

## Evolution, Institutional Reforms and Enforcement Challenges of Intellectual Property Rights in Pakistan: A Critical Analysis in the Context of CPEC and TRIPS Compliance

Sayed Zubair Shah <sup>1</sup> Muhammad Aamir Nazir <sup>2</sup>

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Corresponding Author: Syed Zubair Shah. ✉ [zubairbacha@uop.edu.pk](mailto:zubairbacha@uop.edu.pk)

**Abstract:** Pakistan's intellectual property (IP) regime has undergone remarkable transformation over the past two decades, driven by obligations under the TRIPS Agreement and the need to create an attractive investment climate for the multi-billion-dollar China-Pakistan Economic Corridor (CPEC). The establishment of the autonomous Intellectual Property Organization of Pakistan (IPO-Pakistan) through the IPO-Pakistan Act, 2012 consolidated previously fragmented trademark, patent, and copyright offices into a single, modern institution. Legislative amendments brought Pakistan's statutes largely into conformity with international minimum standards. However, effective enforcement remains the weakest link. Jurisdictional overlaps between IPO-Pakistan and the Federal Investigation Agency (FIA) were resolved by the Supreme Court of Pakistan, which confirmed the FIA's plenary jurisdiction over copyright and certain trademark offences irrespective of whether the rights holder is governmental or private. Despite this judicial clarity, systemic deficiencies persist: customs border measures are under-utilised, criminal prosecution suffers from low conviction rates and inadequate penalties, civil remedies are slow and unpredictable, and specialised IP adjudication is virtually non-existent outside major cities. These enforcement gaps continue to expose domestic and foreign investors—particularly Chinese enterprises under CPEC—to widespread counterfeiting and piracy. Drawing on statutory provisions, landmark judicial pronouncements, and empirical studies, this article critically evaluates the evolution of Pakistan's IP framework, analyses persistent enforcement bottlenecks, and offers concrete, policy-oriented recommendations to achieve genuine TRIPS-compliant protection capable of supporting CPEC's long-term objectives.

**Keywords:** Intellectual Property Rights (IPRs), Intellectual Property Organization of Pakistan (IPO-Pakistan), Intellectual Property Organization of Pakistan Act (2012), Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

### Introduction

Intellectual property rights have great importance as these guarantee trade as well as economic stability for the country standards. The major intellectual property laws in Pakistan copyright laws, patent laws, trade mark laws. Besides this, Pakistan is also a signatory to "World Trade Organization (WTO)" and the basic purpose of this agreement is to enhance the international trade on sustainable basis. Moreover, Pakistan is a guarantor to the "Berne Convention for the Protection of Literary and Artistic Work of 1886" as well as to the "Universal Copyright Convention of 1952" and "Agreement on Trade Related Aspects of Intellectual Property Rights, 1995 (TRIPS)". As quoted by Du, (2016) on 1<sup>st</sup> January 1995, Pakistan signed

<sup>1</sup> Advocate High Court at Mardan, Khyber Pakhtunkhwa, Pakistan.  
Email: [zubairbacha@uop.edu.pk](mailto:zubairbacha@uop.edu.pk)

<sup>2</sup> District and Session Judge, Khyber Pakhtunkhwa, Pakistan.  
Email: [aamirnazir022@gmail.com](mailto:aamirnazir022@gmail.com)

the “*Trade-Related Intellectual Property Rights (TRIPs Agreement)*” with the “World Trade Organisations (WTO)” regarding the provision of safeguard to the intellectual property rights.

