

**COPYRIGHT PROTECTION AND THE *MAQASID AL-SHARI'AH*
(THE OBJECTIVES OF ISLAMIC LAW)**

By

Asma'u Aminu Sani*

ABSTRACT

Intellectual property rights (specifically copyright) has been subjected to a lot of jurisprudential debates concerning its adaptation and recognition in Islamic law. This is due to the fact that there are no textual sources that afforded recognition to it being a contemporary issue. The paper aims to analyze the legal framework for justifying copyright in Islamic law through exploring the doctrine of *Maqasid al Shari'ah* particularly exploring the traditionalist approach of protection and preservation of wealth and intellect, aligning it to the idealization of fitting it within the paradigms of Right and Development in the contemporary discuss on the evolution of the *Maqasid*. For this purpose, the research utilizes the doctrinal methodology vide the normative analytical tool in analyzing relevant concepts within the extant principles and doctrines of Islamic law. The analysis demonstrates that integrating copyright within the realms of Islamic law is clearly based on the preservation of wealth which recognizes earnings based on individuals' labour in order to enhance societal equitable development and incentivize an author for his creative effort. While protection and preservation of intellect is re-conceptualized to construe propagation and seeking of knowledge and avoiding brain drain through fostering learning and innovation. Thus the *Maqasid* approach is considered as a balanced interest in justifying copyright which recognizes incentivizing an author for his individual efforts and at the same time safeguarding public interest as one of the major goals which Islamic law is set to achieve. The study recommends further research into other Islamic law principles such as the use of *Maslahah Mursalah* in justifying Copyright protection as a means of knowledge dissemination the hallmark if which is to serve the benefit of the society as a whole.

Keywords: Copyright, *Maqasid al Shari'ah*, Protection of Wealth, Protection of Intellect.

* Lecturer, Department of Islamic Law, Bayero University, Kano. Aasani.isII@buk.edu.ng abidatuasma@gmail.com

1.0 INTRODUCTION

The concept of Intellectual property rights (IPR) has always been a controversial and unsettled matter under Islamic Law. This is due to the fact that Muslim scholars and theologians have shared divergent opinion concerning its justification within the precepts and sources of Islamic law. The major concerns were on its adaptation within the scope of what is recognized as property (*Al Mal*) and its characterization within the classical definition. Thus the unsettled question of fitting Intellectual property rights within the principles of Islamic law garnered opposite dimensional views; while the extremists refuse to acknowledge the justification of the IPRs within Islamic legal scholarship regarding it as product of Western normative ideologies and dominance describing it as contrary to Islamic teachings which has not been directly justified within the normative or textual sources. While the positivist view inclined towards justifying the IPR based on Islamic norms, legal concepts, and analytical arguments canvassed by the Muslim to substantiate its adaptation within Islamic scholarship.

Intellectual property rights constitute four (4) distinct rights; Trademarks, Patents, Copyrights and Trade Secrets. Trademarks is considered as a source of quality identifiers which encourages investments in products that are marketed under an identifiable mark. Patents on the other hand is granted in order to encourage and reward innovation by providing inventors with a right to exclude and prevent others from using their novel inventions. Copyright serves to encourage authorship of literary and artistic expressions by giving authors moral and financial rights to protect the works of authors and reward them for their endeavour. While Trade secrets generally protect the ideas that an inventor which he wishes to maintain in secrecy.

Copyright originally a western legal concept was perceived by many of the Muslim scholars as not being adaptive to the rules of Islamic Law. Hence, its adoption within the enclave of Islamic law principles requires more than just establishing its compatibility with the notion of ownership over ideas, but rather a robust approach is needed to connect how the sources and objectives of Islamic law fits copyright as it is perceived within the International framework

Among the legal concepts that were used to justify recognition for Copyright in Islamic Law is the doctrine of Maqasid al Shari'ah which is encapsulated under the five (5) major fundamentals of the law; protection of life, protection of lineage, protection of intellect, protection of wealth and

protection of religion. While specifically aligning the current study to protection and preservation of wealth and intellect. The rationale for this is to be able to substantiate the new paradigm developed for the *Maqasid* doctrines beyond just the issue of protection, but provide a more holistic approach of the modernist perception of re defining the *Maqasid* to incorporate the idea of rights and development.

