

## **Intellectual Property Rights and Economic Development: A Case Study of Pakistan**

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### **Abstract**

*In this era of global village the competitiveness in a global social-economic system, it is very important to follow and adopt the laws and regulations for the effective development of IP rights system. After the revolution especially in the field of information and technology Intellectual properties become the back bone for the economy. There is very strong system in the developed countries like USA but the developing countries are not much familiar about the intellectual property as compared to developed countries. The implementation on the IPR system in the country leads to the growth in the economy and for the implementation of IP laws globally the world intellectual property organization plays an important role. The main function of the WIPO is to provide the legal system by providing the education through seminars workshops to its member countries. WIPO is also provides the alternate dispute resolution (ADR) on the issues relating to the protection of Intellectual property rights. Inventions, literary and artistic works are includes in the copyrights. A copyright gives the exclusive right to the original creator, usually for a limited time. A trademark is a unique and different sign, design or expression which makes the products or services distinguish from the other. A patent is a right which is granted by the government or any other statutory body to an inventor to make,*

*sell, use and to import an invention for a limited period of time. License is also a type of patent right in which government allows some person to make, use or to sell the specific product exclusively. Intellectual property right system become very important in the economy system it directly interlink with the economy. If there is lack of enforcement in the country then the direct foreign investment (FDI) does not come to the country. International and multinational companies only invest in that country where the enforcement of laws are sufficient to secure their investment. Intellectual property right system also impact on the tax net of the economy. The counterfeiting and the piracy create the bad impact on the industry due to lack of enforcement on the IPR system. Growth of counterfeiting and piracy products in the market results the loss of achieving tax target by the revenue department of the state which affects the economy. Thus, we can say that for the development of the country in this modern age it is very important to enforce the laws are sufficient to secure their investment. Intellectual property right system also impact on the tax net of the economy. The counterfeiting and the piracy create the bad impact on the industry due to lack of enforcement on the IPR system. Growth of counterfeiting and piracy products in the market results the loss of achieving tax target by the revenue department of the state which affects the economy. Thus, we can say that for the development of the country in this modern age it is very important to enforce the laws relating to intellectual property rights.*

**Keywords:** Intellectual Property Rights, Pakistan, Economy, Development, Foreign Direct Investment, WIPO, trademark.

### **1.1 INTRODUCTION**

Considering the circumstances at the present day, the only focus of the economist, jurist and scholars is to determine the extent of the impact of development on the intellectual property rights as the intellectual property plays a significant role in the economy of a country. Although the information available on this pressing issue is very limited and its authenticity can be challenged. Nonetheless, the institution of World Intellectual Property Organization (WIPO) and various other organizations like World Bank and World Trade Organization has gathered information on developed countries and authentic deduction can be made from it. However,

the information gathered about the developing countries is yet very limited and unauthentic.

Before unfolding the probable impact of intellectual property rights on the economy of a country, it is essential to understand what actually property rights entail.

Intellectual property is anything that is created with mind and intellect. It is a wide concept and entails everything inventions, intellectual works, designs, logos as well as artistic creations. There are primarily two categories of intellectual property; industrial and copyright. Industrial property refers to patents, logos, trademarks and designs whereas the copyright is inclusive of literary and artistic creations for example dramas, poems, prose, paintings, designs and monuments. The rights of copyright are for the protection of creators of the literature, artist in the performance, makers of the phonograms, directors of radio and television broadcast<sup>1</sup>. In simple words, Intellectual property rights are designed for benefitting the creator of the work.

## **1.2 RESEARCH QUESTIONS**

- 1- What benefits the developing countries may achieve by introducing effective mechanisms of intellectual property rights?
- 2- Whether strong Intellectual property laws have some impact on the economy?