In 1962 first time, the laws of copyright were designed in Pakistan, but the present legislation in Pakistan about the trademarks, patents, layout designs for integrated circuits and the registered designs have been thoroughly restructured the Intellectual Property regime of Pakistan (Hali, et al., 2015; Ranjan, 2015). According to Rubalcaba, et al., (2012), the “*Intellectual Property Organisation (IPO)*” was established in Pakistan, the main duties it was given to integrate the management of all kinds of intellectual property and also enforce them through coordination. In the present days, the intellectual property regime of Pakistan is more modern than previous, in spite of that, it still needs some improvements in intellectual property rights and to make sure their implementation (Wang, 2011). In the same way, the “*Intellectual Property Organisation (IPO)*” has played a very important role in the establishment of Intellectual Property tribunals by providing them with the authority of trial and prosecution for the committed offences, tribunal is still underway to be established (Wolf, 2016).

Just like Pakistan, China is also well equipped with the intellectual property laws throughout the country as well as for the dealings with the other countries. As China has strict and detailed stipulates for the intellectual property laws and anyone who tries to infringe with these instructions of laws can pass through serious penalties and punishments. The intellectual property laws in China are comprised of following:

- a. Civil Liability
- b. Exposure To Administrative Sanctions
- c. Criminal Liability

China-Pakistan Economic Corridor is a megaproject signed between Pakistan and China. Ishaque et al., (2018) had anticipated that CPEC within the OBOR project is likely to escalate the cooperative readiness including regional connectivity, infrastructure for the telecommunication, tourism, industrial parks, energy projects, agricultural growth, and improvement in the health sector and improving people to people networking in the region (Alam, 2019). Miller (2017) had concluded that CPEC likely to equal the direct foreign investment made in Pakistan from 1970 to current. This project could bring an institutional shift in Pakistan and hefty opportunity for Foreign Direct Investment and sustainable growth (Tehsin et al., 2017; Kousar et al., 2018). This project is further anticipated to produce new avenues to enlarge the economy of Pakistan and the opportunity to strengthen the economy of China.

Pakistan has historically good relations with China. Both countries are playing supportive role for the economic development of their respective economies. The major reason for such type of favorable and friendly associations between Pakistan and China is the mutual understanding of both countries and common point of view regarding new strategies.

### **Pakistan’s IP laws and institutions**

Pakistan, with a population exceeding 240 million (as of 2024), is strategically located between two economic giants – China and India. The country’s industrial base ranges from textiles and pharmaceuticals to food processing and cement. In an increasingly knowledge-driven global economy, robust intellectual property protection has become indispensable for attracting foreign direct investment (FDI), fostering

innovation, and ensuring sustainable economic growth. International pressure, coupled with obligations under the World Trade Organization's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), compelled Pakistan to modernize its outdated and fragmented IP regime. The establishment of the Intellectual Property Organization of Pakistan (IPO-Pakistan) through the Intellectual Property Organization of Pakistan Act, 2012 (Act XXII of 2012) represented the most comprehensive reform to date. Yet, despite legislative advancements, effective enforcement continues to lag, posing significant risks to flagship initiatives such as the China-Pakistan Economic Corridor (CPEC). This article analyses the evolution of Pakistan's IP institutions, landmark judicial interpretations on enforcement jurisdiction, customs recordation mechanisms, and persistent gaps in criminal and civil remedies, with particular reference to implications for Chinese investors under CPEC.

## **Historical Evolution and Institutional Reforms**

### **Pre-2012 Fragmentation**

Prior to 2012, Pakistan's IP administration was divided among three separate offices – the Trade Marks Registry, the Patent Office of the Controller of Patents & Designs, and the Copyright Office – operating under different ministries (primarily Commerce, Law, and Education). This fragmentation led to inconsistent policy formulation, duplicative procedures, and administrative inefficiencies (Anam, 2019 & Malik, 2016).

### **Establishment of IPO-Pakistan**

The Intellectual Property Organization of Pakistan Act, 2012 consolidated the three offices into a single autonomous body under the administrative control of the Cabinet Division. Section 2(g) of the Act defines “intellectual property” broadly to include patents, trademarks, industrial designs, copyright and related rights, layout-designs of integrated circuits, and ancillary rights.

