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# Protection for Fashion in Shi'a Jurisprudence

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**Abstract**
**Along with the growth of intellectual property rights, trends and areas associated with this field have undergone changes. One of the major domains of intellectual property that today has gained a great position and importance in the world, is the concept referring to fashion (Mode) and creations of Beauty and Wear. Although lawyers often scrutinize fashion in the field of literary property rights, and sometimes in the form of industrial property rights, the status of fashion as an important part of intellectual property rights is undeniable. In Shi'a jurisprudence, there are various views on intellectual property rights, which are generally true in the concept of fashion, too. In general, there are two views in Shi'i jurisprudence on intellectual property and, consequently, of fashion. According to the first comment, intellectual property and consequently fashion are lacking in legal terms, and the holy legislator has not provided any protection for fashion. However, the group believes that some rights can be recognized through the terms of legal contracts for intellectual people. On the contrary, the second group, with the full support of fashion, believes that the holy legislator, in general primary rulings, as well as secondary ones such as "La-Zarar" (Prohibition of Detriment) and "La-Haraj" (No Distress), etc., have implicitly supported the thoughts. However, given the growth of the fashion arena, it seems that the second approach is consistent with global developments.**

**Key words: Fashion, Beauty creations, Shi'a jurisprudence, Prohibition of Detriment, Sheikh Ansari**

# Protección Para La Moda En La Jurisprudencia Chiíta.

Resumen
Junto con el crecimiento de los derechos de propiedad intelectual, las tenden-cias y áreas asociadas con este campo han sufrido cambios. Uno de los princi-pales dominios de la propiedad intelectual que hoy ha ganado una gran posición e importancia en el mundo, es el concepto que se refiere a la moda (Modo) y las creaciones de Belleza y Desgaste. Si bien los abogados a menudo examinan la moda en el campo de los derechos de propiedad litera-rios, y en ocasiones en forma de derechos de propiedad industrial, el estado de la moda como una parte importante de los derechos de propiedad intelec-tual es innegable. En la jurisprudencia chiíta, hay varios puntos de vista sobre los derechos de propiedad intelectual, que en general también se aplican al concepto de la moda.
En general, hay dos opiniones en la jurisprudencia chiíta sobre la propiedad intelectual y, por consiguiente, sobre la moda. Según el primer comentario, la propiedad intelectual y, por consiguiente, la moda carecen de términos legales, y el legislador no ha proporcionado ninguna protección para la moda. Sin embargo, el grupo cree que algunos derechos pueden ser reconocidos a través de los términos de los contratos legales para personas intelectuales. Por el contrario, el segundo grupo, con el apoyo total de la moda, cree que el legislador santo, en general dictámenes primarios, así como los secundarios como "La-Zarar" (Prohibición de Detrimentar) y "La- Haraj" ( No Distress), etc., han apoyado implícitamente los pensamientos. Sin embargo, dado el crecimiento de la arena de la moda, parece que el segundo enfoque es consis-tente con los desarrollos globales.

Palabras clave: moda, creaciones de belleza, jurisprudencia chiíta, prohibi-ción del detrimento, jeque Ansari.

## Introduction

The advancement and expansion of societies requires that, in the wake of developments, the rights and supportive provisions will be accompanied by incremental developments and, moreover, will provide a wider range of affairs under the umbrella of its support.
One of the issues that, with the growth of the industry, along with the advancement of intellectual property rights, has entered the legal literature

of the countries, is the discussion of fashion and, consequently, creations and clothing items, designs and models – are the examples of the fashion industry. Fashion, as a word, means new taste and style. But as a term, means a sudden change in the taste of a group of people, which tend to lead to a particular behavior or the consumption of certain goods or to adopt a different style temporarily in the life.[1]

In French law, the historical record of fashion support dates back to 1806, and the discussion of the special support for creations and clothing items - as one of the examples of fashion since 1902 - has been officially discussed. In addition to the adoption of specific legal texts in this area, after the interval, according to paragraph 14 of Article L-112-2 and the fifth book of intellectual property law (articles L- 511-1), the products of clothing, Seasonal industry, designs and models are included as an integral part of fashion related topics, have been supported.[2]

Although when it comes to fashion and its concept, it is mostly the aesthetic aspect of it which matters, inserting a type of thinking into a particular period of time in the form of a fashion concept itself is a strong reason to place this subject within the framework of intellectual property rights. Fashion-related (Beauty-Wear creations) rights are considered to be one of the most important categories of intellectual property rights, which, with its inherent revenue-generating qualities, play an unquestionable role in flourishing of industry and the economy of the countries.