## **1.3 LITERATURE REVIEW**

There is a strong positive correlation between the economic growth and IPRs (Gould and Gruben, 1996). The correlation is more strong and prevalent in the developed countries in contrast to developing economies. The efficiency of the IPR is expressively depended on the economic infrastructure of the country and it is more significant when the progress of a country is measureable in terms of per capita GDP.<sup>2</sup>

Nonetheless literature available on the impact of IPR on the economic progress is quite limited in contrast to other disciplines. After conducting a study on ninety-five countries by utilizing the Rapp and Rozek index it has been concluded that the protection of IPR positively effective on the economic growth in the developed countries<sup>3</sup>. Another study after determining the evidence of one hundred and twelve countries concluded that there is a positive link between IPR and economic progress. The results of both studies are irrespective of the economic status of the country. These studies failed to distinguish between developed high income countries or low income developing countries. It has been deduced by Thompson and rushing that patent protection has a significantly positive impact on the efficiency in the developed countries.

By utilization of the Ginarte and Park (1997) model, Kanwar and Evenson(2003) examined a panel of thirty two countries. It has been concluded that the protection of the intellectual rights has a positive impact

on the Research and development in the countries. The stronger intellectual property rights protection incentives the innovation process there resulting in economic growth and progress. Nonetheless it has been asserted by Falvey and other (2004) that the effectiveness of IPR protection is dependent on the infrastructure and the stage of development of the country. Moreover, it has been indicated by Maskus and others in 1995 that the impact of IPR protection is highly dependent on the on the economic growth of the country concluded that the intellectual property set up does not support economic growth in developing countries as the infrastructure is not well developed to overcome the challenges endured in IPR protection.<sup>4</sup>

#### **1.4 WORLD INTELLECTUAL PROPERTY RIGHT ORGANIZATION (WIPO)**

In 1967 World intellectual property rights organization (WIPO) was created by United Nations through the WIPO convention. It is a dedicated agency for protection of the intellectual property rights. The primary objective of its members is to encourage the safeguard of the intellectual property all over the world by the combined effort of states and in alliance with international institutions<sup>5</sup>.

In the history of IP, the most primitive and significant convent is the 1883 Paris Convention for the protection of Industrial property (Wipo.int, n.d.). It recognized the corresponding rights and protection and prioritize the protection of patents, industrial design and trademark. In lieu of administration of the Paris Convention, an international bureau was also formed.

In 1886, after the Paris convention, the renown Berne Convention for the Protection of literary and Artistic Works was put forth to provide the Intellectual property rights an international standing and to correspond with legislative works on IPR (Berne Convention for the Protection of Literary and Artistic Works). Likewise, for the administrating the Berne convention an international bureau was established. Later on in 1983, the international bureaus were combined together as one international organization named as Bureaux Internationaux Réunis pour la Protection de la Propriété Intellectuelle (BIRPI).

Later on BIRPI was changed into a more effective and bigger organization named as WIPO. Due to the present day significance of the IPR the WIPO has 184 state member and administers twenty-four international treaties.

##### **1.4.1 OBJECTIVE OF THE WIPO**

The main object of the WIPO is to promote the awareness of intellectual property rights among the member countries for the protection of the IP rights. Apart from it, making of rules and policies regarding the enforcement of IP laws worldwide is another major object of the WIPO.

WIPO is not only create the bond between the member countries but also to provide proper framework on the emerging issues relating to intellectual property rights.

#### **1.4.2 ALTERNATIVE DISPUTE RESOLUTION (ADR)**

The main mission of the WIPO is to provide the alternate dispute resolution. Arbitration and mediation center of the WIPO has been extended to solve the disputes and issues between the parties, individual or countries by the misuse of the domain on the internet.