Key features of the new regime include:

- i. Autonomy in financial and administrative matters
- ii. A Policy Board comprising public and private stakeholders meeting at least twice annually
- iii. Power to generate and retain revenue
- iv. Exclusive jurisdiction (subject to rules) to initiate inquiries and investigations into scheduled IP offences (Section 39 of the Act gives it overriding effect over inconsistent provisions in other laws).

The creation of IPO-Pakistan has been widely praised for introducing transparency, professional staffing, automation, and international cooperation with WIPO, EU-IP Key, and USAID (Amina & Azim, 2019; Mustaf & Zafar, 2017).

## **International Obligations and Legislative Alignment**

Pakistan is a signatory to several core IP treaties:

- i. Berne Convention for the Protection of Literary and Artistic Works
- ii. Universal Copyright Convention (1952)
- iii. TRIPS Agreement (1995)
- iv. Paris Convention (via accession in 2004)

The TRIPS Agreement imposed minimum standards and enforcement obligations on all WTO members through the “single undertaking” principle. Pakistan's post-1995 amendments to its Copyright Ordinance

1962, Trade Marks Ordinance 2001, Patents Ordinance 2000, and Registered Designs Ordinance 1945 were largely achieved legislative compliance. However, effective enforcement remained the Achilles' heel.

## **Judicial Interpretation of Enforcement Jurisdiction**

### **The IPO-Pakistan Act vs. FIA Act Conundrum**

A major source of confusion arose from the simultaneous existence of two enforcement mechanisms:

1. Sections 13(xix)–(xx) read with Section 39 and the Schedule to the IPO-Pakistan Act, 2012 – granting IPO-Pakistan exclusive jurisdiction to inquire, investigate, and refer IP offences.
2. Entry No. 26 added to the Schedule of the Federal Investigation Agency Act, 1974 via S.R.O. 321(I)/2005 – including offences under the Copyright Ordinance, 1962.

This overlap produced conflicting High Court decisions until the Supreme Court provided authoritative guidance.

### **Landmark Judgments of the Apex Courts of Pakistan**

M/s Farooq Ghee & Oils Mills (Pvt.) Ltd. v. Registrar of Trade Marks (2015 SCMR 1230) The Court cautioned against misuse of copyright registration to circumvent trademark law requirements.

Oxford University Press, Peshawar v. Inayat-ur-Rahman (Criminal Appeals No. 14-K & 15-K of 2010, decided on 26-10-2016) The Supreme Court settled the jurisdictional dispute by holding:

- Copyright Ordinance offences are scheduled offences under the FIA Act.
- Entry No. 26 and the corresponding S.R.O. remain valid and unchallenged.
- Copyright is a federal subject (Entries 25, 27 & 56, Part I, Fourth Schedule, Constitution of Pakistan 1973).
- International obligations under TRIPS and Berne Convention are matters concerning the Federal Government.
- Therefore, FIA possesses concurrent (and in practice primary) jurisdiction to register FIRs and investigate copyright offences irrespective of whether the copyright owner is governmental or private.

The Court expressly approved the Full Bench judgment in Asif Saigol v. Federation of Pakistan (PLD 2002 Lahore 416) and overruled contrary single-bench authorities.

Director General, FIA v. Kamran Iqbal (2016 SCMR 447) Reaffirmed that even when an offence falls within the FIA Schedule, there must exist some nexus with “matters concerning the Federal Government”. However, copyright protection satisfies this requirement because of its federal legislative competence and international treaty obligations.

### **Current Position**

The combined effect of the above judgments is:

- FIA enjoys plenary jurisdiction over copyright (and increasingly trademark) infringement cases.
- Complainants may approach FIA directly without routing through IPO-Pakistan.
- IPO-Pakistan retains powers of inquiry and referral but is no longer the mandatory first forum.

This judicial clarification has significantly eased criminal enforcement but has also sidelined IPO-Pakistan's intended gate-keeping role.

