has intended that a Muslim engage to find the knowledge independently which is bounded within the circle of Islamic *Shari'ah*. Islam will never allow the monopoly of knowledge to be accumulated in the hands of particular individuals.

Dr. Musammil Siddiqui the former head of the North American Islamic Institute explains: "Islam recognizes the individual and public property. Islam never allows the violation towards the economic rights, whether it is intellectual or non-intellectual property. And the use of such materials without the permission of the owner is an exploitation of the labour of the owner. He added, "Islam encourages Muslims to learn and values a person's intellectual property. Copyright infringement, misappropriation of other human economies, and such acts

are plagiarism and fraud” (Siddiqi, 2020). He mentions. He goes on to describe the reality of copyright granting: "Each of us must ask ourselves why copyright holders and computer program designers register their products under copyright law?" The reality of this is that some duplicates of the original work of some unjust persons are sold and sold to prevent the employer from receiving any relief from the profits made by them” (Siddiqi, 2020). The implication here is that the real owner also provides legal protection for the intellectual work thus registered under the Copyright Act in order to protect his rights.

Another claim interpreted as a change to copyright is that of Ali (Rali). Ali (Rali) once narrated “*Secure the knowledge from which the bag from which it came will not harm you.*” The explanation is that a Muslim should seek knowledge from many sources. Rather it does not provoke the unjust acquisition of other man's knowledge. It is also a golden language spoken with the lofty intention that Muslims should seek knowledge. Islam generally recognizes the protection and legal recognition of copyrighted scholarly property. Can be understood through the above comments.

The *Shari'ah* position for the protection of works of art and literature can be understood by combining the protection of scholarly property under copyright law with the goals of the Shariah, the "*Maqasid al-Shari'ah*" The goals behind the Divine Law are the *Maqasid al-Shari'ah*. Its *daruriyyah* (Necessity) type objectives can be classified into five. They are the Preservation of faith or Religious, the Preservation of life, the Preservation of Lineage, the Preservation of knowledge and the Preservation of property. "*Maqasid's* classification includes assets that can be copyrighted within two categories. They are

1. Preservation of knowledge refers to the protection of a person's intellect from harmful substances. The fact of scholarly property is the knowledge and the main purpose of granting copyright is to protect the property. Protection under copyright law is provided when a person is protected from intrusions against his knowledge. Therefore, Copyright protection goes hand in hand with *Maqasid's* classification as knowledge protection.
2. Preservation of the intellectual property of the individual is granted by copyright. In particular, Sri Lankan copyright law distinguishes rights associated with works of art and literature between economic and moral rights. These two rights also go hand in hand with the classification of protection revealed by *Maqasid*.

Both of these are taxonomies related to individual rights. The Qur'an has outlined the above concept in many places: “*O you who have believed, do not consume one another's wealth unjustly but only [in lawful] business by mutual consent. And do not kill yourselves [or one another]. Indeed, Allah is to you ever Merciful.*” (Qur'an 4:29). It is, therefore necessary to preserve and implement the literary works on which the copyright has been granted based on the view of *Maqasid Shari'ah* (Theobjectives, 2012).

5.1.2. Musical Works (Lyrical and Non-Lyrical Musical)

Let us look at the general view of Islamic Sharia on music before examining the issue of the protection of musical works, Music is a subject of debate in many parts of the world (Bhimiji, 2021). There are four different words had been used to refer to the music in the hadith and Islamic legal texts books. The explanations for the particular words are as follows

- **Mutrib**

It is abbreviated in Arabic as "سرور أو حزن لشدة الانسان يعترى خفة". It is used as to refer to music that causes a person to forget his deepest worries and sorrows which would return to a state of happiness. It is abbreviated as "music that has the power to change the emotions of human” (Leonard, 1997).

- **Gina**

This has been defined by the Islamic scholars as “مد الصوت المشتمل على الترجيح المطرب (extending the sound born from the singer's voice). Which means stretching and changing the tone of the voice sounding from the throat. This is considered as a useless kind of enjoyment of pleasure. Reading over an item with pleasant sound in order to delight or please others shall not be considered as Gina. It is a sound changing the related pitch with a prolonged humming (Leonard, 1997). The purpose of play is collecting a crowd or performed in a gathering. For example, during the entertainment of nightclubs and disco dance when they are conducted in the halls where this kind of culture is mostly performed.