#### **1.5 INTELLECTUAL PROPERTY RIGHT SYSTEM AND PAKISTAN**

The chapter will outline the aspects that can aid the developing countries in improving their status from the least developed toward advancing countries in the first phase. Intellectual property in isolation cannot make a substantial change unless the other aspects are also improving. Keeping in light, the possible financial benefits of the intellectual property rights can result in realistic increase of finances in the economy of a country. The chapter covers the significance of intellectual property rights and the progressive influence on the gross domestic Product. With the setup of Intellectual Property Organization there is incredible growth in the sector of the economy. The chapter also briefly discusses other factors like Foreign Direct Investment (FDI), tax revenues, technology transfer, global economy, global trade, licensing of technology, and quality of goods, joint ventures, job industry and working conditions of a country with the development of IPO Pakistan.

##### **1.5.1 INTELLECTUAL PROPERTY ORGANIZATION OF PAKISTAN**

With the advancement in the country and due to the need of time the intellectual property organization was built on April 08, 2005 as autonomous body under the administration control of cabinet division. Later on, the IPO Pakistan was transferred to Commerce division from the Cabinet division. Copyright offices, Patent offices and Trade Mark Registry later on included in the new Organization.

##### **1.5.2 GOVERNANCE OF IPO PAKISTAN**

The governance of the organization belongs to the Policy Board which consists of Public-Private partnership. The Board consists of total fourteen members. There are five members from private sector, five members from public sector and one member from each province.

##### **1.5.3 FUNCTIONS OF IPO PAKISTAN**

The main functions of the intellectual property organization of Pakistan is as under

- a) Manage the regional offices throughout the country.
- b) Create the awareness among the people about the IP rights.
- c) Recommend the Federal Government for legislation.

- d) Enforcement of IP laws in the country through law enforcement agencies i.e. FIA, Police.

### **1.6 INTELLECTUAL PROPERTY RIGHT SYSTEM AND FOREIGN DIRECT INVESTMENT (FDI).**

Foreign Direct Investment (FDI) is paramount in the policy framework and economic outlook of a country (OECD benchmark definition of foreign direct investment, 2008). According to the OECD, the Foreign Direct Investment is defined as the reflection of the motive for acquiring an ongoing interest by the owner country in an economy through a host country that is not in the economy of the owner. This is known as direct investment enterprise. The continuous interest indicated the long lasting link among the investor and the host enterprise and a substantial amount of control is exhibited on the management by the actual investor. The FDI is inclusive of both the foremost transactions between the entities and the related capital proceeding between them and the related enterprise irrespective of their incorporation or UN incorporation (OECD benchmark definition of foreign direct investment, 2008).

The relationship between IPRs and the foreign direct investment has been widely discussed. The positive correlation between the IPRS and FDI has been extensively discussed by the jurists, economic researchers and foreign ministers. The owners value their intellectual assets for its high economic worth and goodwill. Owner of the intellectual property are lawfully anxious about the exploitation of their assets and are entitled to legal compensation in case of infringement to effectively defend their property<sup>6</sup>.

The Asian currency downgrading initiated in Thailand in 1997 and is widespread in other countries as well primarily Indonesia, Korean republic and Malaysia. It rehabilitated the importance of the prudent management of the foreign investment capital transaction as the local market were under recession<sup>7</sup>. The south Asian countries are striving for economic progress. At this time, in south Asian region India is the host country for large number of foreign investments. On contrary, Pakistan is suffering a setback in the foreign investment to its underdevelopment and confined financial market.

#### **1.6.1 FOREIGN DIRECT INVESTMENT (FDI) AND PAKISTAN**

Pakistan was primarily an agricultural and since its independence in 1947, agriculture contributes significantly in its economy. The industrial capacity of the country is very limited with respect to its ability to process locally produced raw material and the number of foreign direct investment is very less.

IPR is not the only factor taken into consideration in case of foreign direct investment. Apart from IP, political stability is also a very essential element that attracts the investors to invest in a particular country. Since 1947, Pakistan has faced many military coups by its own army official. It not only ruined the political infrastructure of the country but also portrayed a negative image on the international level. Through every military coup the Pakistani nation was promised democratic rights but the promise was never

fulfilled. Adding to the misery, the political leadership is corrupt and not competent enough to bring the country out of crisis. The image of Pakistan is completely ruined due to political instability along with other factors like, abuse of power, interference with judiciary. The most paramount factor is adversely effecting Pakistan's economy is terrorism. The repeated acts of terrorism negatively impacted FDI.