1.1 NATURE OF COPYRIGHT

Copyright is a statutory right which confers on its holder the exclusive right of a work for a sustained period of time. It allows an author or creator to exploit ideas once he has embodied in a work which has been created or recorded.¹ It is the exclusive right given under the law to an author/creator to control the reproduction of a work which is the subject of copyright. As a specie of Intellectual property, it is considered as the product of the mind which has been described as man's only genuine property worthy of protection.² Further to this, it constitute a bundle of rights which are granted for a period to protect the form, way or manner in which an idea or information is expressed. Unlike other forms of Intellectual property, it subsists without any need for formality such as application or registration. Thus for the right to exist for an author, certain amount of effort need to be expended in order to justify its existence.

Within the Islamic paradigm, Copyright is referred to '*Haqq al Ibtikar*' which means the authority or ownership of a newly created work.³ Contemporary Scholars have described it as the exclusive rights for creators or recipients of the rights to reproduce their creations or give permission for it without restrictions.⁴ Thus it gives the author the right to protect his ideas and information from commercial exploitation.⁵ While from another perspective it is idealized it as a negative right of preventing others from copying authored works. It is the general perception of the law that copyright is significantly different from physical property or other rights in terms of its being

¹ Catherine Colston, *Principles of Intellectual Property Law*, Cavendish Publishing Ltd, (1999) p.167.

² Ameh I 'An Appraisal of the Role of the Nigerian Copyright Commission in the Enforcement of Copyright Laws in Nigeria' *Ahmadu Bello University, Journal of Commercial Law(ABUJCL)*, vol,5, no.1, (2010-2012) pp 140-150.

³Setiwoyati, Realising Halal Copyright Principles Through Protection of Copyright Holder's Economic Rights, in F. Kerem Giray et al. (Eds.): LICS 2022, ASSEHR, (2023), 754, p.27. Accessed at https://doi.org/10.2991/978-2-38476-074-9_4

⁴ Ibid

⁵ W R Cornish, *Intellectual Property; Patents, Copyright, Trademarks and Allied Rights*, Sweet & Maxwell, (1981). pp.296-297.

defined, used and protected⁶ and this makes it distinct in nature and distinguished by certain characteristics that makes it difficult to fit easily within the regimens of property in the classical principles of Islamic law.

1.2.1 Intangibility

Copyright garnered recognition in Islamic law it being construed as intangible property. This is a type of property that exist in abstract form of whereby physical substance cannot be attributed to it. This establishes the significant distinction between copyright and physical property which lies in the fact that, copyright is an intangible right resulting from intellectual effort which is embodied in any medium of expression whether books, broadcasts, pictures e.t.c.⁷

1.2.2 Property Applicability

Although, copyright has its distinctive terms of ownership being property rights that are termed as deemed abstract, (*haqq al mali al ma'anawi*) that gives it a controversial perspective than other rights due to its nature. This is because absolute ownership and possession cannot be determined due to its abstractness. Thus the rationale for recognizing Copyright as property is based on the financial worth and the benefits accruable and not its adaptation the general characteristics of property in Islamic law.

1.2.3 Personal Characteristics

The exercise of intellectual creativity in authored works most of the time showcases the personality of the author. Therefore, among the distinctive features of authorship is that it is attached to its author as an extension of his personality reflecting his unique attributes. The author usually personifies the work and establish a strong connection between himself and the work.