- **Lahw**

"*Lahw*" is an Arabic word mostly used in Islamic sources expressing the meaning as "useless" or "uselessness" since it is played in places where useless activities are taken place, such as nightclubs and discos. The word is used to refer the music as well as the places where the music is played which are prohibited by Islam because it is only wasting of time and played having no useful purpose (Bhimiji, 2021).

• **Music**

The Music includes the whole works and instruments such as the sounds, the lyrics and related instruments. The Arabic word "*Al-Bayt*" is used to refer to the above and listen to forbidden music called "*Al-Bayt*" is one of the major sins according to Islamic Jurists. The author, Ayatullah Zaid Dastahab As-Sirasi has listed the sins in his book named "The Major Sins" where he has ranked the Music at 15 (Bahimiji, 2021).

Playing musical instruments is also a sin. Playing instruments like drum, piano and guitar is also haram. The music that comes out of this instrument is also *haraam*. *Baqil Ibnu Ibn Shaan* has narrated as it is revealed by *Imam Ali Ibn Musa al-Rihahas* that "involvement in musical instruments is one of the major sins" and the production, purchase, and sale of musical instruments as well as pursuit are also Haram as per the unanimous decision of Islamic jurists. The income generated through the activities related to music is also Haram. The transaction and the dealing made with musical instruments are also valueless. It is also *haraam* for a person to possess a musical instrument. It is incumbent upon him to destroy it. *Jafar ibn Muhammad Assadik* has recorded in his Book *Thuhaful Uqool* with the longest hadith on this regard that it can be considered as evidence "*Allah has forbidden the production of things that are prohibited by him, such as flute and etc., which are only harmful. Further the objects used for gambling, photographs and etc. which may pave the way to atheism are haram.*" The Imam has stated that all activities such as teaching music, learning, playing music and paying for the related activities are *haraam*. *Jafar ibn Muhammad Sadiq* narrates what the Prophet (PBUH) said:

"Almighty Allah has sent me to the worlds as a blessing and to guide the people. He has commanded me to abolish all instruments of flute playing, other musical instruments, bad games, idolatry and ignorance"(Mustadrakul Wasa'il, Chapter- 79).

And "*And do not pursue that of which you have no knowledge. Indeed, the hearing, the sight and the heart - about all those [one] will be questioned*", (Qur'an 17:36). This verse is meant to prevent you from listening to music and to make you realize that you will be questioned on those activities in the last day.

Further,

"*That [has been commanded], and whoever honors the sacred ordinances of Allah - it is best for him in the sight of his Lord. And permitted to you are the grazing livestock, except what is recited to you. So avoid the uncleanness of idols and avoid false statement*",(Qur'an 22:30)

"*And of the people is he who buys the amusement of speech to mislead [others] from the way of Allah without knowledge and who takes it in ridicule. Those will have a humiliating punishment.*"(Qur'an 31:06).

"*Certainly will the believers have succeeded: They who are during their prayer humbly submissive And they who turn away from ill speech*"(Qur'an 23: 1-3).

Ali ibn Abi Talib once stated, "*Listening to a musical instrument is one of the greatest sins.*"

The Prophet (peace and blessings of Allah be upon him) said, "*Listening to music leads to adultery.*"

The Music that is generally forbidden and permissible in Islam can be categorized into the following four types: -

1. Musical instruments and lyrics used in music are prohibited by Islam: The use of instruments that are generally prohibited by Islam, such as the piano, guitar and flute are strictly prohibited where the lyrics of the particular music may incite human desire, lead to idolatry, or provoke violence. This category includes some of the most popular music in the world.
2. The prohibited musical instruments are used and its lyrics are allowed but also blocked due to such music can lead man to the evil deeds. An example the "*qawali*" type of song sung in India Pakistan and elsewhere (Bahimiji, 2021). Although the lyrics are sung about the Lord and His messenger using the instruments in these songs are restricted because musical instruments.
3. in the event where the musical instruments are permissible (Drum) in a song but the contents of the same are prohibited. This kind of music also prohibited therefore hip-hop, rap music have been included in this kind.
4. *Shari'ah* has permitted the songs and the music which are not contradicting sharia

Thus the following positions can be furnished when looking at the status of Islam in on providing copyright to musical instruments.