In 2002, eleven French engineers were killed in Karachi Pakistan. It has been reported that the government and the intelligence department of Pakistan were part of the plan.<sup>8</sup> China is the biggest supporter of Pakistan. In 2011, six Taliban entered Pakistan naval airbase. Their intention was to kill Chinese engineers working there. However, they were notable to kill them and in the seventeen-hour siege destroyed two maritime surveillance aircraft and killed ten military combats<sup>9</sup>.

In 2006, three Chinese engineers were killed in the south western Baluchistan by bombarding their vehicles.<sup>10</sup> In 2002, the US based journalist was killed by the militant groups. In 2009, the renowned engineer Piotr Stanczak was killed by the militant groups in the remote areas. Recently Osama Bin Laden was killed in 2011 in the residential home in Abbottabad Pakistan. He was worth 25million dollar reward by the federal bureau of investigation owing to his acts of terrorism and attack on the twin tower. He was one of the most wanted fugitive on the list. More so, Ilyas Kashmiri, a member of al Qaeda linked with Kashmir conflict was killed within the boundaries of Pakistan in 2011.

These examples reflect that the low FDI in Pakistan is not due to lack of proper IPR system but the war against terrorism has the detrimental impact on the economy of Pakistan. The circumstances of Pakistan are unusual. The Pakistan army is busy in overcoming the insurgencies in the Waziristan region. The ongoing war consumes huge amount of Pakistan's budget. Pakistan needs to be extremely vigilant in drafting the foreign policies. It should give extra preference to TNC and MNE in contrast to local companies. In order to attract more FDI Pakistan needs to have strong and effective IPR system in addition to the foreign policies.

#### **1.6.2 RESEARCH AND DEVELOPMENT SECTOR IN PAKISTAN**

The present age is of knowledge based economy. In this the production and management technology is the modes of creating wealth rather than the old factors like labor and capital.

Since its establishment Pakistan has been subject to various intense situations. It has been in war with India in 1965 and 1971. Both of these countries are working in their Research and development department. Pakistan is on number 34 in term of allocating finances for R&D. The higher Education Commission (HEC), is the main regulatory body for advance education in Pakistan.<sup>94</sup> It upgrades the universities and ensure that there are improved conditions for research and development. In 2011 the HEC was dismissed by the government of Pakistan. The reason was the unviability of financial resources to support the foreign studies. The

dissolution of HEC was frowned upon by all the departments of government. It has been asserted by Pervez Hoodbhoy that apart from the effectiveness of HEC, its dissolution has caused great amount of havoc as the government failed to provide an alternate and without an alternate dissolution will result only in more problems. In these circumstances creating a new organization or giving the control to the preexisting education centers will negatively impact the quality of university education in Pakistan.<sup>11</sup>

Education is very expensive in Pakistan and everyone is not financial resourceful to acquire it. Moreover, child labor is quite common. Despite all these discouraging factors, Pakistan has made excellent researcher known globally. The IPRS have a strong role in the developing countries to allocate resources in the R&D by making sure that they are given proper incentive that is protection of IPRS, will aid Pakistan in developing effective R&D department.<sup>12</sup>

### **1.7 INTELLECTUAL PROPRTY RIGHT LEGISLATION IN PAKISTAN**

According to a report by International intellectual property (IIP) the publishers of Pakistan are constantly in competition with the pirated market with the added factor that the government of Pakistan is unable to impose any stringent remedies for fighting piracy. The report also provides an outline about the piracy network, software piracy and put light on the judicial system of Pakistan and implementation strategy.