In French and British law, a historical record of supporting the creation of beauty-wear (fashion), respectively returns to 1806 and 1873, and the discussion of specific support for creation and clothing items - as one of the examples of fashion, has been officially raised in these two countries since the twentieth century onwards.

On the other hand, it should be noted that, although in British law, supporting the fashion products is only applicable to industrial property rights, French lawyers have considered the matter of protecting the fashion as one of the important issues of industrial property in their legal works, in addition to the discussion of literary domain. Also in Iran's law, in accordance with Article 4 of the Law on Regulations of Fashion and Clothing adopted in 2006, "The produced designs and patterns, textiles and clothing based

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1 - P. Breesé, Stratégies de propriété industrielle, 2è é, PUF, Paris, 2002, P. 372.

2 - Ibid, p. 373 et 374.

on Iranian-Islamic symbols are protected by the rights of compilers and authors and industrial property rights".

In addition to the adoption of specific legal texts in this regard after the above stated period, in accordance with clause 14 of Article L-112-2 and the Fifth book of intellectual property law (Articles L- 511-1) and also Article 3.18 of the Designs and Models law in the United Kingdom in 1976 with subsequent amendments, the clothing products, seasonal industry, designs and models, as well as a sample of protected examples of industrial property rights, including patents, trademarks, competition law and industrial designs, have been included in protection. In Iran's law, it is possible to consider the legal safeguards of this issue by comparing the rules and regulations governing industrial property and by adopting a common line between the rules governing it in relation to fashion-related rights. The above claim is strengthened when the Iranian legislator, in accordance with Article 4 of the Law on Regulation of Fashion and Clothing, adopted in 2006, produced designs and patterns, textile and clothing based on Iranian-Islamic symbols, are protected by the rights of compilers and authors and industrial property rights.

**The Concept of Fashion**

Fashion (Mode) is a new concept, which, despite having commonalities in all societies, sometimes differences may be raised in its concept, due to differences in the socio-cultural infrastructures of countries. As an example, what in Iran, as having such a religious and national background, is interpreted as fashion, is different from what is meant by this concept in European and Western countries. But it seems that it is necessary to distinguish between the concept of fashion with modality and in striving for a comprehensive definition of fashion in terms of existing differences in relation to the type of attention to moderation, not what is considered as the definition and concept of Fashionism.[3]

Fashion is a phenomenon that is specific to the human community, which is associated with the concept of modernism. In other words, fashion has emerged with the modernization of societies. Because in past eras, a concept called fashion and fashionism did not have the perceptible position

3- Kourosh Moghimi, "Cultural Studies in the Field of Western and Iranian Wear", Social Science Journal of Zanjan University, No. 48, 2007, p. 114.

among people as it does today. Looking at history, it is possible to see this phenomenon among the great civilizations of the world, though. As it has been said about Sumerian women, using a lot of ornaments and luxury coatings was very common among women in the affluent stratum.[4]

Mode is from the Latin root (modus). After World War I, this term entered Persian language following the influx of Western civilization. The term "Mode" in Persian literature is taken from the French language and means the temporary methodology that regulates the way of life, clothing, etc., according to the taste of the people of the era.[5]

The notable point in this definition is the temporality of the behavior.

This term is closely related to terms such as Modern, Modernity, and Modernization. In medieval Europe, these words were avoided and a new and novel category was described with the term "New". [6]New object or phenomenon was a new affair belonging to the heavenly realm, which was the result of the creation by God and divine creativity, and on the contrary, the "Modern" and "Mode" phenomenon belonged to the earthly realm. Mode was the result of human will for creativity and had a concept close to "Innovation" in Islamic culture. But simultaneously with the tradition of socializing in Europe in the era of enlightenment, the terms like Modern and Mode were also sanctified and more widely accepted.[7] Although Iran, due to its religious and traditional base, has established its legal provisions according to religious and jurisprudence principles, it has not, however, been away from modern legal issues, and has consistently attempted to, in addition to recognizing new concepts, prove the compatibility of these emerging concepts with jurisprudence.[8] One of the most important categories of law that is constantly evolving and progressing in Iranian law, is Intellectual property rights. This branch of rights, which has put protecting human intellectual creations as its principal job, is divided into two main categories of literary and artistic ownership rights and industrial ownership rights.