1. The Music is generally forbidden in Islam so it cannot be granted the status of copyright no matter what type it belongs to such as Mutrib, Gini, Music and lahw.
2. Legal protection cannot be provided for the use of lyrics which is not allowed by Islam.
3. Legal protection cannot be provided for musical instruments that are prohibited by Islam.

Finally it is necessary to look at the basic permission. When a copyright is granted to music in Islam. The Copyright Act of Sri Lanka provides legal protection for music and also permits for the musical instruments. This is completely contrary to Islamic *Shari'ah*. Islam never accepts this. Islam has allowed the copyright for songs and musical instruments subject to *Shari'ah* definition.

5.1.3. *Speeches, sermons, speeches on stage, religious teachings and other oral conversations*

As far as concern of conversation, discourse, stage speech and religious teachings are means of communication in which information is exchanged between two or more persons. The text thus transmitted can be oral or written. But Sri Lankan copyright law requires this kind of property should be in written form as mandatory for legal protection. There is no direct evidence to provide the protection of such intellectual property as per the law of Islam. Moreover, there is no clear agreement among Islamic scholars on the protection of such items. Conversations, discourses, stage speeches, and religious teachings are expressions that originate from the thought of a person which are considered as oral expressions. Such expressions can be scholarly or non-scholarly. It is positive for violations on discourses which are considered as intellectual property.

The copyright protection has not been accepted of religious teachings by Islamic Sharia in general since the teachings of Islam are the common property of the whole of human society. This cannot be celebrated as an individual right. This is illustrated by Abdul Wadood Moustafa Moursi El- Seoudi (2012) with the following: "In general, the intellectual property can be divided into two categories. One is Auditory Property which is hearing-related assets and the other is output-based property called "publication Property". Of the above two categories the religious teachings (lectures), and oral discourses can be considered as public property in the rights of hearing. It is not acceptable to celebrate the rights of the individual because it is not possible to provide legal protection for such assets as well as the prime purpose of creation of such property is the beneficial of the public. The legal protection cannot be provided for publishing assets" (El-Seoudi, 2012).

The Prophet (PBUH) said during his final *Hajj*, "Report those who have come here to those who have not attended here." Further, The Prophet (PBUH) said, "The best of you is the one who learns the *Qur'an* and teaches it to others" (Bukhari). What emerges from this is that the religion that recognizes the breadth of Islamic knowledge and the basic sources of Islamic jurisprudence, such as the *Qur'an* and the *Sunnah*, have been passed down orally in the early days. A scholar in the field of Hadith would get permission from his teacher for the purpose to pass the hadiths to others and the "*Ijazaa*" has been used for such practice. This is because of the lofty intention that the fake hadiths should not be narrated by the name of the author which is considered as part in line with copyright law.

In short, the provision of legal protection for written speech, discourse, stage speech, and religious teachings in Sri Lankan law contradicts the need to distribute knowledge among all which is the highest goal of Islamic Sharia. In the event of necessity when a company desires that would lose some benefits which may secure with the conversations and lectures obtainable easily by other companies the protection is justifiable by Sharia on the ground of *Maslaha Al Mursala*".

5.1.4. *Photo Creations*

Although, photography is generally permitted in Islam but there are differences of opinion among Islamic scholars regarding the use of pictures (darallfta, 2021). The drawing of human figures has been prohibited by Scholars such as *Maliki, Hambali and Ibn Hamdan*. Their argument for prohibition that Allah has forbade the forming of images similar to his creation. Moreover, drawing such portraits would lead towards atheism. An even occurred in the life of the Prophet (PBUH) quotes as proof of this.

Hazrat Aisha (may Allah be pleased with her) has reported:

"Once when the Prophet (PBUH) was returning from the battlefield I saw a curtain with pictures on the shelf. The Prophet (peace and blessings of Allah be upon him) tore it and threw it away. The Prophet (PBUH) said: Aisha, know who will suffer most on the Day of Judgment, as the One who created the creations similar to Allaah. Then I cut the curtain into small pieces and turned it into a mattress" (Buhari, Libas-91, 95).