1.2.4 Exclusivity and Usability

The idea of applying the exclusivity test to Copyright poses a lot of problems while placing it within the enclave of property. Unlike physical property, works that are subject to copyright are mostly intended for public use due to their nature and the successes of authored works largely depend on their dissemination and use. Thus the dichotomy of monopolization if far-fetched from the recognition afforded to copyright

⁶ Ali Ahdash, *Foundations and Conditions for Copyright in Islamic Law*, p.107

⁷ Ibid

1.2.5 Originality

The originality is one of the fundamental elements that shapes the boundaries for copyright protection and defines the threshold of the creativity required for the copyright to be established. It is the basic requirement that confers exclusive rights on an author to protect his original work.⁸ The main concerns of this principles requires that a work must be the result of an authors' independent intellectual effort which must exhibit certain level of minimal creativity. Under the provisions of the Copyright regimes within the International framework requires minimum level of originality for a work to attract the protection. The essence of which is to strike a balance between encouraging creativity on one hand and safeguarding public interest on the other.⁹

1.3 THE FOUNDATIONAL DEVELOPMENT OF ISLAMIC LAW

Islam as a comprehensive religion came into existence with various dimensions.¹⁰ It stipulates a regulatory framework that encompasses all aspects of human life including his social activities, economic ideologies and rules of conduct. The aim of the legislation is to bring as much as possible the desired benefits for mankind, both in this world and the hereafter.¹¹ It constitute a comprehensive set of rulings that are dynamic and diverse which are derived from the primary textual authorities i.e. the Qur'an and the Sunnah and also encapsulated within two distinct dimensions Shari'ah and *Fiqh*. Although the two words are synonymously used in context, they differ in the sense that Shari'ah refers to the moral, ethical values and principles that guide Muslims within the sacred texts, *Fiqh* on the other hand signifies the human understanding of the Shari'ah which applies human reasoning while attempting to interpret the divine provisions making it flexible to fit into current societal needs and development.¹² Therefore annexing Shari'ah and

⁸ Anushka Hanotiya, Copyright and Originality, Unpublished Manuscript submitted to Karnavati World School of Law, (2023) .Accessed at <https://ssrn.com/abstract=4620875>, p. 5.

⁹ Ibid

¹⁰ Mahmud Shaltut, *Al-Islam 'Aqidah wa Shari'ah*, Dar al-Qalam, (1966), pp. 11-13.

¹¹ Imran Ahsan Nyazee, *Theories of Islamic law*, Adam Publishers, India (2003), p.57.

¹² Musawah, *Shari'ah, Fiqh, And State Laws: Clarifying The Terms* (2016) (distinguishing between *Shari'ah* [*Shariah*] and *fiqh* by explaining that “*Shari'ah* comprises moral and ethical values that embody the spirit and trajectory of Islam’s sacred texts,” and *fiqh* refers to legal rulings, juristic scholarship, and jurisprudential texts produced by Muslim jurists and noting that human-made laws and policies are not the same as *Shariah*); *see also id.* at 3 (“*Shari'a* is the eternal, immutable, and unchanging law as it exists in the mind of God. *Shari'a* is the Way of truth and justice as it exists in God’s mind. In essence, *Shari'a* is the ideal law as it ought to be in the Divine realm, and as such it is by definition unknown to human beings on this earth. Thus human beings must strive and struggle to realize *Shari'a* law to the best of their abilities. In contrast, *fiqh* is the human law—it is the human attempt to reach and fulfill the eternal law as it exists in God’s mind. As such, *fiqh* is not itself Divine, because it is the product of human efforts. *Fiqh*, unlike *Shari'a*, is not eternal, immutable, or unchanging. By definition, *fiqh* is human and therefore subject to error, alterable, and contingent.” (quoting Professor Khaled Abou El Fadl) 28.

Fiqh provided a distinct methodology of deriving legal rulings of Islamic law. The resultant effect of which is the reconceptualization of Islamic principles and ideologies to embrace and justify contemporary issues not clearly dealt with within the sacred texts.¹³

1.4 THE OBJECTIVES OF THE SHARI'AH (MAQASID AL SHARI'AH) AS A LEGAL DOCTRINE

The term *maqasid al-Shari'ah* as a compound word contain two words. “*Maqasid*” plural of *maqasid* which is synonymously used to mean leading to one direction, goal, something fair or consistent, not to exceed limits, a straight path among others.¹⁴ Shari'ah on the other hand etymologically means God's commands and prohibitions relating to the behaviours of humans in life. Therefore, where *maqasid* is attributed to Shari'ah it brings to mind the legal purposes of the rulings of the Shari'ah articulating it as a legal theory and its application within the context of the law.¹⁵ In a more comprehensive definition of *maqasid al-Shari'ah* expounded by Ibn Ashur, he opinionated that *maqasid* is centred on the general notions and objectives of the Shari'ah which is mainly to maintain human orderliness, ensure human welfare including their behaviours and intellect as well as the environment they live in.¹⁶ He asserted:

The overall objective of Islamic legislations is to preserve the social order of the community and ensure its healthy progress by promoting the well-being and virtue –*salah* of the human being. The *salah* of human beings consists of the soundness of their intellect and the righteousness of their deeds as well as the goodness of the things of the world in which they live that are put at their disposal.

The doctrine of *Maqasid al-Shari'ah* underwent rapid development bringing to the fore arguments canvassed by the jurists on its evolution as a legal concept in law making and the conception of Islamic theology. *Maqasid al-Shari'ah* or the objectives of Islamic law is evidentially a relevant but somehow neglected theme of the Shari'ah which has not received much attention in the early

¹³ Ibid

¹⁴ Musfir bn Ali Al Qahtani, *Understanding the Maqasid al Shari'ah: A Contemporary Perspective*, International Institute of Islamic Thought, UK, (2015), p. 4.

¹⁵ Muhammad Amin Suhayli, *Qawa'id Dar'ul Mafasid awla min Jalb al Masalih Dirasah Tahliliyyah*, Egypt, Dar al Salam, (2010), p. 64

¹⁶ Muhammad al-Tahir bin 'Ashur, *Maqasid al Shari'ah al-Islamiyyah*, Tunisia: Dar Sukhun li al-Nashr wa al-Tawzi', (2007), p. 49.

development of Islamic legal thought.¹⁷ The Shari'ah generally is predicated on benefits to the individual and the community, and its laws are designed so as to protect these benefits and to facilitate the improvement and perfection of the conditions of human life on earth. The *maqasid al-Shari'ah* is a driving force in approaching issues and addressing matters that pertains to the Muslim community wholly from the earliest time of the development of Islamic tradition. The idea of *maqasid* is justified to be firmly rooted within the primary sources i.e. the Qur'an and Sunnah of the Prophet (SAW) because it serves as the underlying phenomenon in developing the principles of the law. It also serve as the main pillar for the development of the science of *Usul al-Fiqh* which helps in setting the framework for encapsulating intellectual and practical development of the law and shaped it in a manner befitting to the needs of time.¹⁸ A later approach towards the conceptualization of the Maqasid idea is construed as the divine intent and moral concept that serves the foundational basis for the development of Islamic law base on justice, free will, human dignity and facilitating social cooperation in the society. Further to this, it reiterated the connection between the principles of Islamic law with the notion of human rights and development.

1.5 THE DEVELOPMENTAL STAGES OF MAQASID AL SHARI'AH

The traditionalist perspective of the development of the doctrine of maqasid evolved during the early developmental stages of legal thinking and rationalization as expounded by early Muslim scholars such as Al Juwayni and Al Ghazali and who brought to the fore the idealization of the basis of the Maqasid principle to be on five levels of aims: necessities (*daruriyyat*), general needs (*hajjah'amah*), complementary matters/ moral behaviours (*makrumat*), preferable matters (*mandubat*), and matters that cannot be subjected to reasoning- (*ma la yumkin irja'ahu ilaal'aql*).¹⁹ Al-Ghazali, following the footsteps of Al Juwayni at a later stage introduced the notion of "preservation" of the necessities as expounded by Al- Juwayni namely; life, intellect, religion, lineage and wealth.²⁰

The second pivotal stage in the development of the Maqasid theory sees the contributions of scholars like Ibn Abdussalam and Al Qarafi who collocated and idealized the Maqasid base on

¹⁷ Muhammad Hashim Kamali, *Maqasid al Shari'ah; The Objectives of Islamic law*, *Journal of Islamic Studies* 38:2, p. 193.

¹⁸ Mazen Hashem, *Maqasid al Shari'ah: A Civilizational Perspective*, International Institute of Islamic Thought, London, (2023) p. 4.