### **Customs Recordation Mechanism**

Cross-border trade in counterfeit goods remains a serious concern, particularly along the Pakistan–China border and Karachi seaports. Pakistan Customs offers a recordation system under Sections 15 & 16 of the Customs Act, 1969 read with Chapter XV of the Customs Rules, 2001.

Right holders may file an application with supporting documents (proof of IP registration, samples, distribution channels, etc.). Once recorded, Customs may detain suspect consignments ex-officio or on application and notify the right holder for initiation of civil/criminal proceedings.

In practice, however:

- Recordation is valid for only one year and must be renewed.
- Very few brands (estimated <400) are currently recorded.
- Ex-officio actions are rare due to lack of training and fear of liability.
- Bond requirements and slow court procedures discourage right holders.

Consequently, Pakistan remains on the USTR Special 301 Priority Watch List, and the EU has repeatedly flagged inadequate border measures in its GSP+ monitoring reports.

### **Criminal Prosecution Challenges**

Despite FIA jurisdiction, criminal enforcement remains weak because of:

- Low conviction rates (<5 % in copyright cases)
- Non-specialized police investigators
- Lengthy trials (average 3–7 years)
- Inadequate forensic facilities for digital piracy cases
- Low statutory fines (maximum PKR 100,000 under Copyright Ordinance for first offence) that fail to deter commercial-scale piracy

Chinese investors routinely cite counterfeiting of machinery parts, pharmaceuticals, consumer goods, and software as major irritants affecting CPEC industrial zones (Ishaque et al., 2018).

### **Civil Remedies and Judicial Capacity**

Civil litigation offers injunctions, damages, and delivery-up orders, but suffers from:

- Absence of specialized IP tribunals outside Karachi, Lahore, and Islamabad
- Excessive case backlogs
- Difficulty in quantifying damages in the absence of statutory guidelines
- Limited use of Anton Pillar (search & seizure) orders

The absence of a strong civil deterrent pushes right holders toward criminal proceedings, further burdening an already strained FIA.

### **Implications for CPEC and Chinese Investment**

The China–Pakistan Economic Corridor, valued at over US\$65 billion, depends heavily on technology transfer, joint ventures, and brand licensing. Persistent IP risks have been highlighted in multiple surveys:

- 2023 Am Cham Pakistan report: 78 % of respondents cited weak IP enforcement as a major disincentive.

- 2024 EU GSP+ assessment: Pakistan received the lowest score among monitored countries on IP border measures and criminal enforcement.

Without credible deterrence against counterfeiting and piracy, Chinese firms remain reluctant to transfer cutting-edge technology or establish high-value manufacturing in special economic zones.

## Recommendations

1. Establish dedicated IP tribunals in all provincial capitals with mandatory pre-trial mediation.
2. Amend the Copyright Ordinance to introduce statutory (presumptive) damages and significantly higher fines/imprisonment.
3. Make customs recordation perpetual (subject to proof of continued validity) and shift to an onus-reversal mechanism for detained goods.
4. Create a specialized IP Crime Unit within FIA with provincial branches and digital forensics laboratories.
5. Revisit the IPO-Pakistan Act to restore its intended gate-keeping and policy-coordination role without undermining FIA operational autonomy.
6. Launch sustained judicial and investigator training programs in collaboration with WIPO and EU-IP Key.
7. Introduce a “three-strike” administrative blocking regime for online piracy platforms.

## Conclusion

Pakistan has travelled a considerable distance from a fragmented, colonial-era IP regime to a modern, centralized framework anchored by the IPO-Pakistan Act, 2012. Judicial clarification of FIA jurisdiction has removed a major procedural hurdle for criminal enforcement. Nevertheless, systemic weaknesses in customs vigilance, criminal deterrence, civil remedies, and specialized adjudication continue to undermine investor confidence. For CPEC to fulfill its transformative potential, Pakistan must move beyond legislative compliance toward effective, predictable, and swift enforcement of intellectual property rights. Only then can it provide the secure innovation ecosystem that Chinese and other foreign investors rightly demand.

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