This hadith illustrates that a picture which is forbidden when hanging on the wall can be turned into cushions and allowed to be used when placed on the floor instead of hanging. Ibn Hajar concludes based on the Hadeeth above that "it allows the painting to be painted without shadows and stipulates that the image should not be used for acts that could lead to atheism such as worship" (Questions on Islam, 2009).

The subject above has viewed by *Imam Nawawi* says that the majority of the Mujtahids, such as *Sufyan Tawri*, *Imam Malik*, *Imam Azam Ibn Hanafi* and *Imam Shafi*, are in the following position: The prohibited pictures whether they have a shadow or not they are forbidden when such pictures are used on the body or head they are glorified." 'Abdullah ibn Mas'ud (Rali) reported that the Prophet (peace and blessings of Allah be upon him) said: "The one who will be punished severely in the last day is the one who draws images" (Buhari: 382). Abu Huraira (Rali) narrated that the Prophet (peace and blessings of Allah be upon him) said, 'Allah, He is the Most High,' who is more wrong than one who tries to create something like my creation? Allah will ask and He will say, "Let them make a grain of wheat or a kernel of corn." (Buhari: 385).

Ali (Rali) once said, "Shall I not send you on the same path as the Messenger of Allah (PBUH) sent meon?" Do not leave any built-up graveyard unbroken, and do not leave any house without destroying any image" (Muslim).

Based on the evidence above drawing and visualizing images, whether they are human or other creatures, whether they are three-dimensional or two-dimensional, whether they are printed, drawn, engraved, engraved, printed or even printed all kind of them can be considered as haram.

The Copyright Act of Sri Lanka protects portraits created by paintings, photographs, and sculptures, lithographic and other fine arts. Islamic Sharia never acknowledges the protection and promotion of an object that is fundamentally forbidden by Islam so it can be understood that the above matter is contradicting with Islamic Sharia. Recognizing such arts as "if a bit of small harm leads to another great harm, it is appropriate to prevent such small haram" if not people will carve their favorite leaders into idols in the future leading to the great shirk " therefore it is appropriate to prohibit such activities and this is what the doctrine of Islamic jurisprudence explains. It is also worth noting that some of the Islamic jurists agree that it is possible to draw pictures which have no shadows in some unavoidable situations.

5.2. DERIVATIVE WORKS FROM SOURCE

The law also deals with the work diverted from the original work of the intellectual property. This type of work is provided legal protection by law. The jobs diverted can be listed as follows.

1. Translations, modification, Adaptation, regulation and other modified work.
2. Compiled Jobs and Compiled Data which can be readable by machine or any other format.

The main purpose of the translation is to make to understand the message and information provided by the author to the audience (Maroni, 2020). Islam has basically allowed translation (Bahimiji, 2021). This can occur for social gain or for self-interest but the text translated should not be meant to bring people towards what is forbidden in Islam. The work concerned should not lead to *kufir*, *shirk*, immoral acts as well as heresies. Wherever it is the translator will take part in the author's sinful act. In addition to this, everyone who prints and publishes the book can share the equal sin according to the declaration of the Holy Quran as follows.

".. Do not help one another in the sin and the enmity; .." (Qur'an 5: 2)

Shari'ahs permitted for the translation of texts of scientific and literary arts and religion (Bjimiji, 2021). The art of translation had been originated in Islamic history during the period of the Abbasian Khalifa Maumoon (Murodi, 2020). The people who read the translation of texts explaining idolatry during this period have misled from reading the Qur'an and the path of the Sunnah creating negative consequences that appeared in the society of that time.

It is mandatory to obtain prior permission from the author of the book before translating texts for the use of the public whether it is a copyrighted or non-copyrighted text. The translation activities carried out without such prior permission are considered violation and such violations have been condemned by Islam strongly.

5.3. WORKS FOR WHICH LEGAL PROTECTION CANNOT BE PROVIDED

The Copyright Act of Sri Lanka, Sections 6 and 7 identify the works that cannot be provided with the legal protection (copyright).

- A. Any thought, discipline, process structure, theory, discoveries, data, publications or video descriptions
- B. Any legal, Administrative, Judicial documents or any other administrative translations
- C. Daily news, publications or other news releases similar.