Examples and the scope of Mode inclusion

After explaining the concept of Mode and defining what is used by defining this term, scrutinizing the scope of inclusion of this concept seems to be necessary. In fact, the notion of conceptual scope and that which

4 - Gholam Abbas Tavassoli, "Fashionism in Iranian Culture", Social Sciences Letter of Tehran

5 - Ali Akbar Dehkhoda, Dictionary, Vol. 12, Tehran University Press, 1998, p. 1811.

6 - Abdol Rasoul Bayat, "Madness of Fashionalism", Design and Fashion Monthly Paper, No. 12, 2009, p. 35.

7 - Ibid, pp. 35 and 36

matters are situated in this category, along with Mode contexts, plays a significant role in clarifying the subject. Thus, according to this necessity, the thematic framework of Mode; that is, Beauty and Wear creation, will be addressed in two speeches. Creation means "something which is produced by manpower or an effort," or "the result of an act or a process."[9] Also in the field of goods and products relevant to Mode, various examples of it are commonly subcategorized under two concepts of Wear and Beauty creations.[10] There is no doubt that since both of these instances are created by the thoughts and are the creations of the human mind, they can be protected under the umbrella of intellectual ownership rights on certain conditions, and can be supported as "Intellectual Works".

Wear Creations

The concept of Wear creations can be considered in the form of general and specific meanings. The meaning of wear creations, in the general sense, is any kinds of wear for each components of human body or tools and means of life. Thus, this title does not refer solely to what is referred to as clothing, and also involves pieces of wear such as glasses, shoes, and even jewelry and, in general, ornaments that adorn the component of a person's body or his life. On the contrary, the title of wear creation in a particular concept, is used only in the sense of what is used as clothes and clothing, hence it does not include general examples of wear. It should be noted that the Supreme Court of France, in one of its judgements, affirmed that whenever the term "wear Creation" was used, it should be considered in the general sense, so that many examples would be protected as protectable works relevant to fashion.[11] Beauty Creations

Beauty creations are also divided into two general concepts. The general concept of this title, in fact, contains all the products and productions that are the ornamentation of mankind and in some way change human body parts from natural and normal. Thus, in the general sense of the word, in addition to cosmetics, it even includes some kind of jewelry and ornament and is closely related to the concept of Wear Creations.[12]On the other hand, the specific title of Beauty Creations covers only cosmetics and this subject matter is not opposed to other examples. It should be noted, however,

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9 - Asadollah Emami, Intellectual Ownership Rights, First Edition, Vol. 1, Mizan Publication, Tehran, 2007, p. 91

10 - M. Vivant. Et J.-M. Bruguière, op.cit., P. 282 .

11- Ibid, P.283.

12- M. Buydens, La protection de la quasi-création, 1è é, Larcier, Bruxelles, 2010, P.341.

that the authorities responsible for dealing with violations of the fashion rights in France are constantly expanding the circle of inclusion of these products of mind, to the extent that even some have also considered the tools and accessories of the body tattoos as to be the Beauty Creations.
Some French writers consider the division of fashion-related products a form of play on words, and insist on the belief according to which the only thing that matters is to support the creations related to fashion industry, and the other precise division of it into Wear and Beauty creations is not so functionally useful.[13] According to them, "The protection itself is important, whether in form of products or in the context of exemplary beauty creations, they must be protected".
On the other hand, others believe that there is nothing wrong with the necessity of this division by itself, and in any case, there is a possibility of the combination between the two cases, but what is to be needed in this regard is that, in order to provide a legal protection from fashion-related products, the legislator's mentality and interpretations used by him should be considered. More precisely, since the French legislature has already approved laws and regulations on protecting the fashion industry, entitled "The Laws of Protecting Wear Creations", it is better to set up a thematic framework of fashion - in line with French legislature's interpretations - Wear creations, with the notion that with the expansion of its examples, the possibility of supporting what may be mentioned as Beauty Products is also to be provided.[14] The latter group has gone so far as to consider even the legal protection of fashion and photo exhibitions and films taken in it, under the title of supporting Wear Creations in the broad sense.[15]
Finally, some other scholars, in line with the idea based on which supporting the fashion is involved in intellectual ownership issues, have linked its inclusion scope to the branches of this science of law - that is, literate and artistic ownership rights and industrial ownership
rights - and the scope the theme of fashion is explained by linking it to the examples of the above legal branches, including industrial designs, patents, trademark rights, Folklore rights, and so on.[16] From what has been

