
| RESEARCH ARTICLE

Analyzing the Trademark Protection Index of China and Pakistan: A Comparative Study

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| ABSTRACT

The protection of trademarks has been considered a significant issue and a big challenge both for underdeveloped and developed nations. This study aims to shed light on important issues regarding trademark protection in two major countries, i.e. China and Pakistan. In the previous studies, emphasis was given on innovation and patents, but less focus was paid on trademarks. Like other components of intellectual property assets, the role of trademarks is much more important in all types of firms across the whole economy. A ten years' comparative analysis of the trademark protection index of China and Pakistan have been conducted in this study using secondary data from the website. In this study, secondary data was collected from the International Property Rights Index (IPRI) portal. Furthermore, this study elaborates on some salient loopholes affecting the lack of compliance of intellectual property rights in China and Pakistan, considering the current era of this century. The findings of this study suggest that the legal systems of China and Pakistan needs reforms and need to be adopted similar type of practices implemented in Western economies and developed nations. Finally, some recommendations related to trademarks reforms have been discussed at the end of this paper.

| KEYWORDS

Trademark Protection, Index System, China, Pakistan

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1. Introduction

A trademark is anything distinctive that is used in the marketplace to identify the source or origin of products or services. It safeguards a producer's investment in building goodwill and reputation, prevents customer confusion, and ensures market integrity. In modern national economies, property and its protection are viewed and protected in diverse ways. There are several countries where property rights and intellectual property rights are well protected, causing no economic, legal, or social concerns, and are frequently regarded as key factors in growth and progress (Antony et al., 2012; Debora, 2000; Eugenia et al., 2007). On the other hand, property rights enforcement is underestimated or purposefully ignored in other countries. Unfortunately, some of these countries are also developing rapidly, putting piracy in jeopardy.

The paper's main goal is to compare trademark rights protection indexing levels in a Chinese and Pakistani context. In the current era, trade-marks have received far less attention, despite the fact that these intellectual property assets are more extensively employed by businesses of all types across the economy. A rising empirical economic literature examines the growing usage of trademarks and attempts to assess the economic significance and impact of this sort of intellectual property (Baroncelli et al., 2007; Daniel, 2012; David, 2007). Trademarks become a strategic asset for companies competing on the basis of product difference and customer loyalty because they provide visibility and reputation. When trademarks are successful, they become connected with the perceived value among users, resulting in larger margins for the companies that fill them. Trademarks, one of the most common forms of intellectual property rights, are used by both innovative and non-innovative businesses.

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and are frequently regarded as key factors in growth and progress. On the other hand, Trademarks rights enforcement is underestimated or purposefully ignored in other countries. Unfortunately, several of these countries are also developing rapidly, and piracy is becoming a concern as a source of growth. Since 2001, China has been a member of the World Trade Organization (WTO), whereas Pakistan has been a WTO member since 1 January 1995 and a member of GATT since 30 July 1948. Members of the World Trade Organization (WTO) are required to enact intellectual property (IP) regulations that meet minimal criteria. As a result, there should be few significant variations between Chinese and Pakistani legislation and those of other developed nations. In today's China, enforcing trademark rules may be as simple as granting a larger budget to these organizations to allow them to expand their size and training of enforcement personnel (Barton, 2006). The preparation of the law enforcement system to protect intellectual property is the most important sign of the positive development of China's trademark system. Businesses seeking protection must recognize and capitalize on these changes.

A major revision to improve the Chinese trademark law was taken up for deliberation by China to stop legislation in December 2012, resulting in the much-awaited new trademark law passed on August 30, 2013, and expected to take effect in 2014. China has clearly achieved its goal of becoming the world's factory floor in its quest for economic expansion and investment. Since then, China has aspired to be more than just a global manufacturer; it aspires to convert its economy into an innovative one capable of producing products and services that can compete directly with global leaders. Several political and economic efforts are attempting to restructure China's economy in order to promote both indigenous growth and the development of new domestic enterprises that can compete globally. While the outcome of these government initiatives remains to be proven, China's economy has experienced extraordinary development and has a lot to lose. The size of China's economic growth. In this third stage, trademark registration by domestic and foreign entities has reached a very high level creating an internal and native demand for the protection of trademark rights; as a result, China's political and policy-making system is able to recognize intellectual property protection theory underlying trademark laws. Therefore, the PRC government is likely to continue refining trademark laws which are reinforced with better enforcement mechanisms.