These are the works related to the public for which cannot be claimed the ownership by an individual. Because all of the rights and interests of the above said documents belong to the whole human society.

This kind of property is category of "public property" as per the Islamic classification. Its whole right belongs to the Allah while the benefit belongs to the whole Ummah. The best example for this kind is the wellor land under the Wakf. Imam Shafi'i describes on this kind of property as "thepower of the man vested on this property has been removed and transferred to Allah and the benefits exists from beginning to end" (Aashiq, 2019).

All three of the above types of properties are public properties. The "Right to Information Act No. 12 of 2016" gives the entire right to the public in order to enjoy without hindrance (Saujan, 2019).

5.4. ECONOMIC OWNERSHIP

The Copyright includes many rights. Some of these rights are granted to the purchaser (Customer) while other rights are vested in the owners which are called as moral rights. And granted permanently to the actual owner. The rights will not leave from the actual owner even after the economic rights have been transferred to other persons. There are differences between selling one's copyright and selling a work for which a copyright has been granted. Let us first examine the economic entitlement in detail:

It has been mentioned in the United Nations Universal Declaration of Human Rights that "Economic rights are seen as an integral part of comprehensive human rights" described in the International Covenant on Economic, Social and Cultural Rights (ICESCR) which have been identified in the Commissioner UN.2021 of III Section 7,8&9. and states: The right to work, the right to choose a job, the right to own property, the right to secure an adequate standard of living, the right to education, the right to live as a family, the right to obtain the social security, the right to scientific advancement, the right to health and the right to discipline (Commissioner U.N, 2021).it is possible to identify with the economic rights associated with copyright such as the right to own property and the right to scientific advancement from the above said rights . Teachers are the owners of economic rights where there are some exceptional conditions. That is, the product created with an employee belongs to the employer in a factory which mentioned by the theory of: the Economy Incentive Theory". It allows to be handed over and empower the economic rights but the moral rights always stick the teacher.

The financial right includes all activities such as reproduction, sale, rent, distribution, public relations and translation of publications (National Intellectual property Office, 2020). The economic benefits that a publisher acquires through his writings, publications also have been included with these rights (EI-seoudi,2012).The economic benefits obtained is not a reward for the publisher's knowledge but it is a reward for the effort made by the person concerned to present his or her thinking provided in writing, to gather the related information and to organize it. The Qur'an declares (during the period of Hajj) *"There is no blame upon you for seeking bounty from your Lord [during Hajj]. But when you depart from 'Arafat, remember Allah at al- Mash'ar al-Haram. And remember Him, as He has guided you, for indeed, you were before that among those astray."* (Qur'an 2: 198). The doctrine of economic also refers to the same concept of the Qur'an (Malkawai, 2013).

According to the section from 11 up to 13 of the Act No. 36 of 2003 which is in force in Sri Lanka states that the copyright holder of a work has an economic right and is permitted by law to carry out the following economic processes.

- a) The right to reproduce a job
- b) The right to translate a work
- c) The right to carry out other translation or regulation and other related work
- d) These include the sale, rent, export or other public distribution of the source or copy of a work.

The Economic rights stipulated in Islam are the rights granted to servants by God which are inherited by the descendants of the persons after the death of the owners (Malkawai, 2013). An individual's economic ownership of a property is related to the property right he belongs to. The Property right is seen as a bridge between immovable property or the person who belong to the property in order to achieve their utmost benefits. The majority of Islamic jurists refer to property as all ways and means that can be utilized in order to benefits such as land, house, vehicle, money, books, new inventions and so on. The benefits mean focus on economic interests.

Imam Abu Haneefa defines the property as an object provides benefits that must be in possession of the person concerned. (Bashar, 2013). An object which is being able to gain benefits can only be considered as property. It is viewed differently on the right to buy and sale or reproduce the property related to copyrights further, it can be decided that the permission of such activities is on the basis of Islamic legal sources such as customs and public interest.

Moreover, the Islamic jurists have described an example for a fruit-bearing tree where the entire ownership of the tree belongs to its owner and the fruits and other benefits (fruits and other) from the particular tree are acquired by others through sale. Thus, some scholars point out that an object which can be dealt cannot be transferred the ownership of such object such as lease or Hiring (Bashar, 2013).