Although, Pakistan has recently amended its laws with respect to IPR to make its legislation according the global standards laid down in the TRIPS agreement. Nonetheless, these efforts are ineffective in improving the infrastructure of Pakistan as the piracy industry is increasing by leaps every single day, resulting in colossal damages to the economy (International Intellectual Property Alliance®, 2008).

The possible explanation to it is the existing loopholes in the legislation aggravated with slow implementation, expensive judiciary and lenient sentences. The punishments are not strict enough to deter the crime according to its gravity. The amount of fines is quite low in contrast to the massive piracy industry. For example, if an individual is charged under IPR legislation he can be sentenced for only two months or maximum three years of imprisonment and it is a bail able offence.<sup>120</sup> The minimum amount of fine is set to be five thousand rupees only. The process of litigation is time consuming and expensive whereas the implementation is not effective. It has been suggested in the report that Pakistan and its officials should work in correspondence with international organizations to overcome piracy. It has also been put forth by the report that the United States should pressurize the Pakistani government in lieu of Investment framework agreement 2003 for the implementation of the judicial proceedings for effective protection of IPR.<sup>13</sup> Pakistan is highly populated country with weak economy to support its people. If it is assumed that all the pirated and counterfeiting industries are seized, then the price of the



goods will increase making it unavailable for most of the population. A large proportion of population are striving for basic needs of life. The illiteracy rate is extremely high in Pakistan and struggle to make ends meet leads to corruption. In these situational circumstances effective IPRS will not provide an instant rise to economy nonetheless, it is feared to be otherwise. The stronger IPRS system will rise the prices and minimize the job opportunities. Apart from the above discussed connotations, Pakistan needs to improve its economic appearance in the international world. For instance, the present legal framework of Pakistan is effective enough to deal with crisis and the ambiguity in laws can be dealt through legal doctrines. It is essential that the present laws are effectively implemented rather than drafting new legislatures (International Intellectual Property Alliance®, 2008).

In the present legal framework, there are independent courts for resolving IP disputes. There is a need to give more autonomy to these tribunals and the judges should dispense matters readily. The national authorities should establish effective arbitration. Moreover, the judicial process should not be deemed as expensive. The entities should ignore the resources when the matter pertains goodwill and precedent setting..

#### **1.9 ENFORCEMENT OF IP RIGHTS IN PAKISTAN**

Patents is the granted exclusive rights for 20 years for an invention as an incentive to putting forth for the public in the patent office of relevant information so that everyone can benefit from the progress in the scientific field with respect to that specific invention. Inventions do not take place easily, it requires extensive and costly research for a large period of time. The exclusive rights granted by patents for a period of twenty can aid in gaining economic benefit while the knowledge presented can be utilized by everyone for further research (Li and Correa, 2009). It was held in the *SmithKline and French Laboratories Limited v. Ferozsons Laboratories Limited* 1992 MLD 2226 by the judge of Sindh high court that the defendant was unable to provide evidence that their drug was produced with any other method apart from the one that was described by the plaintiff. This case is reflective that if necessary the courts in Pakistan are willing to grant absolute protection under the patent. Relevant patent cases granting full protection and advancement in law are reported in the 1987 CLC 1571 and 1992 CLC 2382.

Trade Marks are effective instruments for the traders that distinguishes their good affiliated with him in the framework of trade from the goods of other traders<sup>14</sup>. In most of the cases it has been neglected that the trademark is not only for protection of the trader but it also provide benefit to the general public as well. It holds the trademark holder accountable for the quality of the goods which are provide under his trademark<sup>15</sup>. An evident example of the trademark in the public interest is found in the pharmaceutical industry. There is utter confusion due to similar generic names. It also facilitated the market of compromised quality and counterfeit drugs. It was alter reversed through the Drugs Act 1976. The Drugs Act is different from the previous

laws as it necessitates the registration of the compound drugs under the names of its proprietary. Likewise, is the case with the singular ingredient drugs (registered under proprietary names)<sup>16</sup>.