Enforcement of trademark in Pakistan is beneath Trade Marks Ordinance 2001, Trade Marks Rules 2004, Intellectual Property Organization of Pakistan Act 2012, applicable provisions of Pakistan Penal Code 1860, Specific Relief Act 1877 and Customs Act 1969. The civil system is dealt with the Code of Civil Procedure 1908 and the crook system according to the Code of Criminal Procedure 1898. Trade Mark Ordinance 2001 is the primary statute of Pakistan coping with a trademark that is an addition to different associated legal guidelines and does now no longer bar implementation of different applicable legal guidelines for safety and implementation of trademark rights in Pakistan. Duration for the safety of registered trademark is 10 years and renewable after expiration of the period as area call is covered for five years. Trade Mark Rules 2004 are made through the Federal Government of Pakistan beneath Neath segment 132 of Trade Marks Ordinance 2001 for a clean manner of trademark registration and its enforcement in Pakistan. Intellectual Property Organization of Pakistan (IPO-Pakistan) mounted in 2005 beneath Neath Intellectual Property Organization of Pakistan Ordinance 2005, which turned into later repealed through Intellectual Property Organization of Pakistan Act 2012. IPO-Pakistan is an independent frame beneath Neath manipulate of the Cabinet Division of the Federal Government of Pakistan. IPO-Pakistan is needed to paintings strengthen IP legal guidelines, regulations and regulations, take measures associated with the safety of IP rights and do all different works for a clean implementation of IP legal guidelines in Pakistan. Trademark Registry works beneath Neath IPO-Pakistan for registration and enforcement of emblems for the duration of Pakistan. It works as an administrative frame to sign up emblems and listen to competition programs, and it is far empowered to paintings as IP Tribunal. Appeal towards the selection of the Registrar lies earlier than the High Court (Faqir, 2011). The present study bridge the gap between Pakistani and Chinese trademark protection enforcement against the infringement and counterfeits cases.

Following are the objectives of this study;

- To assess the major issues regarding trademark protection in two major countries
- To analyze the trademark protection index of China and Pakistan
- To suggest recommendations in improving the trademark based legislation

This paper is organized as follows: the first section deals with the importance of trademarks, their use and the enforcement legislation system. The second section deals with the review of the literature part, which indicates the basics and theories of trademarks used by the previous researchers. The third section describes the methodological process regarding the collection of data from secondary sources. The fourth section highlights the major findings and results in the discussion of our study. Finally, the concluding remarks along implications of the present study are recorded.

2. Review of Literature

Previously different scholars introduced the concept of the (IPRI), another very popular indicator used to compare intellectual property enforcement worldwide (Block et al., 2014). IPRI is designed to serve as a barometer of property status worldwide. It is

mostly taken as the most accurate and comprehensive comparative study of trademark protection (Brian, 2004). The authors analyzed the property literature to structure the comprehensive nature of this issue (Cheung, 2011; Fisher III, and Oberholzer-2013). The main components of IPRI are 1) Trademark Protection, 2) Legal Environment (LE), 4) Policy Environment (PE), 5) Physical Property Rights (PPR), and 6) Intellectual Property Rights (IPR). The Trademark Protection provides insights regarding preventive measures and mechanisms adopted in any country under their existing rules and regulations. The Legal Environment (LE) and Political Environment (PE) components provide insight into the impact of political stability and the rule of law in a particular country (Christine, 2005; Cita, 2011). Therefore, the measures used for IPR are broad in scope. The authors of this index believe that this component is important for advancing laws and protecting physical and intellectual property rights. The other two components of the index, physical property rights (PPR) and intellectual property rights (IPR) reflect two important forms of property rights to a country's economic development. Factors included in these two categories take into account both legal rights and the de facto consequences of the countries analyzed (Patricia, 2011). In developing countries, a set of reasonable trademark-related empirical studies have been conducted, which are transparently showing the significance of their activities to the rest of the world. A lot of research has been done on intellectual property protection, but few emphases were given to the trademark protection research (Tiwari, 2012).

3. Research Methodology

The property rights component is a part of the rule of law. It is a qualitative assessment of how a country's legal framework allows individuals to freely accumulate private property secured by clear laws enforced effectively by the government. This study collected secondary data from the International Property Rights Index (IPRI) portal.