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13 - M. Vivant. Et J.-M. Bruguière, op.cit, P. 274
14 - A. Lucas, Traité de la propriété littéraire et artistique, 3è é. Litec, Paris, 2011, P. 128.
15- Estelle Derclaye, «Are Fashion Designers Better Protected in Continental Europe than in the United Kingdom? A Comparative Analysis of the Recent Case Law in France, Italy and the United Kingdom», The Journal of World Intellectual Property, Vol. 13, No. 3, 2010, P. 315.
16 - M. Vivant. Et J.-M. Bruguière, op.cit, P. 255

said, it seems that the latter category, by not sticking to words and terms, as well as paying more attention to the legality of the issue, has a greater commitment to legal protection of the fashion industry and has chosen a more rational path. But their approach is criticized for this reason that the consideration must be done generally, since considering the instances of an issue may sometimes not cover all the aspects and details.

Attitudes of Shi'a jurisprudence about fashion

In general, there are two major views on fashion in Shi'a jurisprudence. The first group believes in lack of legitimacy of intellectual ownership and, consequently, fashion, and the latter group seeks to support fashion by legitimizing intellectual ownership rights.

Lack of legitimacy of intellectual rights

It can be said that the most prominent opposition to intellectual rights has been crystallized in the views of Imam Khomeini. According to him, "what is known as the right is not considered as a religious right, and it is not permissible to deny the domination of the people on their property, without any conditions and contracts. Accordingly, publishing a book and writing the phrase "Copyright and Imprint is Reserved" on it, does not create the right of self-determination and will not imply the obligation of others. Therefore, others can print and copy it, and no one can prevent them from doing so".[17]

As a justification of his opinion, some critics and scholars have stated that "they do not rationally agree that as soon as a book is published, there will be a right for the owner of publication, and there is no reasonable agreement on the prohibition of people from copying. Because the nature of mankind is based on imitation in all affairs, inventions and professions, and they do not consider the imitation of industrial affairs and the making an object by copying another instance and using the results of past people's thoughts as seizing the rights of others which is conditionaly based on the permission of the owners of these industries, works and thoughts, and the publishing a book is not beyond the scope of this tradition."[18]

Such a jurisprudential view towards intellectual rights is not unique. Some other well-known jurisprudents as well emphasize on such a jurispruden-

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17 - Translation of Imam Khomeini's Tahrir al-Vassilyh, Translation by the Institute Arranging and Publishing Imam's Works, Volume I, Orouj Publishing House, Fourth Edition, 1392, p. 231

18 - Motahari, Ahmad, Document of Tahrir al-Wasila, 1405, Khayyam Printing House, Qom, | P. 236