Although in the 7UP case proceeding consumed a lot of time in the appellate courts but led to a remarkable verdict with enhanced judicial interpretation of an old law. Nonetheless, the extensive time the process consumed is a cause of concern as these matters are commercial in nature and are extremely significant for their litigators. However, the delay in verdict was due to the complexity of matter and complication of facts, it should not be deemed as a usual practice<sup>17</sup>.

Under the registered Design ordinance protection is only granted to the innovative and genuine designs. The registration is given only for the designs that holds the intrinsic value and is not related with mechanical requisite of the product. These registration includes the shape, design and configuration like printed on piece paper or fabric and is different and innovative. The exclusive right to use the design for twenty years is provided considering the design increases the intrinsic value of the product and is not important for its consumption<sup>18</sup>.

The copyright ordinance outlines the list of works that can be make the owner the exclusive holder of the right to perform, copy reproduce or display in other terms in which copyright is compromised. In this lieu the work is literary, musical, artistic, cinematographic works as well. In this regard computer programs are also covered under the literary works. The economic progress of a large number of individual is dependent on the recognition of their copyright work. The copyright owner benefits from the work which he worked through the license. The availability of wide range of laws for the protection of IP rights in some instances leads to the exploitation of the process for which the laws administering should be vigilant. For instance, if an individual is unable to register a trademark he will opt for registration under the copyright ordinance nonetheless the ordinance is not for the registration of the trademarks. This because action has been condemned recently by the Sindh High Court in 2003 CLD 1531. The court rejected the defense for infringement of a copyright that was initially copy of a foreign trade and should not have been registered under the copyright ordinance in the first place<sup>19</sup>

Besides the modes of protection and enforcement of the IPR under the particular laws and trade mark under law, the exclusive rights should persist in the case of secret mechanism and other trade enigmas that withholds a valuable position in the course of action of business. The secret knowledge of the owner can be licensed providing him sole right to produce commodities of international effectively.<sup>20</sup>With respect to all kinds of property, trademark, patent or licensed design, it is essential that the grant of rights is speedy and the process should take reasonable amount of time in case of assertion of rights and to grant relief against infringement. Most of these matters are civil matters and are commercial in nature so they should

be provided speedy remedies as they are extremely significant for their litigators. It is apparent that the rights are justly established. Over the period of time enforcement is tried to be attained when there exist no exclusive rights. The matters related to IPR are very sensitive in nature as the verdict has far fetching impact either to encourage or discourage industrial innovation. These should not be dealt like regular case of laws. <sup>21</sup>

### **CONCLUSION**

Pakistan is the 47th largest economic power of the world and it enjoys the 27th largest purchasing power (Cohen, 1953). The economy of Pakistan is facing wide range of challenges owing to the global assertion to overcome terrorism, inaccurate democratic policies along with corrupt governance. Intellectual property is not an unfamiliar term to the economy of Pakistan but due to low education it is quite ineffective. People are although familiar with term intellectual property but are unable to understand intellectual assets. People fail to understand the importance protection if IP rights and the negative impacts piracy and coping has on the national economy. It is very essential that significance of the IP rights is well understood by the masses. The government include the education about IP rights in general curriculum.

On the other hand, the developed countries are protecting their intellectual property rights by introducing new and evolving legislation in order to address the currently changing issues. It can be clearly deduced from the discussion above that if a country desires to improve its economic position it certainly needs to follow the standards and the footsteps of the developed countries.

In order to deal with the issue of piracy Pakistan has taken some initiatives. The issues have been extensively highlighted and relative solutions have been put forth giving a chance to improve the economy.

The paper identifies the major causes of concern and put forth extensive possible solutions with respect to each issue at hand. Pakistan is a country with extensive talent and hardworking individuals. It is the time to understand the pressing need to embrace technology. It is essential to follow the international standards and invest in research and innovation. It is imperative to be father of innovation in order to boost the economics and secure a potential place in the international economies.

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