

THE EVOLUTION OF INDUSTRIAL DESIGNS PROTECTION IN PAKISTAN: COMPARATIVE ANALYSIS OF THE PATENTS AND DESIGNS ACT 1911 AND THE REGISTERED DESIGNS ORDINANCE 2000

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ABSTRACT

The protection of industrial designs plays an important role in the promotion of both innovation and economic growth, by safeguarding the visual design and presentation of manufactured goods. The legal framework of design protection in Pakistan has undergone significant transformation, transitioning from the colonial-era Patents and Designs Act, 1911 to the more sophisticated and comprehensive Registered Designs Ordinance, 2000. This paper critically analyses the evolution of design rights in Pakistan, by offering a comparative analysis of the two statutes with a focus on substantive legal provisions, procedural reforms, and their compliance with international obligations i.e. the Paris Convention 1883 and the TRIPS Agreement 1995. This study relied on the relevant statutes, official guidelines, news articles, websites and scholarly journals. The study finds out that the Ordinance 2000 has updated and has brought much clarity to the then legal framework for design protection. However, still certain ambiguities remain, particularly in the areas of the criteria of originality, enforcement mechanism, and those of unregistered design rights. The paper concludes with certain recommendations for further refinement to ensure that the current law fully protect and encourage innovation and is aligned with the best global practices.

Keywords: Pakistan, Patents and Designs Act 1911, The Patent Ordinance 2000, Rules 2003, registration, originality, upgradation, international standards, unregistered designs

INTRODUCTION

Intellectual property law of Pakistan has developed under the influence of its colonial past and its aspirations for integration into the global economy. Industrial design protection plays a vital role in safeguarding the aesthetic aspects of manufactured articles as well as in nationwide intellectual property regimes across the globe. It has always been the design, the aesthetic presentation of the article or goods that attract obligations i.e. the Paris Convention 1883 and the TRIPS Agreement 1995. This study relied on s the customer to purchase the same, thereby affecting the sale of the product. Therefore, the

manufacturer spends a chunk of money on the design to be applied on the article, then the article itself. In fact, no design can have an existence separate from an article, meaning thereby design is attached to the article. Therefore, the purpose of design laws is to protect the creativity of the person and give him an exclusive right to use that design, subject to the condition, if registered. This is why, Pakistan's comprehensive regulation of designs was established under the Patents and Designs Act, 1911, which remained effective from 1912 until its successor came into force in 2000. After being

introduced nearly a century ago, the 1911 law struggled to keep up with the intricacies of contemporary design innovation and the high standards of international trade. Passage of the Registered Designs Ordinance, 2000 changed the course of Pakistan's legal history by bringing its regulations into line with global standards and international treaties such as the TRIPs and Paris Convention.

This paper made a critical and comparative analysis of the Patents and Designs Act, 1911 and the Registered Designs Ordinance, 2000. The study aims to illuminate the substantive and procedural reforms introduced by the Ordinance in the Act 1911, assess its efficacy in protecting design rights, and to appraise its conformity with the set international legal standards. By relying on statutory provisions, official rules, government guidelines, and scholarly commentary, the paper attempts to provide a comprehensive overview of the evolution of design laws in Pakistan and highlights the areas where further legislative measures are required.

Methodology

The research is based on both primary and secondary data. Primary sources, includes the Patents and Designs Act, 1911, the Registered Designs Ordinance, 2000, and the Registered Designs Rules, 2023 (IPO Pakistan, 2023a, 2023b). Secondary sources include open-access scholarly papers, books, legal commentaries and reports published by various international organizations i.e. United Nations Conference on Trade and Development (UNCTAD) and World Intellectual Property Rights Organization (WIPO). The study is confined to the national law of Pakistan and does not introduce comparative distinct material from other jurisdictions. The analysis is made to gather data from established peer-reviewed journals, with in-depth discussion and critical evaluation.

Literature Review

The literature on Pakistan's design law highlights the historical limitations of the 1911 Act and the impetus for reform brought about by international trade agreements and the need for modernization. UNCTAD (2000) notes that the colonial-era statute was ill-equipped to address the challenges of globalization and the increasing importance of industrial design in global trade.