¹⁹ Ibid

²⁰ Ibid

benefit and harm. The final stage in the development was expounded by Al-Shatibi, who crystallized a comprehensive methodology for the Maqasid. His method when he developed the theory of Maqasid in three substantial ways; from unrestricted interest to fundamentals of law, from wisdom behind a ruling to the bases for the rulings and from uncertainty to certainty.²¹

1.6 RECONCEPTUALISATION OF THE MAQASID THEORY: FROM PROTECTION AND PRESERVATION TO THE CONCEPT OF RIGHTS AND DEVELOPMENT

Even though it was met by a lot of criticisms by contemporary scholars and writers, the doctrine of *Maqasid* was re-conceptualized from the classical and traditionalistic ideology of protection and preservation of the five values; life, religion, intellect, lineage and property to a more dynamic and systematized approach which emphasizes on human growth, reducing harm and provision of suitable environment and equitable development. Therefore, contemporary Muslim scholars re-oriented and developed the *Maqasid* concept to suit current trends.²² Thus from the perspective of the traditional concept of preservation of lineage as one of the necessities which Islamic law aims to achieve, was coined into a family oriented theory which Ibn Ashur encapsulated to include care for the family as important to achieving the objectives of the Shari'ah.²³ Also, the preservation of intellect in the traditional context was a restrictive purpose to the prohibition of intoxication. This was however contemporaneously looked to include evolving matters like propagation and seeking of knowledge and avoidance of brain drain. Preservation of wealth evolved into what is perceived as economic development, societal wellbeing and diminishing differences between economic levels.²⁴ This development enables utilizing *Maqasid al-Shari'ah* to encourage economic and societal growth as a whole²⁵ in the same way, preservation of religion has been re-interpreted to mean a different concept entirely encapsulated as freedom of faith/belief within the contemporary ideology developed for the *Maqasid*.²⁶ Likewise the protection and preservation of life and honour as expounded by al-Ghazali and al-Shatibi is being replaced with the idea of preservation of human

²¹ Ibid

²² Jasser Auda, *Maqasid al Shari'ah as Philosophy of Islamic law, A Systems Approach*, International Institute of Islamic Thought London, (2007), p.21.

²³ Ibid p.22.

²⁴ Ibid.

²⁵ Ibid.

²⁶ Ibid p.23.

dignity under the pretext of protection of human rights as a purpose of Islamic law in its own right.²⁷

However, the compatibility of the concept of human rights and its adaptation to Islamic law has been subjected to heated debate from both the Islamic and international circles.²⁸ A universal Islamic Declaration of Human Rights was announced in 1981 by a significant number of Muslim scholars as representatives of various Islamic entities at the United Nations Educational, Scientific and Cultural Organization (UNESCO). This Declaration included an entire list of all the basic rights mentioned in the Universal Declaration of Human Rights (UDHR), such as right to life, freedom of expression, equality, justice, education among others.²⁹ Although concerns have been raised about the adoption of the Islamic Declaration of human rights may likely impinge upon the notion of the literalist ideology of *Maqasid*, others believed that this may add a new positive dimensions to human development, as it is attributable to divine sources thereby adding up to the moral motivation or even feeling of an obligation to their compliance.³⁰

Nevertheless, a more robust idea of the *Maqasid* to fit into human development was evoked based on its adoption within the framework of the UN Development Reports. The index generated showcased most of the Muslim countries ranking low in measures of literacy, enrolment in education, life expectancy, standard of living, access to welfare and incentives among others.³¹ Hence, it was suggested by a contemporary writer on *Maqasid* that human development is to be considered as prime expression of *maslahah* in our current time, which the *Maqasid al-Shari'ah* aim at its realization.

1.7 MAQASID AL SHARI'AH AND COPYRIGHT

The justification of copyright serves the *maqasid al-Shari'ah* in protection and preservation of property and intellect. Copyright is justified by many base on the fundamental consideration to serve the *maslahah* (interest) of both the individual author and the community in several ways.

²⁷ Ibid.

