

## Offenders of Pakistani Intellectual Property Rights (IPR) and Federal Shariah Court

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### Abstract

Intellectual Property Rights (IPR) violations present a significant challenge in Pakistan, affecting various sectors and hindering economic growth. Despite legislative measures, enforcement remains inadequate. The purpose of this study was to investigate the IPR violators in Pakistan and the Federal Shariah Court's involvement. This study examines the role of the Federal Shariah Court in addressing IPR offenses, considering the intersection of Islamic jurisprudence and contemporary legal systems. Through legal analysis and qualitative research, it evaluates the effectiveness of Shariah-based approaches in deterring offenders and protecting intellectual property. The study uncovers substantial hurdles in enforcing IPR laws in Pakistan, despite existing legal frameworks for copyright, trademark, and patent protection. Judicial inefficiency, resource scarcity, and limited expertise obstruct effective implementation, leading to widespread IPR violations. Moreover, it highlights the unique role of the Federal Shariah Court in adjudicating IPR cases within Pakistan's dual legal system, raising concerns about harmonizing Sharia principles with modern intellectual property concepts. The study underscores the necessity of comprehensive reforms to boost IPR protection, including legal framework enhancements, judicial capacity building, awareness raising, and international cooperation, while also addressing socio-economic challenges like poverty and education.

**Key Words:** Shariah Court, Islamic Law, Offenses, Enforcement, Jurisdiction.

### Introduction:

An intellectual property offender is an individual or entity that uses, copies, distributes, or illegally profits from copyrighted works, trademarks, patents, or trade secrets without prior written consent or permission of the rightful owner. Such a violation disturbs the rights of creators and innovators and may result in legal consequences. Offenders may include forgers, hackers, software offenders, and individuals who engage in plagiarism or unauthorized distribution of digital content.

According to the World Intellectual Property Organization (WIPO), intellectual property offenders hinder innovation, creativity, and economic growth. WIPO emphasizes the importance of enforcing intellectual property laws to protect the interests of creators and rights holders worldwide (WIPO, 2014).

According to the Intellectual Property Organization of Pakistan (IPO-Pakistan), infringement of IPR remains a significant challenge in the country, with rampant counterfeiting and piracy across various sectors (IPO-Pakistan, 2023). The lack of strict enforcement mechanisms and public awareness worsens the problem, posing threats to both local and international creators and innovators. Additionally, the United States Trade Representative (USTR) has consistently raised concerns about Pakistan's inadequate enforcement of intellectual property laws, particularly regarding counterfeit goods and online piracy (USTR, 2021). Such violations not only undermine the rights of rights holders but also hinder foreign investment and economic growth.

Efforts to combat IPR violations in Pakistan include initiatives by the government, such as strengthening legal frameworks and collaborating with international organizations to enhance enforcement measures (IPO-Pakistan, 2023). However, sustained efforts are required to address the systemic challenges and effectively deter offenders from engaging in intellectual property violations.

One of the primary critiques of Pakistan's intellectual property rights (IPR) system revolves around the considerable delays in delivering justice. This issue is compounded by the absence of specialized courts dedicated to handling IPR cases, necessitating adherence to standard legal procedures outlined in respective ordinances. Often, these cases are adjudicated by judges at the first level or above.<sup>(1)</sup>

To underscore the magnitude of this issue, we can examine the backlog of cases at the Lahore High Court. As of January 15, 2018, there were approximately 1,873,085 "old" criminal cases pending, along with 53,023 old civil cases and 83,004 pending civil cases. This backlog suggests that new cases are being filed at a faster rate than existing cases are being resolved.<sup>(2)</sup>

This backlog significantly impacts IP cases, particularly due to their intricate and technical nature. Consequently, IP litigation may encounter similar or even lengthier delays. One potential remedy could involve appointing judges with a deeper understanding of IPR complexities and the substantial harm inflicted by offenses like piracy. These judges may be inclined to impose stricter penalties in line with the law. Presently, Pakistan's domestic IP laws seem to have limited provisions to comprehensively tackle offenders.<sup>(3)</sup>

The current situation reveals a concerning surge in visits to websites offering pirated content, with alarming statistics such as 90% of college campus books being pirated and 86% of software being pirated, resulting in annual losses of approximately 278 million USD.<sup>(4)</sup> To effectively combat such widespread criminal activity, stronger measures are imperative. This could entail law enforcement utilizing its inherent powers to routinely crack down on known hackers or vulnerable markets. Additionally, contemplating amendments to relevant laws to broaden the scope of individuals violating national IPLs through action or inaction may be necessary. For instance, under the Copyright Ordinance of 1962, those engaged in copying and distributing pirated products for commercial purposes are deemed violators. For instance, Article 29 stipulates that anyone "making or causing to be made a 'published work' for sale in business" violates the publisher's rights.<sup>(5)</sup>