Table 1. Trademark Protection Index of China

China	Score	Annual Change	Global Rank	Regional Rank
2011	5.500	0.413	59	11
2012	5.500	0.000	57	10
2013	5.500	0.000	56	10
2014	5.500	0.000	48	8
2015	5.389	0.111	52	9
2016	5.408	0.019	55	9
2017	5.712	0.304	52	9
2018	5.904	0.192	52	9
2019	6.033	0.129	49	9
2020	6.045	0.012	49	9
2021	6.088	0.043	46	9

Data Source: International Property Rights Index (IPRI)

In the period between 2011 and 2014, China's protection of trademarks right according to the International Property Rights Index (IPRI), was rated lower and scored 5.5 and globally ranked at number 59, 57, 56 and 48, respectively, which meant that trademark protection was inadequately protected and that the trademark protection was not adequate. It means that private firms' trademark protection system was is poorly protected. In this period in China, inefficiency was higher, and the judiciary was strongly influenced by government decisions, and even expropriation was possible. China was ranked in 59th position in 2011 and moved to the 46th position having 6.088 scores with an annual change of 0.043 in 2021. Then its position and score significantly improved. In 2014 Xi Jinping began empowered in his office, and he took a strong decision with an anti-corruption campaign and suggested some remedial strategies to law enforcement departments and policymakers. With the Chinese cyber security system, the protection of trademarks rights has even been improved.

Table 2. Trademark Protection Index of Pakistan

Pakistan	Score	Annual Change	Global Rank	Regional Rank
2011	4.100	0.217	108	18
2012	4.200	0.100	109	18
2013	4.100	-0.100	115	18
2014	4.300	0.200	86	15
2015	3.557	-0.743	114	17
2016	3.684	0.127	119	17
2017	3.474	0.210	121	18
2018	3.637	0.163	121	18
2019	3.874	0.237	120	18
2020	4.142	0.267	116	18
2021	4.211	0.069	111	18

Data Source: International Property Rights Index (IPRI)

The trademark protection from the period 2011-2014 in Pakistan was not performed better as evaluated by International Property Rights Index (IPRI) than China was rated lower and scored 4.1 and globally ranked at number 108, 109, 115, and 86, respectively. It indicates that the global ranking improved in 2014 as the global rank was recorded at 86th number, which meant that trademark protection was improving gradually in that time span and that the trademark protection was appropriate at that time period. In this period in China, efficiency was higher, the judiciary was strongly influenced by government decisions, and even expropriation was possible. Pakistan was ranked in 108th position in 2011 and moved to the 111th position having a 4.211 score with an annual change of 0.069 in 2021. At this time, its position and score were not improved significantly. The best places in the ranking Pakistan recorded in 2011, 2014 and 2015 place. The findings of the results suggest that a well-defined legal system should be organized for the right protection of trademark, and also the implementation of rules related to trademark protection are crucial for bringing change in the attitude of the whole society members. The selling of counterfeit goods from producers towards buyers should also be discouraged to strengthen the mechanism of the trademark protection system. It suggests that the court system in Pakistan is inefficient and subject to delays. Corruption may be present, and the judiciary, in many cases, can be influenced by government decisions.

4. Results and Discussions

The major finding of this study depicts that China's trademark index arose from the period 2011-2021. In this time period, China ranked higher than Pakistan in this ranking. The trademark protection index of Pakistan, ranging from the period of 2011-2014, got a lower score of 4.1 and did not perform well as evaluated by International Property Rights Index (IPRI), and therefore, Pakistan globally ranked at numbers 108, 109, 115, and 86 respectively. It indicates that the global ranking improved in 2014 as the global rank was recorded at 86th number, which meant that trademark protection was improving gradually in that time span and that the trademark protection was appropriate at that time period. The foremost motives of the scores are ups and down because of survey-primarily based evaluations totally. Respondent responses can range considerably because of worded questions, examine samples, or examine data. Because the nations blanketed inside the evaluation are huge and populated, it's miles nearly impossible to survey respondents' equal organization in each nation. In addition, a few methodologies pay unique interest to the shape of structures much like the ones applied in advanced nations, specifically in Pakistan and China.

The foremost hassle for China and Pakistan is the implementation of this system. Enforcement of IPR legal guidelines stays a critical hassle in China and is also difficult in Pakistan. There exist significant structural and institutional impediments that undermine powerful IPR enforcement. These consist of a loss of coordination amongst authorities agencies, inadequate assets for enforcement, nearby protectionism, and a loss of judicial independence. Administrative IPR enforcement, including raids and seizure of infringing goods, usually consequences simplest in brief slowdowns in production; consequences aren't enough to discourage repeat offenders. Criminal prosecutions that can have a deterrent effect are rare. There also are problems in prosecuting civil IPR cases, consisting of pretty low harm awards, the dearth of a sturdy machine for the discovery of proof, the sporadic utility of contempt citations for uncooperative or cheating defendants, a green judiciary, and laborious necessities for the usage of proof from abroad. However, there are a few pros and cons of development in IPR enforcement, in particular with recognition to courts in predominant towns in China. Despite the truth that the evaluation of the safety of belongings is considerably exclusive in analyzed scores, it may be said that the general evaluation of highbrow belongings rights safety in China and Pakistan continues to be very terrible and unsatisfactory. Some authors stated that the issues with the dearth of recognizing of belongings rights consequences from records and unique attitudes in the direction of highbrow belongings. In the light of Socialist and Confucian viewpoints, in China, thoughts are shared and opened to utilization via way of means of the community, in preference to being owned via way of means of an individual. Chinese humans agree that an idea, if correct enough, have to be shared. China and