There are Islamic intellectuals those who claim to have economic rights to the particular property produce a number of arguments. The real right (moral right) of a property belongs to its owner. Islamic jurisprudences

recognize this as an economic right, such as the sale of the item and the right of publishing for the purpose of profit from the said property.

The evidences they present for the above are as follows:-

Ibn 'Abbas (Rali) reported that the Prophet (peace and blessings of Allah be upon him) said: *"If you are given an authority over something from which you the payment, then it is the Book of God"* (Buhari: 5737)

This hadith clarifies many of the existing doubts associated with intellectual property such as is it permitted to generate with knowledge? This hadith is a suitable response for it from which we can understand that the economic benefits can be achieved by selling copyrighted property.

Further, *"The Prophet (PBUH) allowed them to be paid to teach the Holy Qur'an"* (Bukhari: 1987)

Furthermore, the Prophet (PBUH) narrated in a narration through the Companion *Sahil Ibn Sa'd Al-Saadi* *"Have you memorized anything from the Book of Allaah?" As Sahabi said yes to that The Prophet (PBUH) said: the Prophet (PBUH) "teach her the Qur'an instead of Mahr. Teaching of Quran has been permitted against money or valuables"* (Buhari: 1987).

Islam emphasizes the dissemination of knowledge through education, the publication of literature and allows the gaining of money. Maher is a wedding gift given by a husband for women. In the subject mentioned above it is clear that Maher has been accepted with the economic right of knowledge to be provided instead of money.

The Intellectual assets are born from the physical and intellectual endeavors (Malkawi, 2013). So it is accepted that a man has a right over all the things he has created using his effort. The best example for the above that Islam has given full ownership of the land to the person who developed the barren lands and used it for agriculture found within the area ruled by Islam *"Whoever revives a barren land belongs to him and no one else can claim ownership of it unjustly"* (Thirmadi: 1378). Thus the income generated with the copyright is halal on the view of Islam which enforces such widespread economic rights. The same has been accepted by the International Islamic Fiqh Institutions and issued fatwas for.

Islam accepts the economy gained by selling a job under the copyright law of Sri Lanka with the condition such Literature documents sold must be within the limits of Islamic Sharia. In contrast, the economy gained through musical instruments, lyrics, texts that lead to atheism, translations, paintings, sculptures, etc. is haram and has been forbidden. These are non-Islamic ways and have not been accepted and encouraged.

5.5. MORAL RIGHTS

Moral right is a right associated with the property to which copyright has been granted. Sri Lanka copyright law has failed to provide proper definition on these rights. However, some legal scholars have provided some definitions for this such as Moral right restricts the use of a writer's work and prevents acts that could tarnish the reputation of a surviving writer (Dilan Philip, 2009).

The moral right allows the owner to receive economic benefits or compensation by allowing third parties to use their work. The moral rights which can be enjoyed by an author or creator are as follows:-

- Reserves the right to disclose the name of the owner on a work and to indicate the name of the owner on articles provided for public use.
- Reserves the right to use the author's nickname and to refrain from using his or her real name in the work.
- The right to obtain the Author's approval (consent)
- The right to protect the integrity of the work
- The right to change or ban counterfeit works that could harm the reputation of the creator.

These kinds of rights are available throughout the life of the owner. The law allows the owners' heirs to exercise this right for a period of 70 years after the demise of the owner (Ministry of Trade, 2020).

The Sri Lanka Copyright law outlines five exclusive events that require the permission of the owner as follows: -
Reproduction rights this type of right includes rights such as copying, copying, transcribing and limiting a work.

1. The right to make changes (Modification right) is also known as the right provided from the source. It involves making small or large changes to an existing job and creating new work called as a work diverted from the source.
2. Distribution Rights: Distribution rights refer to the distribution of duplicate source work to the public through means of sale, rent and lease.
3. The Public Performance Right of the public to exercise means the right of the public to act of read, playing and performing in public places.
4. The right to be displayed in public called Public Display Right which refers to the right to display transmits films, slides, television photographs in public and conceptual photography or any other forms.