Intellectual property rights (IPR) are the foundation of the modern economy, protecting innovation and creative works while promoting economic growth and development. In Pakistan, a country that seeks technological advancement and creative excellence, protecting intellectual property rights is essential. However, in the country's evolving legal landscape, the intersection of intellectual property rights and Islamic jurisprudence, as expressed through the Federal Sharia Court, presents a complex terrain that requires ask to learn and analysis.

Pakistan, with its dual legal system of secular law and Islamic principles, poses unique challenges and opportunities in the area of intellectual property rights enforcement. The Federal Shariah Court, established under the 1973 Constitution of Pakistan, occupies an

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<sup>(1)</sup> Overview: the TRIPS Agreement, —Enforcement of Intellectual Property Rights, available at: [http://www.wto.org/english/tratop\\_e/trips\\_e/intel2b\\_e.htm#enforcement](http://www.wto.org/english/tratop_e/trips_e/intel2b_e.htm#enforcement), Retrieved: 21-08-23.

<sup>(2)</sup> Story available at <https://www.thenews.com.pk/print/268487-1-87-million-cases-pending-in-pak-courts/>, Retrieved: 21-08-2023.

<sup>(3)</sup> The Global Dimensions of Intellectual Property Rights.

<sup>(4)</sup> Special 301 Report on Copyright Protection and Enforcement, 2013, International Intellectual Property Alliance, 215, available at: <http://www.iipa.com/rbc/2013/2013SPEC301PAKISTAN.PDF>, Retrieved: 21-08-2023.

<sup>(5)</sup> Copyright Ordinance (as amended), No. 34 of 1962, PAK, CODE (1962)

important position in the country's legal hierarchy, responsible for the interpretation and application of Islamic law in areas of governance. different rationale. However, the extent to which the Federal Sharia Court handles cases involving intellectual property rights violations remains largely unexplored.

This study attempts to fill this gap by conducting a comprehensive examination of intellectual property rights violators in Pakistan and the role of the Federal Shariah Court in adjudicating these cases. Drawing on legal statutes, precedents, and academic discourse, this study aims to explore the following key aspects.

A mixed-methods approach is employed, combining legal analysis with qualitative research. Legal analysis entails reviewing statutes, case law, and legal commentaries related to IPR and Shariah law in Pakistan. Qualitative research includes interviews with legal experts, practitioners, and stakeholders involved in IPR enforcement and Shariah jurisprudence.

### **Legal Framework of IPR in Pakistan**

The legal framework for intellectual property rights (IPR) in Pakistan is mainly governed by several important legal documents, international agreements and institutional mechanisms (Abdul Haq, 2016).

#### **Constitutional Basis**

The Constitution of Pakistan provides the foundation for the protection of intellectual property rights. Article 19 protects the fundamental rights to freedom of expression and access to information, which are necessary to protect intellectual property rights.<sup>(6)</sup>

#### **Legislation**

- Copyright Ordinance, 1962 (amended in 2000): This legislation governs copyright protection in Pakistan, covering literary, dramatic, musical, and artistic works, as well as cinematograph films and sound recordings (Hussain, 2018). It outlines the rights of authors, composers, artists, and creators.<sup>(7)</sup>
- Patents Ordinance, 2000: This ordinance regulates the registration and protection of patents in Pakistan, granting exclusive rights to inventors over their inventions for a specified period, typically 20 years from the date of filing.<sup>(8)</sup>
- Trade Marks Ordinance, 2001: This legislation governs the registration and protection of trademarks in Pakistan, providing for the registration of marks used to distinguish goods or services of one entity from another.<sup>(9)</sup>
- Industrial Designs Ordinance, 2000: This ordinance regulates the registration and protection of industrial designs in Pakistan, granting exclusive rights to the creators of original designs applied to articles of manufacture.<sup>(10)</sup>
- Geographical Indications (Registration and Protection) Act, 2020: This act governs the registration and protection of geographical indications in Pakistan, aiming to protect products originating from specific geographical areas known for their unique qualities or reputation.<sup>(11)</sup>
- The Intellectual Property Organization of Pakistan (IPO-Pakistan) is responsible for the administration and enforcement of intellectual property laws in the country (Malik, 2019).

