

Intellectual Property Rights in Education of Pakistan: Review of Constitution, Current Status and Expectations

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Abstract

This paper aims to highlight the importance of most imperative and serious concern of intellectual property rights in academic world of Pakistan. This paper highlights the status of intellectual property rights in context of constitution of Pakistan. It's also investigated the awareness of Intellectual Property Rights (IPR) among faculty in the universities. This paper has investigated the Need of Intellectual Property Rights in Education of Pakistan: Review of Constitution, Current status and Expectations. The major focus of the study is to examine the constitution of Pakistan and investigate the perspective of university faculty regarding IPR. It was descriptive research and content analysis method is used. This qualitative research reviews the constitution of Pakistan and highlights the codes of intellectual property rights. Furthermore the data was collected with informal interview from faculty of federal universities. After the review it was found that awareness is much needed to improve framework on Intellectual Property Protection. Especially IPR condition and work with law and HEC is needed for better identification, planning, commercialization, representation, for protection of invention or creativity. As a Muslim I want to quoted, the moral basis for protection of Intellectual Property finds its mention in the Holy Quran: "Do not usurp one another's property by unjust means, nor bribe with it the judges in order that you may knowingly and wrongfully deprive others of a part of their possessions"¹

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Overview & Introduction of Intellectual Property Rights

According to oxford dictionary briefly the word “property” is defined as something owned, a possession, especially a house, land, etc. and the right to possession, work , art, idea, use etc. In Law dictionary the term “property” is a very complex term having different aspects which commonly includes all legal rights, property rights, and corporeal property. Consequently, Intellectual property rights are such rights which are given to persons who are the authors or creators of the new and original literary and artistic works such as books, articles, other writings, paintings, musical compositions, sculpture, films and computer programs by application of their creativity process and intellect.

Intellectual property or protected innovation by law widely means the legitimate rights which come from the scholarly movement in the education and industry fields. In worldwide different nations have constitution to secure intellectual property for two fundamental reasons; one is to give statutory expression to the moral and financial privileges of inventors in their manifestations and the privileges of the general population in access to those manifestations. The second is to progress and improvement, as a purposeful demonstration of Government approach, innovativeness and use of its results and to energize rational exchanging and trading which would add to financial and social improvement. Intellectual property is divided into two categories:

- Industrial Property which includes Patents for inventions, Trademarks, Industrial designs, Geographical Indications.
- Copyright covers: Literary works such as ‘novels, poems and plays’, films, music, artistic works (e.g., drawings, paintings, photographs and sculptures) and architectural design. Rights related to copyright include those of performing artists in their performances, producers of phonograms in their recordings, and broadcasters in their radio and television programs.²

In fact, the law does not permit to anyone to steal the rights of other in any form, either in form of Intellectual property this robbery is not permitted too. After the country law, the role of Government is an essential in encouraging innovation. Innovation typically requires considerable investment in education, research and development, if anyone bring new idea and someone steals the idea of other and it is proven than law will take action. This is the very foundation and philosophy of Intellectual Property laws. In

intellectual property rights; patents, trademarks and copyrights are also included. In the present scenario the term intellectual property, covers the following aspects in the relevant categories namely:

- Copyright and related rights
- Trademarks, Service Mark & Domain Names
- Industrial Designs
- Patents
- Geographical indications
- Plant Breeders Rights
- Layout Designs (Topographies of integrated circuits).
- Protection of undisclosed information/Trade Secret
- Others (Utility Models).³

Intellectual property rights (IPR) means any creative expression, ideas and invention confers the status of property, and these exclusive rights must provide to the inventor and creator of that property. There are some types of intellectual property protection like patent, copyright, trademark, etc. Patent is a credit for an invention, it's become a new trend in education the purpose of patent is to satisfies the criteria of global novelty and application. Keeping in view of the above facts researcher find out from literature review that there is gap in Intellectual property rights (IPR) awareness and present practices. This area is not properly studied in this particular filed and in world of academia. That is why researcher wants to conduct research on this topic.