²⁸ Mohammed Osman Salih, *al Islam Huwa Nizam Shamil Li Himayah wa Ta'ziz Huquq al Insan*. A paper presented at the International Conference on Islam and Human Rights, Khartoum, (2006), p.26

²⁹ International Protection of Human Rights (2004) University of Toronto Bora Laskin law Library, available from <https://www.law-lib.utoronto.ca/resguide/humrtsgu.htm>

³⁰ Salih, (n 28), p. 25

³¹ Ibid

1.7.1 Preservation of wealth (*Hifdh al Mal*)

The general notion of property (*mal*) being construed and recognized as form of tangible property has created dichotomies among Muslim scholars concerning fitting copyright as a specie of Intellectual property to fall within this category of *mal*. This is due to the inability of the concept to fit well within the characterization of property expounded by the early Muslim scholars and the schools of jurisprudence (*Madhahib*). However, with the continued transformative development, contemporary scholars opined the inclusiveness of copyright as an extended form of property as intangible assets being abstract in nature but recognized to have financial value. The starting point for the recognition of property is clearly reflected in the recognition everything in the universe belongs to Allah (SWT) and human beings are regarded as trustees to manage the resources embedded within the earth and that ownership in these resources arise from the concept of stewardship (*Khilafah*).³² Therefore, the principles of the law clearly emphasized the recognition of the property rights which includes but is not limited to the right to earn and acquire property, the right to own possess and enjoy and the right to transfer such property by any of the legitimate means of transfer recognized by the law.³³ Thus Islamic law has recognized gaining fair reward for efforts and is also considered as one of the legitimate ways of acquiring ownership in property. Further to this, it emphasized the importance of the preservation of an individuals' property right by defining a person's right on one hand and that of the society on the other.

From another dimension, the right of possession in the resources provided for man to harness collectively and where an individual exerted an effort in accruing these resources, he acquires a preferential right in the use and enjoyment of the resultant effort without indirectly denying others the right of access to the resources.³⁴

With regards to copyright in terms of its preservation as property in Islamic law, the property rights of an author is recognized due to the effort and labour exerted by him whereby he is allowed to transact in his property within the purview of the law, Authors can only harness their economic rights arising from writings only through the recognition of the proprietary interests that have been justified to exist within the copyright which is based on *Maslahah*. Thus the appropriation of copyright for creators of works would seem to fit with the *Maqasid* of Shari 'ah regarding the

³² Q 6:165, Q 57:7

³³ Muhammed Habib Dolgun, Property rights According to the Qur'an and Sunnah and their Economic Implications for Contemporary Societies, *ISRA, International Journal of Islamic Finance*, Vol 8, Issue 1(2016), p.94.

³⁴ *Ibid*, p.102.

protection of rights to own property as an ideology developed at a later stage of *Maqasid*. Thus, copyright is conceived as protection of the public interest on one hand and the rights of ownership of the authors on the other.

Practically, the question of whether or not copyright, especially its economic perspective can be ascribed correctly to its rightful owner under Shari'ah has much greater significance due to the exploitation of their works. Hence the law decided to give the authors certain level of protection against the infringement of their rights who have sacrificed their time and effort would become meaningless or at least at risk, if others could appropriate their intellectual works. It is of the *Maqasid al-Shari'ah* that the precise beneficiary of a right must be readily determined so as, to prevent risks of conflict within a society.³⁵ Therefore, protecting these rights is an essential *Maslahah* the special status held by copyright is essential to its establishment as a right and the unique role it plays in societal upliftment and development, hence the need to foster intellectual creativity by protecting authors rights.

1.7.2 Preservation of Intellect (*Hifdh al Aql*)

The faculty of reasoning has been one of the most valuable character given to the human being which makes him to be a superior creature in the whole of the universe. Where there is no reason, then the development of a healthy mind as a pre-condition for worship and correct application of the religious practices cannot be attained, and this will make the ultimate purpose for the creation of human beings obsolete. According to al Ghazali, possession of intellect is the foundation of all knowledge and the basis of its benefit is to achieve success to both in this world and the hereafter.³⁶

The preservation of the mind within the confines of Islamic law has been explained to fall under the dimensions of its development and utilization. Therefore the traditionalist approach from the classical perspective of the law was the protection of a person's mind from any form of irrational and disintegrative reasoning that was set to be achieved by the prohibition of intoxicants.³⁷ Further to this, looking at the issue from the re-conceptualized perspective as expounded by Ibn Ashur and

³⁵ ibn Ashur, (n 16) p. 421.