tial view and have known the prerequisite of the primary argument as lack of legitimacy of these rights. For example, Ayatollah Safi, one of the well-known contemporary authorities, has written in an analytical and argumentative Fatwa: "I have not been able to adapt the right of printing, copyright, and patents, as defined in the new rules of the law, and the works that it perpetuates to the Islamic rules and laws, and it is not involved in contracts and trades so that I say it is possible for the public to refer to some evidence, such as "O'Fawa B-al Oghoud"( Honor your contracts), ... and also during the time of the holy legislator, there were literary works, inventions and innovations while there were no rights credited for the authors, inventors and researchers; and no rights were given to them by the legislator. And in the last word, there was supposed to be no credited rights ... Therefore, the legitimacy of the said rights has not been proved to me."[19]
Despite such a challenge, even such scholars, facing with the wave of proliferation of such phenomena, and their importance in the field of economics, business, culture, and social- educational institutions, and the growing tendency of human societies at the national and international levels towards recognizing the widespread financial rights for the owners of such works, have inevitably referred to extra-divine laws. In their view, two solutions will work in this regard. First, based on the condition as an integral part of the contract, some of the works accepted in the statute law could be guaranteed in favor of the owner of the work. Based on this solution, the condition must be clear and transparent and should be considered by the parties at the time of concluding the contract. However, solely inserting the phrase, "All rights reserved for the author, or publisher", is not sufficient and will not result in financial entitlement because the buyer is not usually aware of the conditions when buying a book.
Even due to the inadequacy of this solution to cover all the intended purposes in the law, they suggest that another way should be sought so that the government and the competent ruler, in accordance with the provincial or public authority and in line with preserving the public interests, recognizes some of the right considerations in the validation of these rights and grants an exclusive privilege to the owner of the invention, printing or writing

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19 - Safi Golpaygani, Lotfollah, 2007, Theology in Nahj al-Balagha, Third edition, Boostan-e-Ketab Institute, Qom, p. 213

for a limited period. Given the fact that the material presented refers to the public intellectual ownership, it is also true about fashion. Therefore, according to opponents of the legitimacy of intellectual ownership rights and, consequently fashion, it can be recognized through the terms of the contract and the owners of its ideas can be protected.

Legitimacy of intellectual rights

In contrast to the first group, another group of contemporary jurisconsults have struggled to confront these emerging phenomena in order to place them within the framework of the primary rules and justify their legitimacy; and others have tried, by citing the secondary rules, to attribute these rights to the legislator of Islam. In the following, the results of the theoretical efforts of this group of jurisprudents are briefly reported.

The Evidence of Primary Rules

In terms of the principles of jurisprudential inference, the most reliable and, at the same time, the most stable jurisprudential ruling is the rule that is documented by least one of the Primary Rules Evidence. In this respect, the secondary rule can be cited only in certain cases, such as the lack of a primary rule or its inapplicability. Accordingly, the jurisconsults who agree with the legitimacy of intellectual rights have made extensive efforts to include the primary rules evidence towards these rights. Some have tried to capture the public interest and some by developing the conceptual and subject-matter of this argument have tried to provide this coverage, and others have tried to Justify this inclination through identifying and recognizing the jurisprudence criterion of the primary rules; and others, by appealing to rational arguments, have sought to assign these rights to the divine law legislator; and finally, the other group by citing has also sought to legitimate rational formations, have tried to prove the legitimacy of these rights. Here are some of these theoretical endeavors.

Religious Generalities and References

A group of jurisconsults have tried to justify intellectual rights by bringing up jurisprudential assumption in the form of jurisprudential generalities and references. They state that: “In the context of legal issues, the duty of the legislator is expressing the rules and laws. The subject of the laws is not expressed by him. This tradition and taste of the legislator can be expressed and identified in a variety of cases. For example, regarding the contracts and transactions, the legislator’s judgement only is “Honoring the contract” and “lawfulness and influence of sale”. What is the legal rule is the general title of “contract” and “sale”. It does not determine its meaning and example, but refers it to the custom of to recognize it based

on circumstances and conditions. Such a tradition can be seen in relation to "harm", "deception" and "defect", too. In their view, even the issues of "prohibition of oppression" and "necessity of justice" should be taken from the custom.[20]

Regarding the property rights, such a tradition is seen by the legislator of Islam. What is stated in the divine law words, such as "Al-Nas Mosalatoon Ala Amvalehom", "Allah Le Mo'men Mal Akhie Ala An Tayeb Nafseh", "Al-Moslem Akho Al-Moslem La Yahel Ma Laho Ella An Tayeb Nafseh" and "La Yahel Mal Ella Men Vajhe Ahl-Allah Ta'ala", and the existential evidence of property has not been considered in the words of the evidence, but assignment of these examples has been delegated to the custom of the time. According to the evidence above, the property of others is respectable, and no one has the right to offend it without obtaining the consent and the permission of the owner thereof, and the owner thereof is permitted to apply its possession within the limits of the divine law. This is a general rule, and it does apply for any specific property. Wherever a property belongs to someone, it is entirely respectable, whatever it is a physical object or non-physical, standing property or benefits, or debts. Finally, defining the concept and examples of the subject of this general public, that is, "property", is up to the custom. Whenever and wherever the custom of a society considers something as "property "and as a source of economic value and the subject of trading between itself, it is legally honorable. Therefore, the phenomena and effects of creative, innovator and artist minds of humans, since it is considered as property and economic value and the subject of trades and transfers in the current situation and based on the custom, therefore, the subject of these generalities and the general rules of are compatible with them.[21]