<sup>(6)</sup> Constitution of Pakistan ([http://www.na.gov.pk/uploads/documents/1452129289\\_951.pdf](http://www.na.gov.pk/uploads/documents/1452129289_951.pdf))

<sup>(7)</sup> Copyright Ordinance, 1962 (<https://ipo.gov.pk/copyright-ordinance-1962/>)

<sup>(8)</sup> Patents Ordinance, 2000 (<https://ipo.gov.pk/patents-ordinance-2000/>)

<sup>(9)</sup> Trade Marks Ordinance, 2001 (<https://ipo.gov.pk/trade-marks-ordinance-2001/>)

<sup>(10)</sup> Industrial Designs Ordinance, 2000 (<https://ipo.gov.pk/industrial-designs-ordinance-2000/>)

<sup>(11)</sup> Geographical Indications Act, 2020 (<https://ipo.gov.pk/geographical-indications-registration-and-protection-act-2020/>)

- Pakistan is a signatory to various international agreements and treaties related to intellectual property rights, including the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

### **Penalties**

The primary target is individuals engaging in commercial distribution of unauthorized CDs, DVDs, and books, with no specified penalty for consumers in these settings. Universities could be liable if most books sold are pirated. Penalizing distributors and consumers, reasonably, whether individuals or entities, would deter widespread IP rights violations.

- Copyright penalties underwent significant amendments with the Copyright (Amendment) Act, 1992, focusing on enforcement. Notably, Article 66's amendment strengthens penalties for infringement. Offenders may face up to 3 years' imprisonment or an Rs. 100,000 fine, potentially doubling on repeat offenses under section 70(b). Civil remedies outlined in the Copyright Ordinance 1962 allow copyright owners, including exclusive licensees, to seek injunctions, damages, and profit computation for infringements (Hussain, 2018).
- Trademark violation in Pakistan is governed by the Pakistan Penal Code and the Trademarks Ordinance 2001. It targets individuals affixing false trademarks, irrespective of their awareness. Section 40(8) of the Ordinance covers situations where possession or sale of goods with infringing marks occurs. However, the Ordinance lacks clarity regarding penalties. Conversely, Section 486 of the Pakistan Penal Code addresses penalties for selling products with false trademarks (Abdul Haq, 2016).

### **Challenges and Patterns of IPR Violations in Pakistan**

- Forged goods and piracy are common in Pakistan and affect various industries such as pharmaceuticals, textiles, software, and entertainment. Counterfeit products range from counterfeit drugs and fake luxury goods to pirated movies, music, and software (Bloomberg, 2018).
- Inadequate enforcement mechanisms, including limited resources, lack of specialized intellectual property courts, and corruption, contribute to challenges in combating intellectual property rights violations in Pakistan (Masood, 2019).
- Weak border controls and leaky borders worsen the problem of forged goods entering and leaving Pakistan. The absence of stringent measures allows counterfeiters to operate with impunity (Rashid & Iqbal, 2017).
- Limited awareness among the public, businesses, and law enforcement agencies about the importance of IPR and the consequences of IPR violations hinders effective enforcement efforts (Amanullah, 2016).
- The rise of e-commerce and digital platforms has led to an increase in online intellectual property rights violations, including unauthorized distribution of copyrighted material, counterfeit products, and trademark infringement (Yousaf, 2020).
- Pakistan does not have a specialized intellectual property court, leading to delays and ineffectiveness in resolving intellectual property disputes. This undermines the effectiveness of enforcement efforts (IPO Pakistan, 2019-20).

### **Jurisdiction and Mandate of the Federal Shariah Court**

The Federal Shariah Court of Pakistan was established under the Federal Shariah Court Act, of 1980. Its primary jurisdiction is to examine and determine whether the laws enacted by the federal or provincial legislature or any other provisions are contrary to the prohibitions of Islam as set out in this Act Quran and Sunnah (Malik, 2019). According to Article 203 of the Constitution, the Federal Shariah Court has jurisdiction over “any question as to whether any



law or legislative provision is contrary to the injunctions of Islam. Although the court's jurisdiction is primarily focused on matters of Islamic law, the court may have ancillary jurisdiction over cases involving intellectual property rights if they raise issues relating to Islamic legal principles or subject to trial.<sup>(12)</sup>