Scholarly commentary (Ali & Associates, 2023; City Laws, 2023) underscores the significance of the Ordinance in clarifying the criteria for registrability, extending the term of protection, and introducing procedural safeguards. However, academic analyses also point to persistent ambiguities, particularly regarding the assessment of originality and the lack of protection for unregistered designs (IPO Pakistan, 2023a; Intel Legal PK, 2023). The introduction of the Registered Designs Rules, 2023 has been generally welcomed as a step towards procedural modernization, but commentators emphasize the need for further legislative refinement to address substantive gaps (Ali & Associates, 2023; Global Law Experts, 2023).

Literature Review

Pakistan's IP regime in the field of design protection has undergone evolution shaped by historical foundations, gradual change, and persistent challenges in ensuring protection. The Patents and Designs Act, 1911, has often been criticized as unwieldy and ill-suited to the needs of contemporary industrial design. It has always been admitted that the 1911 Act was a groundbreaking piece of legislation at the time of its formulation but its unclear criteria for registration and enforcement, resulted in limited safeguards for industrial design interests in Pakistan (Senior, 2022). Enactment of the Registered Designs Ordinance, 2000, marks one of the major achievements toward bringing Pakistan's IP regime in line with the requirements set forth by the TRIPS Agreement and the Paris Convention (IPO Pakistan, 2023a). UNCTAD, 2000). The Ordinance made significant changes to improve the enforceability of industrial designs, by providing extended protection periods and more stringent requirements to register designs. Still, scholars point out that significant uncertainties persist in areas such as whether designs are novel enough to be registered and whether purely functional characteristics should be excluded from protection (City Laws Associates, 2023)

The bulk of research emphasizes how Pakistan's IP laws interact with its economic and institutional environment. A key finding by Sherwani and colleagues is that the success of legal changes is tied to both the clarity of statutes as well as the ability of institutions to execute and

uphold IP rights. Their research on Lahore's building regulations highlights that success hinges on community involvement, effective collaboration between authorities and clear regulations-principles equally relevant for enforcing design rights. These same issues are also cited as key challenges to the development of strong IP enforcement in Pakistan (RSIL, 2019; Ahmad & Akhter, 2023).

There is widespread recognition in the literature that training for judges and public awareness activities are crucial for improving Pakistan's intellectual property framework. Ahmad and Akhter (2023) suggest that creating specialized IP courts with well-informed judges and offering ongoing training for the judiciary and outreach efforts to the public will raise awareness and improve the respect for IP rights in Pakistan. Though the tribunals have now been established as specialized courts, but their suggestions also apply to enhancing the enforcement of industrial design protection as regulated by the Registered Designs Ordinance.

Countless studies demonstrate that the effectiveness of IP rights underpins the promotion of innovation as well as attracting foreign investment into Pakistan's economy. A recent article examines the relationship between effective intellectual property (IP) laws and economic growth in Pakistan. The study shows that efficient enforcing of industrial design rights encourages innovation in manufacturing and design industries (JHS, 2024). Economic analysis therefore highlights the urgent need for Pakistan to both update its legal structure and appropriately carry out these changes. Legal professionals and IP experts have emphasized that recent procedural upgradations in the Registered Designs Rules, 2023 significantly advance Pakistan's design protection. Experts welcome these procedures as fundamental improvements to the efficiency and transparency of the design registration process. Global Law Experts, 2023). Practitioners argue that procedural changes alone are insufficient and should be supported by both clarification of substantive laws and enhancement of competence within the Intellectual Property Organization of Pakistan (Intel Legal PK, 2023). The scholars also highlight a major shortcoming in Pakistan's existing laws – the lack of protection for unregistered designs – which restricts design

rights and is especially disadvantageous for industries where new products emerge quickly. This gap conflicts with prevailing international standards and might be addressed through future legislative changes. The literature criticizes the Registered Designs Ordinance, 2000 as an improvement over the 1911 Act but highlights the need for continued legal improvements. A range of proposals are suggested by the literature regarding how Pakistan's design law system could be improved to better enhance innovation and promote economic development.