Theory of Proactive Ownership

One of the other solutions that some contemporary jurisconsults have put forward to justify the legitimacy of intellectual rights, is the theory of the proactive ownership of the creator of the work on his creation. In their view, "The ownership of human beings including jobs, obligations, body parts and organs, and accomplishments of their jobs, is a proactive owner-

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20 - Hosseini Rouhani, Seyyed Mohammad Sadegh, Al-Masa'l Al-Mastohades, Makheteh Mohammadi, Qom, 2006, p. 93

21 - Hekmat Nia, Mahmoud and Mohammad Movahedi, The Position of Theoretical Foundations in Understanding and Drawing the Intellectual Property System, jurisprudence and law, Year Two, 2006, p 95

ship and control, not a credit ownership; and rationally, in such cases, they do not see the setting credit possession as, for example, in the ownership of man to his home is. The reason is that the proactive ownership removes the need of mankind for credit ownership. This proactive ownership is the subject of human beings right and priority towards these accomplishments and achievements, and it is not a rational dedication to us to conquer us in the constraints of developmental defects. Our document is the narratives about lack of permission for taking the possession of someone else's property like the noble deposition of Emam Zaman (aj) reached by Abu Ja'far Muhammad Ebn Usman Omari (RA), which reads: "La Yahel Le-Ahad An Yatasaref Fi Mal Ghayreh Be Gheir Eznah", or the narration of Sama'a and the narration of Zayd Shaham. In conclusion, books, inventions, trademarks, industrial designs, etc., are all in terms of trade and spirituality, the results and achievements of the owners of these works. Therefore, these works are the proactive not credit ownerships of the owner of the work and possessing them without the permission of the owner is deficiently considered as taking the possession of someone else's property which has been forbidden by these narratives." [22]

The Evidence of Secondary Rules Due to the doubts about the legitimacy of intellectual rights as the Primary Rule, some legal scholars have tried to somehow attribute the legitimacy of these rights to the secondary rules like La- Zarar.

Rule of "La-Zarar" (Prohibition of Detriment)

Some believe that the exploitation of the results of the intellectual work of an author, an artist, an inventor, and any other intellectual producer is prohibited based on the rule of Prohibition of Detriment since it is definitely causing harm to others. It seems that according to none of the commonly accepted jurisprudential views of this rule, the legitimacy of intellectual rights cannot be proved even in any part of the divine law. Because according to the interpretation attributed to the late Sheikh Ansari, the inclusion of the rejection of the harm of the subordinate to the existence of a holy warrant attributable to the divine law legislator is as such.[23] While such a

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22 - Vahid Khorasani, Hossein, Tozih Al-Masaleh, 1423, Qom, p. 237 law legislator by citing the evidence such as "La-zarar" (Prohibition of Detriment) and "la-haraj". This probability is briefly discussed below.

23 - Ansari, Sheikh Morteza, Macaseb, One-volume, published by Etela'at, Tabriz, 1997, p. 93

judgment regarding intellectual ownership is not a provision of any of the primary evidence of the divine law, unless lack of a divine law which provides identification of intellectual rights for the creator of the intellectual work is associated with the verdict and the permission of the legislator to possess the production of the producers by third parties. It seems that even in this assumption, the intellectual right cannot be proved in concept of the statute law, since on this assumption only third parties are forbidden to possess these works, but this does not mean that the producer of the work has a religious right, unless the rule of Prohibition of Detriment includes the incompetence, too.