Intellectual Property Really Matters

It is an apparent fact that in the era of 21st century major development are observable in field of knowledge and technology. Recently, we have been dealt with age of E- intelligence therefore human creative knowledge has changed itself into a new factor of making profit and to be treated as one of the major determinants of national wealth and competitiveness. It is broadly recognized that due to high innovation in knowledge and technology kidnapping the ideas and knowledge of true person become the real concern of Education. However due to these reasons intellectual ownership rights are become questionable. As a result, it is recognized that human creative knowledge to be effectively protected by intellectual property system at national and international level. The 21st century's major developments are being focused on knowledge and information technology. In other words, we have been confronting with era of intelligence where knowledge and

information technology will be perceived as important and strategic factors in the development of society. It universally recognized that manpower, capital and land are three fundamental factors of producing valuable products for society. However, recently individual innovative knowledge has changed itself into a new factor of making profit and to be treated as one of the major element of state assets and competitiveness. Therefore it is much needed that human creative knowledge to be effectively protected, and it is only by 'Intellectual Property' system which is becoming a major national and worldwide concern.⁴

In the context of above stated discussion now over all the world different countries have developed constitution of state for safeguard the intellectual property of their own people, for instance, United states of America has acknowledged and respected artists and inventors' rights of intellectual property such as in the constitution of US, Article 1, Section 8, clause 8 state empowers the individuals To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries. The US President Lincoln regarding intellectual property rights said that the patent system adds the fuel of interest to the fire of genius.

In addition, President Obama launched the US Government Strategy for American Innovation 2009, he said:

*"The United States led the world's economies in the 20th century because we led the world in innovation. Today, the competition is keener; the challenge tougher; and that is why innovation is more important than ever. It is the key to good, new jobs for the 21st century. These timeless principles are especially true today in our high-tech world."*⁵

Intellectual Property Rights indispensable

Intellectual property rights protection is necessary due to following reasons:

- i). Encouragement to creativity by ensuring its reward: all the creations are used by human beings for their enjoyment and benefit and due to that reason they have social applications in economic and social terms like financial gains and reputation. If there will be no reward for the sufferings of creativity nobody will ever undertake to bear such intellectual and physical sufferings and troubles in this world. Thus, protection of intellectual property rights

will encourage intellectual pursuits and efforts due to economic benefits and social recognition.

- ii). No one will invest his hard earned money for creativity and innovations for a long time without any reasonable return or at least return of originally spend money. Thus, intellectual property rights are designed to provide protection for the results of investment in the development of new technology giving the incentive and means to finance further research and development activities.
- iii). Suitable protections to the intellectual property rights are necessary for transfer of technology from developing countries to underdeveloped countries. Thus, a proper and functional intellectual property environment may facilitate the transfer of technology in the form of foreign direct investment, transfer of technology by franchising and licensing, in the form of joint ventures and other big projects which may generate employment opportunities in the host countries and economic growth and development.

History: World Intellectual Property Organization (WIPO)

Intellectual property Rights are drafted in Article 27 of the Universal Declaration of Human Rights. It has extremely significant because Property Rights are allowing creators, or owners, of patents, trademarks or copyrighted works to benefit from their own work or investment in a creation. IP was first recognized in the Paris Convention for the Protection of Industrial Property (1883) after that in (1886) Berne Convention for the Protection of Literary and Artistic Works was established.⁶ Finally, on July 14, 1967 the World Intellectual Property Organization (WIPO) was established in Stockholm. According to their Article #2:

“Intellectual property shall include rights relating to: (a) literary, artistic and scientific works, (b) performances of performing artists, phonograms and broadcasts, (c) inventions in all fields of human endeavor, (d) scientific discoveries, industrial designs, (e) trademarks, service marks and commercial names and designations, (f) protection against unfair competition, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.”⁷

World Intellectual Property Organization (WIPO) is now international level organization and they are creating awareness worldwide level, by taking different steps like:

- Starting large awareness campaigns; by celebrating world intellectual property day; promoting intellectual property rights by cooperate with each other national institutions of the countries.
- Highlighting the important and significance of intellectual property rights education at national level.
- Providing maximum opportunities to develop and train human resource in the field of intellectual property.
- Arranging seminars and workshops on different aspects of intellectual property especially at universities.⁸

Now each year on 26th April world intellectual property day is celebrated. This event was established by World Intellectual Property Organization (WIPO) in 2000. In United Kingdom (UK) Minister for Intellectual Property Lord Younger said in his message on the occasion: “I’m delighted to celebrate World Intellectual Property Day today. World Intellectual Property Day is a good time to reflect on what we have achieved and also look forward at the challenges ahead.”⁹

In the above mentioned context, it was very important to understand and identify Pakistan IP Law Act, current status, expectation and the level of awareness among faculty especially in universities regarding intellectual property rights in Pakistan.