The mandate of the Federal Shariah Court is to ensure that the laws of Pakistan are consistent with Islamic principles derived from the Quran and Sunnah. Its decisions are binding and can lead to the amendment or repeal of laws deemed inconsistent with Islamic prohibitions. Although the court's mandate does not explicitly address intellectual property issues, it may indirectly impact intellectual property cases if they involve intellectual property issues. legal issues that intersect with Islamic law or if the court is required to interpret laws affecting intellectual property rights from an Islamic perspective.<sup>(13)</sup>

### **Adjudication of IPR Cases by the Federal Shariah Court**

Although the Federal Sharia Court focuses primarily on matters of Islamic jurisprudence, it can also hear cases involving civil and criminal offenses, including those involving violating intellectual property rights. However, the level of court involvement in intellectual property rights cases may vary and courts may not have specialized expertise in this area (Shahid, 2017).

### **Islamic Law and IPR**

The compatibility of intellectual property rights with Islamic law is a matter of debate and interpretation. Although Islamic principles generally support the protection of property rights and the prohibition of unfair competition, the application of these principles to modern concepts of intellectual property may require careful consideration. kidney (Hussain, 2016). Adjudicating intellectual property rights cases under Islamic law poses certain challenges, including reconciling traditional legal principles with contemporary legal concepts, ensuring fairness. on procedures and resolve the technical complexity of intellectual property disputes (Choudhry, 2018).

### **Potential Implications**

The involvement of the Federal Shariah Court in adjudicating intellectual property rights cases could have an impact on the enforcement and protection of intellectual property rights in Pakistan. This highlights the need for a comprehensive legal framework that balances the principles of Islamic law with the requirements of the modern intellectual property regime (Bari, 2019).

### **The interaction between IPR and Islamic Law**

Exploring the compatibility and tensions between intellectual property rights (IPR) principles and Islamic legal doctrines involves a nuanced analysis of both systems. Although there are areas of convergence, conflicts can still arise due to differences in philosophical underpinnings, cultural contexts, and interpretations of ethical and legal principles.

### **Convergence**

- **Protection of Creativity:** IPR principles and Islamic legal doctrine recognize the value of creativity and innovation. Intellectual property law aims to encourage innovation by granting exclusive rights to creators, while Islamic principles emphasize the importance of knowledge and the rewards of intellectual work (Al -Dawoody, 2012).
- **Fair Compensation:** Both systems respect the principle of fair remuneration for creators and inventors. Islamic law advocates fair and just transactions, including

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<sup>(12)</sup> Constitution of Pakistan

<sup>(13)</sup> Federal Sharia Courts Act, 1980

recognition of the right of individuals to benefit from their intellectual endeavors (Khan, 2007).

- Social protection: Islamic legal doctrines and IPR take into account broader social welfare. Intellectual property law aims to balance the interests of creators with the public interest, ensuring access to knowledge and innovation. Likewise, Islamic principles emphasize the importance of social justice and equitable distribution of resources (Ghaly, 2010).

### Differences

- Exclusivity and access: Conflicts arise from the balance between granting exclusive rights to creators (a form of monopoly) and ensuring access to essential goods and knowledge for the good of society. Islamic law can challenge monopolistic practices that limit access to essential resources or hinder the dissemination of knowledge (Sawadogo, 2019).
- Concept of ownership: Islamic legal doctrines may differ on the concept of ownership compared to Western legal frameworks. While intellectual property law grants exclusive ownership rights to the creator, Islamic law can treat knowledge and creativity as common goods to be shared for the common good of society (Al-Suwaidi, 2019).
- Ethical considerations: Islamic legal principles may impose ethical restrictions on certain forms of intellectual property, such as patents on pharmaceuticals or copyrights on explicit content if they are considered harmful or unethical to Islam (Hussain, 2018).

### Conclusion

The study reveals significant challenges in implementing IPR laws in Pakistan, despite existing legal frameworks for copyright, trademark, and patent protection. Judicial ineffectiveness, lack of resources, and limited expertise hinder implementation on the ground and contribute to widespread intellectual property rights violations. Furthermore, this study highlights the special role of the Federal Shariah Court in adjudicating intellectual property rights cases in Pakistan's dual legal system. This raises concerns about reconciling Sharia principles with modern concepts of intellectual property. The study emphasizes the need for comprehensive reforms to strengthen intellectual property rights protection, including improving the legal framework, strengthening judicial capacity, raising public awareness, and promoting international cooperation. economy and address socio-economic factors such as poverty and education.

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