Also, according to the reminiscences of the late Fadhil Tony and Shaykh al-Shariah Isfahani, citing this rule to prove intellectual rights is actually a kind of confiscation to be desirable. Because loss means damaging the property and the impairment of rights, and it is fixed if the property or the right of these works has been proven to the producer in advance for another reason, and it is clear that if the production of intellectual works is legally a source of money or right for the producer, no more citation is needed. Of course, if the circle of inclusion of this rule is developed in a way that it includes non-appeals as well, it may be a fairly reasonable basis for justifying the presentation of these rights in the divine law. In other words, as the forgery of a verdict may entail a negative effect, the absence of a judgment may also entail a negative harm in the divine law. Because "... it cannot be believed that the circle of the rule Prohibition of Detriment is limited to the abolition of certain existential

judgements and actions ...

because the legal and legal environment is, to all factions, is the environment of holy divine law, and as falsification of the law may be harmful for a person Or the society, silence and lack of falsification could probably cause loss."[24]

Furthermore, it should be noted that if violation of an author, an artist, or the invention of an inventor is permissible, and if it is possible to copy a trademark easily and attach it on one's own products and services supplied

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24 - Mohaghegh Damad, Seyyed Mustafa, Al-Estefta'at fi-Nizam al-Qaza'i fi Islamic Republic in Iran, Al-Tawhid Magazine No. 31, 1366, p. 31

in the market, or if it is possible to apply another person's industrial design, based on which they have attracted a considerable number of customers, on one's own products without any warranties, and even if neglecting the rights of the owners of the signs of the geographical origin is justified and if. .., undoubtedly, it would cause illegitimate loss to the producers of these works, and perhaps the consumers of these works would suffer too. In addition, lack of recognition of exclusive rights for producers of these works will have harmful consequences for society as well, because we know well that creation and production of many of these works heavily depend on their support by legislators. Not paying attention to this fact will deprive the society of accessing intellectual products and economic, cultural, political, and technological development.

In the domain of the rights of secrecy and confidential information, lack of legal protection leads to similar disadvantages, too. Today, there are many institutions and companies in Iran that have been researching and investigating in a variety of fields and have obtained valuable information, but because there is no law that protects this information and its owners against unauthorized disclosure, so its owners are always afraid of its disclosure, and all their efforts are focused on hiding it and not providing it to the people. The information whose usage and application can be the source of valuable services for the people and society, and will also bring significant benefits to its owners. The owners who have spent years researching and spending a lot of money to access this information.

A glance at other areas of intellectual property clearly reveals that these rights are so delicate and fragile that their survival is heavily dependent on supportive laws, otherwise the creation and production of such works will be significantly reduced and will have many harmful consequences. Therefore, setting proper laws and predicting exclusive rights by the legislator for the owner of the work to dispose these losses is necessity, and this purpose will be justified by the rule of "Prohibition of Detriment" in the above sense.

Conclusion

In spite of the decades of stating the issue of intellectual ownership rights, including the topic of interest in this research as part of intellectual rights in in the field of jurisprudence and brief familiarity of the jurisconsults with them, there have been no remarkable detailed comments given by them. Thus, it can be said that in spite of the

current procedure in the controversy in which the reason of a jurisprudence subject is carefully considered and taken into account from all legal grounds for accountability, only general commentaries have been made by the jurisconsults regarding the issue of intellectual rights, and a large number of general and detailed issues related to this legal knowledge have not been crystallized in jurisprudential works. The induction among the jurisconsults in dealing with this kind of emerging issues shows two completely different views. Some of them have questioned the legitimacy of intellectual rights as a primary ruling, although they have tried to introduce some these rights by referring to the theory of the ruling of the government and the principle of the interlocutory nature of some of the customary works, consider these rights protectable. On the contrary, another group of other jurisconsults have made an extensive attempt to attribute the legitimacy of these rights as a primary or at least a secondary rule to the divine law legislator, and therefore show it justified. The first approach, which opposes the legitimacy of intellectual rights and, consequently, fashion, puts forward the idea basically on opposing the distribution and publishing of science, because according to this approach, the development of intellectual knowledge and fashion is emphasized in narratives and hadiths. However, the second group, which seeks to uphold the rights of intellectual property owners, such as fashion, argue that the arguments of primary and secondary rules both defend the rights of ideas.

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