Al Baghawi Abu Mohammed (1983) has stated Regarding the Sharia status of moral rights: “The moral right was considered on the early days as benefits paid for the purchase of paper, and the expenses incurred by the author for copying and not for skills and the effort of author but in this modern world it is for an attempt to author and the way of respecting him (Al Hija PHD, 2015).

The following rights can be briefly identified as the basis of moral rights

1. Right of Publishing
2. Right of Modification

There is clear evidence in the Islamic jurisprudence to the right of publishing. And those who curse (those who have the right) curse them. *“Indeed, those who conceal what We sent down of clear proofs and guidance after We made it clear for the people in the Scripture - those are cursed by Allah and cursed by those who curse,”* (Qur'an 2: 159) It implies that God does not like to hide the knowledge that benefits the people (AbuElHaija, 2015).

Islamic jurisprudence also recognizes the right of the author of a work to make changes according his opinion such changes can take place due to changes in the environment, culture or times. Umar (Rali) once looked at some people and asked, "Why did he change his mind?" They replied that he too had changed his mind according to the change of time and thoughts.

The Legal scholars have pointed out that religious judgments in Islamic jurisprudence also vary according to time, place, context and people. It is an excellent evidence for reprinting, and further publication of literature and the both rights have been accepted by Islamic jurisprudence.

5.6. FAIR USE

Fair use is an action balancing between the rights of the copyright owner and the rights of the user. It is a strategy that leads to dissemination and exploration of knowledge. Section -11 (1), (2) of the Copyright Act refers to fair use.

Notwithstanding the provisions of subsection (1) of section 9, the fair use of a work, including such use by reproduction in copies or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship or research shall not be an infringement of copyright” (Chamila S. Talagala, 2013)

The critique, comment, read, teach, research, or engage in other learning and teaching activities on the works which the copy right have been considered as reasonable act of fair use. This type of practice is accepted in Islamic Sharia for the reason that Islam is a religion that has more concern on spreading knowledge encourages the human on research.

5.7. DURATION OF COPY RIGHT

the Sri Lanka Copy Right Act stipulates with the Sections 2, 3, 4 and 5 that the owner of the property is subject to protection for the economic and moral rights of a work provided copyright shall be in force as long as the author is alive and guarantees that the legal heirs of the late Author will be entitled as inherited to the right of work for a period of 70 years after the death of the Author.

If a work is executed by two persons then the economic and moral rights of the work are guaranteed until the death of the last of the two Authors and an additional period of 70 years from the death of the last person concerned. If this is published in the basis of joint venture at different times the all documents gathered and the legal protection will be provided from the time the first job is published.

According to Taki Usmani, the state lands belonged to the Islamic regime was leased only for 50 years for public use during the khilafath. So, even the descendants inherit the right on the basis of legal heir but it should be permitted to use as the property inherited for a limited period of 50 years even though the benefits reach the public. The law in force in Sri Lanka contradicts the Qiyas made by Tasky Usmani.

6. RECOMMENDATIONS

1. To bring amendments in places of copyright law of Sri Lanka that conflict with the Islamic jurisprudence identified in this study.
2. To make Muslims aware of the places where copyright can be granted and copyright cannot be granted in attached with Islamic jurisprudence.
3. To form a council of Islamic jurists, led by Sri Lanka's Jammiyyathul Ulama, to examine and provide approval for every potential work for which copyright has been awarded.

4. To introduce and offer a new course that clarifies copyright law from the point of view of Islamic jurisprudence in the Universities of Sri Lanka.
5. To bring in separate legal Islamic Law provisions incorporating the principles of copyright, at least for Muslims only.

7. CONCLUSION

The Copyright Act No. 36 of 2003 in force in Sri Lanka is compliance with the principles of Islamic Law in some areas meantime it contradicts in some other areas. The areas of such conflict have been identified as of granting legal protection to works of music prohibited by Islamic Shari'ah, and granting copyrights to silhouettes, paintings and sculptures. Granting legal protection to duplicate works leading to Kufr shirk. It was found that there some pitfalls such on granting copyright for the diverted works, denoting the absolute period of the Copy right. That is why any kind of involvement of a Muslim by possessingsuch property contradicting Islamic Sharia or misuse of such copyrighted work with an act would lead to a forbidden act called as haram. The Precocious awareness of Muslims in this regard will be an opportunity to succeed hereafter in the last day.

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