³⁶ M Shihan, M Amanullah & A M Ali Zaroum, The Examination of the Social Dimension of Shari'ah from the Viewpoint of Maqasid al Shari'ah: A Case Study of the Preservation of Intellect, International Journal of social Science and Human Research, (2023), Vol06, Issue 02, p.1042

³⁷ Q 5:90 The verse provides for the categorical prohibition of intoxicants and other vices for the attainment of success by the believers.

other contemporary scholars, the idea for the protection of intellect spans across the precepts of propagating proper and rational thinking through access to educational materials as the means of enhancing the well-being of the human being and by extension the society as a whole.

Secondly, it can be argued that copyright be justified for the sake of societal advancement, scientific development and humanity's future, both of which are part of the fundamentals of the *Maqasid* of Shari`ah through safeguarding the intellectual capabilities of the society as a whole. This stems from the fact that it may steer developmental growth of the society. For the sake of scientific development and humanity's future, copyright can be supported by acknowledging the financial value of the created intellectual works and rewarding authors with such incentives. It is a religious obligation upon a Muslim nation to strive to improve its efficiency and capabilities in all aspects of life. This cannot be done without the encouragement of literary and scientific works, which in turn depends on the recognition afforded to copyright. It seems that the protection of intellect, as one of the *Maqasid al-Shari`ah*, can only be achieved by protection of copyright.

On reflection, there is a strong nexus between copyright, educational development and scientific progress. The recognition of copyright respects rights and encourages scientific efficiency. It strengthens the objectives of Shari`ah by promoting literary and technological advancement, scientific innovations and rewarding authors and innovators thereof. Therefore, the recognition of copyright to serve the objectives of the Shari`ah. is obviously that educational and scientific developments within society which has a close bearing upon an authors' ability to benefit from his works.³⁸ The evidence for Copyright is based on the interest that its protection encourages authors to publish their works which helps, develop and enlighten the society.³⁹ Hence, its recognition need be justified in order to stimulate individuals to create new literature and useful knowledge as it also serve as an incentive for the promotion of intellectual works, which in turn, is necessary for advancing public interest.

1.8 CONCLUSION

It is imperative to note that one of the major goals of the Shari`ah is to constitute a framework for existing rulings for matters that have already been addressed by the classical principles of the law. At the same time provide justifications for anticipated rulings vide contemporary matters. This clearly reflects the dynamic nature of Islamic law to suit all times and places. Drawing inference

³⁸ Ahdash, (n 6), p.176.

³⁹ Ibid

from the study on the analysis of fitting copyright in Islamic law by using the *Maqasid* as a template, it provided a robust and strong normative framework by acknowledging adopting it beyond the classical texts but aligning it with the re-conceptualized ideas specifically encapsulated with contemporary perspective of preservation of wealth and preservation of intellect.

The present work is an attempt to situate the doctrine of the *Maqasid al Shari'ah* to contemporary issues, specifically copyright as a form of Intellectual property, generally, the aim of Islamic law for which the law is ordained principally is to exclusively serve the benefit of human being both in this world and the hereafter. The actualization of this generic goal is to make individuals and the society happy, preserve law and order and enhance civilization through investigating extant rulings, study the texts and develop new rulings to suit current needs. As a complementary framework to copyright protection under Islamic law, it plays a significant role in developing guiding principles that relates to copyrights as a form of Intellectual property with emphasis in securing the greater good for the community while also protecting the individual rights of a holder of the copyright. The study provides an insight on the justifying copyright based on protecting the rights accrued by the copyright holder based on the constructive recognition of the individuals' property rights in relation to the efforts exerted by an author.