Intellectual Property Rights in Pakistan

According to Constitution of Pakistan, 1973, Article 260: defines property as

“Property” includes any right, title or interest in property, movable or immovable, and any means and instruments of production;

Source: Gazette of Pakistan, 2012

The present study aims to highlight and review the constitution of Pakistan regarding IP Articles & Acts. The study also highlighted current practices of intellectual property rights organization its major successes and failures in establishment of IP rights protection and awareness in Pakistan. This paper mainly aimed to look in to,

- Review of constitution and Gazette of Pakistan regarding IP Articles & Acts

- Major success and issues for working and implementation of intellectual property rights organization and establishment in Pakistan.
- Major perception and expectation regarding intellectual property rights in Pakistan.

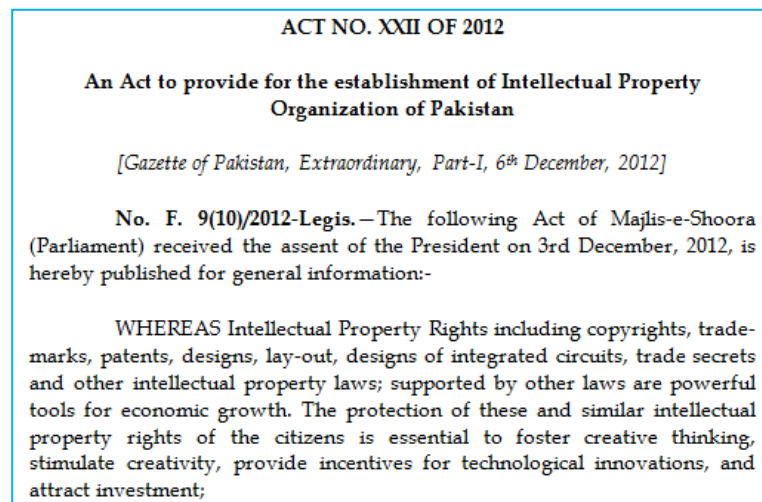
Methodology

Researcher has adopted qualitative approach for this paper which is well supported with qualitative data, which was collected through literature review. For present study research method is content analysis and data was collected through following:

- i). Gazette of Pakistan, 2012,
- ii). Different articles and international paper on IP.
- iii). Informal interviews were conducted with the purpose to figure out awareness and expectation of Islamabad universities faculty regarding intellectual property rights in Pakistan.

Review and Analysis of Constitution: Intellectual Property Rights in Pakistan

In Pakistan intellectual property right is not a new Law, it was a part of Pakistani constitution. Such as Copyright law in Pakistan was first introduced in 1962 through an Ordinance.



Source: *Gazette of Pakistan, 2012*

This ordinance was well and comprehensive document in which all aspects are covered including civil remedies, offences, penalties

and appeals. In practical application of this ordinance Section 45, a Copyright Board was constituted by the Federal Government which was supposed to be a civil court under the Criminal Procedure Act of 1898 and proceedings before the Board were deemed to be the judicial proceedings within the meaning of the relevant sections of Pakistan Penal Code.

(g) "Intellectual Property" includes a trademark, patent, industrial design, layout-design (topographies) of integrated circuits, copyright and related rights and all other ancillary rights;

Source: *Gazette of Pakistan, 2012*

As it is discussed earlier that Copyright protection in Pakistan is provided under the Copyright Ordinance, 1962 it was amended in 2000, we are following new act in 2012. The Ordinance granted well-built acts and steps to fight piracy and intellectual robbery. In addition, copyright crimes are cognizable crime and police officer (FIA) has authority to arrest without warrant and permission from court. Furthermore, for quick investigation police is also allowed to start any investigation without any permission from court. But unluckily, the authority is not exercised. In Pakistan there is need to modernize the act of IP to make it compatible with the IPO's worldwide.¹⁰

Intellectual Property Establishments and Current status in Pakistan

In Pakistan intellectual property law was develop and amended many time but first time at federal level intellectual property rights organization was developed, here for reference three pointed are presented:

3. **Establishment of the Organization.**—(1) There shall be established an Organization to be known as Intellectual Property Organization of Pakistan to carry out the purposes of this Act.

(2) The Organization shall be an autonomous body having perpetual succession and a common seal with powers, subject to the provisions of this Act, to hold and dispose of property both movable and immovable and shall by the said name sue and be sued and may enter into contracts, acquire, purchase, take, hold, enjoy, convey, assign, surrender, yield up charge, mortgage, demise, reassign, transfer or otherwise dispose of or deal with, any movable or immovable property of every description or any interest vested in it, upon such terms as it deems fit.