Pakistan are countries where people never believe in asserting rights over intellectual properties. Followings are the salient recommendations of this study;

- Firstly, the well-defined legal system should be organized for the right protection of trademark, and also the implementation of rules related to trademark protection is crucial for bringing change in the attitude of the whole society members
- Secondly, Chinese and Pakistani societal business attitudes toward the protection of trademark rights must be improved like Western countries
- Thirdly, the selling of counterfeit goods from producers towards buyers should be discouraged to strengthen the mechanism of the trademark protection system

5. Conclusions

The paper's main aim was to compare the trademark protection index of China and Pakistan for the period of 10 years, i.e. 2011-2021. To do that, the legal basis of this protection was shown, and then the final results of rankings that evaluated the protection of trademark were shown and described in Table No. 1 and Table No. 2. It is worth noting that both countries have established rights and are protecting these rights by following the guidelines of the Western and American legal systems. According to our findings, the most serious issue for both countries is that trademark law is not being properly implemented. History and culture may undeniably explain some aspects of Chinese and Pakistani business and everyday life. However, this cannot be the only explanation. Other reasons are greedy human behaviour, lucrative profits and a high level of corruption while selling pirated goods in the market. The need to protect trademark rights stems from human freedom and human rights and is not directly related to economic growth and development. The limitation of the present research is the collection of data from only one web portal ranging from the period of ten years to evaluate the indexing system of Chinese and Pakistani property rights protection mechanisms. However, in the future, data can be collected from Fraser Institute and Heritage Foundation to make the present research results more appropriate and robust. The law students would extend this research by making a comparison with different developed and developing countries by using primary and secondary data sources. Finally, the findings of this study would be helpful for the lawmen, Government officials and policymakers to formulate legislative policies.

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References

- [1] Antony, T., Hannu, W., & Jayashree, W. (2012). *A Handbook on the WTO TRIPS Agreement*. United Kingdom: Cambridge University Press.
- [2] Baroncelli, E., Krivosos, E., and Olarreaga, M. (2007) Trademark protection or protectionism? *Review of International Economics* 15(1): 126-145.
- [3] Barton, B. (2006). An Empirical Study of the Multifactor Tests for Trademark Infringement. *California Law Review*, 96(6), 1581-1654.
- [4] Block, J.H., De Vries, G., Schumann, J.H., and Sandner, P. (2014) Trademarks and venture capital valuation. *Journal of Business Venturing* 29(4): 525-542.
- [5] Brian, A. J. (2004). Trademark Dilution on the Constitutional Edge. *Columbia Law Review*, 104(1).
- [6] Cheung G.C.K., (2011). Intellectual Property Rights in China: Politics of Piracy, Trade and Protection, *Routledge*.
- [7] Christine, H. F. (2005). Why We Are Confused About the Trademark Dilution Law. *Fordham*
- [8] Cita, C. N. (2011). Approaches to Trademark Infringement in ASEAN Countries: Analysis of How the Case is Likely to be Decided in Indonesia. *Indonesian Journal of International Law*, 9(1), 201.
- [9] Daniel, G. (2012). *The TRIPS Agreement: Drafting History and Analysis* (4th ed.). The United Kingdom.
- [10] David, A. B. (2007). Trademark Registration: Patent and Trademark Tactics and Practice. *John Wiley & Sons Incorporation*, United States of America.
- [11] David, S. W. (1991). Reexamining Trademark Dilution. *Vand Law Review*, 44, 531.
- [12] Debora, J. H. (2000). *Intellectual Property in the Information Age: The Politics of Expanding*
- [13] Eugenia, B., Ekaterina, K., & Marcelo, O. (2007). Trademark Protection or Protectionism? *Review of International Economics*, 15(1), 126-145.
- [14] Faqir, H. (2011). *The Judicial System of Pakistan*. Supreme Court of Pakistan, Islamabad, Pakistan.
- [15] Fisher III, W.W. and Oberholzer-Gee, F. (2013) Strategic management of intellectual property: An integrated approach. *California Management Review* 55(4). 157-183.
- [16] Patricia, M. (2011). A Comparative Look at China and the United States. *TOURO International Law Review*, 14(2), 334-362.
- [17] Tiwari G., (2012), 2012 Report. International Property Rights Index, *Property Rights Alliance*.