This has been dealt with holistically as it established a logical and ethical justification in protecting an author's right while upholding the ethical consideration of promoting what is good and beneficial to the society. Conclusively, a study like this provides a dynamic approach towards adapting contemporary challenges within the paradigm of Islamic law, Therefore, the study recommends further research on the doctrine of *Maslahah Mursalah* as a tool that will provide a further insight to the justifications of Copyright being a contemporary issue not addressed by classical texts.

1.9 FINDINGS

There is the general notion that Islamic law is predicated on the benefits of either the individual or the community as a whole. The aim of which is the laws are designed to protect these benefits and improve the conditions of the human kind. Majorly, the provisions of this law is to establish justice, eliminate prejudice and alleviate hardship in the society. While justice is manifestation of God's mercy and the objective of the law in its own right, compassion is manifested in the

realization of benefits *Maslahah* of which the humans have generally considered to be an all pervasive value and objective of the Shari'ah which is synonymous to its intent and purpose.⁴⁰

The justification of copyright serves the *Maqasid al-Shari'ah* in protection and preservation of intellect and property. Copyright are justified by many fundamental considerations working to serve *Maslahah* of the public and that of the author in several ways. First of all, in terms of the protection and preservation of property in Shari'ah, it establishes the proprietary right of authors, who have sacrificed their time and effort would become meaningless or at least at risk, if others could appropriate their intellectual works without any restrictions. This needs to be safeguarded against unnecessary infringements by another. It is of the *Maqasid al-Shari'ah* that the precise beneficiary of a right must be readily determined so as, to prevent risks of conflict within a society.⁴¹ Authors can only harness their economic rights arising from their efforts only through the recognition of the proprietary interests that have been justified to exist within the copyright and this is based on the benefit that is accruable. Thus the appropriation of copyright for creators of works would seem to fit with the *Maqasid* of Shari'ah regarding the protection of rights to own property as an ideology developed at a later stage of *Maqasid*.

Copyright should be conceived as protection of the public interest and the rights of ownership of authors. Practically, the question of whether or not copyright, especially its economic orientation, can be ascribed correctly to its rightful owner under Shari'ah has much greater significance due to the exploitation of their works. Hence, protecting these rights is an essential *maslahah* which needs to be utilized in order to provide resolutions for new rights and issues. Thus the special status held by copyright is essential to its establishment as a right and the unique role it performs in societal progression and development. Therefore, policies need to be implemented so as to foster creative intellectual activities such as authorship and innovation by protecting the author/creators' rights. Secondly, it can be argued that protecting copyright be justified for the sake of societal advancement, scientific development and humanity's future, both of which are part of the fundamentals of the *maqasid* of Shari'ah through safeguarding the intellectual capabilities of the society as a whole. This stems from the fact that it may steer developmental growth of the society. For the sake of scientific development and humanity's future, copyright need to be supported, not

⁴⁰ Kamali, *Maqasid* (n 11) p 194.

⁴¹ ibn Ashur, (n 16), p. 421.

merely by the justice system that has provided for punishment for infringement upon the rights, but also by the accepted priorities that inspired them toward acknowledging the financial value of the created intellectual works and rewarding authors with such incentives. It is a religious obligation upon a Muslim nation to strive to improve its efficiency and capabilities in all aspects of life. This cannot be done without the encouragement of literary, scientific life, which in turn depends on the recognition of copyright. It seems that the protection of intellect, as one of the *maqasid al-Shari'ah*, can only be achieved by protection of copyright.

Reflecting on this, there is an association between copyright, educational development and scientific progress. The recognition of copyright respects rights and encourages scientific efficiency. It strengthens the objectives of Shari'ah by promoting literary and technological advancement, scientific innovations and rewarding authors and innovators thereof. Therefore, the recognition of copyright to serve the objectives of the Shari'ah. is obvious that educational and scientific developments within society have a close bearing upon an authors' ability to benefit from his works. The evidence for Copyright is based on the interest that the protection of copyright encourages authors to publish their works and that these works develop and enlighten the society. Hence, its recognition need to be justified in order to stimulate individuals to create new literature and useful knowledge. Copyright is necessary as an incentive for the promotion of intellectual works, which in turn, are necessary for advancing societal interest and development.