(3) The head office of the Organization shall be in Islamabad. The Organization may establish and close down offices, with approval of the Board, at such places in Pakistan, as it considers appropriate.

Source: *Gazette of Pakistan, 2012*

All the Intellectual Property Rights laws in Pakistan are being administered and managed by three different ministries of the Federal Government, which are as under:

- i). Ministry of Education:
 - The Copyright Ordinance 1962.
 - The Copyright Rules, 1967.
 - The International Copyright Order 1968.
 - The Copyright Board (Procedure) Regulations, 1981.

- ii). Ministry of Industries and production:
 - The Registered Designs Ordinance, 2000.
 - The Registered Layout-Designs of Integrated Circuits Ordinance, 2000.
 - The patents ordinance, 2000.
 - Registered Layout-Designs of Integrated Circuits Ordinance, 2000
 - Patents Rules 2003.
 - Secret Patent Rules 1993.

The central copyright office is located in Karachi, province of Sindh, the most industrialized and populated city of Pakistan. It is functioning under the administrative control of the ministry of education, Government of Pakistan.

Ministry of education is responsible to carry out necessary changes and amendments in the Copyright Ordinance, 1962, from time to time, being a subject allocated to it under the rules of business, 1973, of the federal government.

Ministry of Commerce

Ministry of Industries and Production is also responsible to carry out necessary changes and amendments in the Patents Ordinance, 2000, the Registered Designs Ordinance, 2000, and the Registered Layout- Designs of Integrated Circuits Ordinance, 2000. The Trade Marks Registry is also located in Karachi. It is functioning under the administrative control of Ministry of Commerce, Government of Pakistan.

Ministry of commerce is also responsible to carry out necessary changes and amendments in the Trade Marks Ordinance, 2001, and other related laws from time to time.

36. Integration of the Trade Marks Registry, Copyright Office and Patent Office.—Notwithstanding anything contained in any other law for the time being in force and upon the commencement of this Act, the Trademarks Registry, Copyright Office and Patent Office hereinafter referred to as the said offices shall become part of the Organization,—

Source: The Pakistan Intellectual Property Rights Organization Ordinance, 2005

The patent office located in Karachi is functioning under the administrative control of Ministry of Industries and Production, Government of Pakistan, as an attached office. Ministry of Industries and Production is also responsible to carry out necessary changes and amendments in the Patents Ordinance, 2000, the Registered Designs Ordinance, 2000, and the Registered Layout-Designs of Integrated Circuits Ordinance, 2000.

In Pakistan, the intellectual property law and establishment is working to protect the rights of creators of a broad range of intellectual creations for a fixed period. Various laws have been established to promote the protection of intellectual property, which is important for protection of individuals' rights and industrial development but still the environment and awareness of law is missing.

Discussion & Findings on view point of University Faculty

As far as intellectual property right concerned, most of the respondent replied that in university most of us are unaware about its legal status in Pakistan, there is no guidance and counseling services are available. They further replied that in university mostly students are also unaware about legal implication and importance of Paton registration. In universities there is need to properly recognized and aware the faculty about this fact that property (IP) rights helps promote creativity and innovation, therefore all associated people must understand and work together for promotion of intellectual rights in Pakistan for future progress and honest change.

'*Mishal Pakistan*' report who is a working with global competitiveness and benchmarking, which they share with IPR in Pakistan on world intellectual property rights day, 2013.¹¹ They stated that the country is not being able to improve the environment to protect the Intellectual Property Rights (IPR). Pakistan is showing substantial deterioration on the indicators to improve the IPR, Pakistan now stands at 106 among 144 countries on Intellectual Property Protection, as compared to 86 in 2010 and 88 in 2013. The trend shows 20% decline in IP protection in the country.¹²

Another observation after discussion with faculty of universities it was found that they have no idea about how to register the Patents and who can support them. Although HEC is taking very serious start regarding IP rights information and awareness, in October 2015, HEC has arranged one day workshop for university faculty. In addition another, recent improvement and steps of HEC is remarkable. Higher education commission of Pakistan provides support and encourages the universities to register file of Patents. For this sake HEC is providing finance and facilitation to universities and student for registration of Patents with in limited time. Thus, first time many patents are registered in national intellectual property rights organization. Still lack of awareness and expertise about innovation is there and IPO has inferior position in fort of world.

According to Mishal Pakistan report, 2013, researcher stated the figures of reports to highlight the status of Pakistan, according to their report Although Pakistan has shown improvements on the number of applications filed under the patent cooperation treaty (PCT) per million populations, where Pakistan stands at 88 among 144 countries globally, a thirty percent improvement as compared to 2010.¹³

It is apparent fact that in Pakistan establishments of organization and law are cosmetic in nature, due to lack of implication and work culture. In Pakistan 2013, Intellectual Property Acts was adopted which protects the copyright trade mark, Paton design, layout another intellectual property rights. These rights are essential in any civic society. No doubt these rights can foster the creative thinking, innovation and invention in any scientific and technological field.

An increase in patent filing and lack of capacity of IPO to decide on patent declarations can create a serious situation for IPR appreciation in the country, Intellectual property protection is important for recognizing and respecting creative and intellectual work in a knowledge-based society.

Hence, in short Pakistan needs to improve its framework on intellectual property protection. On the other hand, Pakistan required practical framework to create intellectual asset in the system. Therefore, for competitiveness in the world, implementation mechanism is needed for the citizens of Pakistan to protect their intellectual property.

Conclusion and Suggestions

After the review of constitution, current status and expectation of faculty, it is believed that an intellectual property right becomes the major concern of national and international world, because it is a main driving force of economic and intellectual development.

Keeping in view the Need of intellectual property rights in education of Pakistan the researcher would like to give some suggestions not only to policy makers for future progressive steps. Recommendations are very important part of the research therefore in the light of review and analysis; hence following recommendations have been put forth:

In Pakistan, effective role of HEC & IPO Pakistan is extremely needed, in addition there is needed to empower the IP offices to buildup effective advance and new emerging system with functional systematic infrastructure for active transmission of human creation. IP Offices should play their administrative role with three dimensions; Creation, Rightualization and Commercialization.¹⁴

In addition for specific level of standards, Government of Pakistan & National IP organization should improve IP related laws in order to assurance and effective protection of industrial property and to bring their legal framework in full conformity with internationally establishment rules for the protection of intellectual property .

The strict and effective enforcement of laws can secure the system. Business circles, consumers and researcher must be aware that fake goods trading are the particular form of economic offense which is against the law. So to cure up the world atmosphere from fake goods and intellectual robbery, each country should continually maintain and strengthen its policy and arranged campaigns for public awareness.¹⁵

Effective protection of intellectual property rights can increase innovation and novelty. It is also needed to arrange awareness program for faculty and students. This study could be employed as a useful suggestion for highlight the main prospects of intellectual property rights in Pakistan. It is highly recommended that further research on this topic must be conducted having different aspect of IP.

It is hoped that, intellectual property culture in Pakistan will increased through research experiences of developed countries and with proper legislation, it also hoped that we can upgrade and strengthen IP protection system in Pakistan. Last but not least, it is

to quote following Chinese Proverb: “A Journey of A Thousand Miles Must Begin with A Single Step”.

Notes & References

¹ The Holy Quran (2:186)

² Intellectual Property Organization of Pakistan. Available at: <http://www.ipo.gov.pk>

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⁴ Rudi Bekkers, Geert Duysters and Bart Verspagen, “Intellectual property rights, strategic technology agreements and market structure: The case of GSM”, *Research Policy* 31, no. 7 (2002): 1141-1161.

⁵ Barack Obama, *National Security Strategy of the United States* (n.p.: DIANE Publishing, 2010).

⁶ Ashish Kothari and R. V. Anuradha, “Biodiversity, Intellectual Property Rights, and GATT Agreement: How to Address the Conflicts?”, *Economic and Political Weekly* (1997): 2814-2820.

⁷ WIPO, *WIPO Intellectual Property Handbook: ...*, op.cit.

⁸ Ibid.

⁹ “World Intellectual Property Day 2013 observed”, Pakistan Today, April 27, 2013. Available at: <https://www.pakistantoday.com.pk/2013/04/27/world-intellectual-property-day-2013-observed/>

¹⁰ Intellectual Property Organization of Pakistan. Available at: <http://www.ipo.gov.pk>

¹¹ “Pakistan Needs to improve its framework on Intellectual Property Protection”, Mishal Pakistan. Available at: <http://mishal.com.pk/pakistan-needs-to-improve-its-framework-on-intellectual-property-protection-2/>

¹² Ibid.

¹³ Ibid.

¹⁴ Rudi Bekkers, Geert Duysters and Bart Verspagen, “Intellectual property rights, strategic technology agreements and market structure:..., op.cit.

¹⁵ Ibid.