The Patents and Designs Act, 1911: Scope and Limitations

The Patents and Designs Act, 1911, was passed during the British colonial era and considered to be the foundational statute for the legal protection of patents and industrial designs in the subcontinent. The Act defined the term "design" as a features of shape, configuration, pattern, or ornament applied to an article by industrial process, which can be judged solely by the eye (Patents and Designs Act, 1911, s. 2(5)). This Act allowed only those design to be registered that were new or original, however, it failed to provide detailed criteria for determining novelty or originality. Likewise, the registration process was relatively easy, with the Patent Office being made responsible for the examination and the registration of designs that met the basic statutory requirements (Patents and Designs Act, 1911, s. 44).

One of the eminent limitations of the 1911 Act was it lacked the clarity regarding the exclusion of those designs that were dictated solely by technical function. The Act did not expressly prevent the registration of functional designs, which then created the risk of monopolizing the technical solutions to certain problems, through design rights. Furthermore, the Act explicitly prescribed the maximum term of protection of fifteen years, being divided into an initial period of five-years and then two subsequent renewals of five years each, at the discretion of the owner (Patents and Designs Act, 1911, s. 47). Though, this was in accordance with the early twentieth-century practice, it became inadequate in the light of massive international developments.

The enforcement provisions of the Act were also quite limited, with civil remedies available in case of infringement but no clear provisions were

found for innocent infringers or any kind of mechanisms in case of opposition and appeal. The administrative structure under this Act was combine regulation of patents and designs under a single head, which did not reflect to cope with the growing complexity in intellectual property law.

The Registered Designs Ordinance, 2000: Transitional Statute

The Registered Designs Ordinance, 2000 was passed with the other intellectual property laws, to address the shortcomings hence deficiencies of the 1911 Act and therefore, to bring Pakistan's design law into conformity with the international standards, particularly those set by the TRIPS Agreement and the Paris Convention (IPO Pakistan, 2023a). The Ordinance provides a more comprehensive and nuanced definition of the term "design," emphasizing visual appeal and expressly excluding features that are dictated solely by the technical function or modes and methods of construction (Registered Designs Ordinance, 2000, s. 2(e)). This clarity in the definition, is significant in preventing the misuse of design rights for monopolize functional aspects of products.

The 2000 Ordinance introduces a strict criterion for the registrability of design, requiring that a design should be new or original and not previously registered or published not only in Pakistan but also anywhere in the world (Registered Designs Ordinance, 2000, s. 3(2)). The inclusion of a grace period of twelve months for disclosures made by the applicant in certain prescribed conditions, or arising from abuse on the part of third person (s. 3(3)) aligns with international best practices vis-à-vis provides greater flexibility for designers. The Ordinance additionally empowers the government even to exclude certain designs from registration by rulemaking, thereby allowing for adaptability in response to evolving policy considerations (s. 3(4)).

For the procedural regulation, the Ordinance establishes a more robust application as well as the examination process. The Registrar of Designs is the one who is authorized to conduct inquiries, to require certain amendments either in the form of additions or otherwise, and to refuse application, if it fails to meet statutory criteria (s. 5). Applicants have been provided with

the right to appeal to the High Court, ensuring judicial oversight and procedural transparency (s. 5(6)). The registration of a design is effective from the date of application, but infringement proceedings may only be initiated after the issuance of the registration certificate (s. 5(5)).

The term of protection of an industrial design under the Ordinance has been significantly extended, with an initial period of ten years and the possibility of two renewals of ten years each, for a maximum of thirty years, at the discretion of the owner (Registered Designs Ordinance, 2000, s. 7). This extension reflects the increasing commercial value of industrial designs and the need for longer-term protection in a globalized economy. The exclusive rights conferred by registration include the ability to prevent unauthorized commercial use of the design (s. 7(2)).

The Ordinance further enunciates the grounds for infringement and the remedies available to the right holders. Infringement has been defined as an unauthorized making, selling, or even importing of the articles embodying the registered design (s. 8). The Ordinance also provides for compensation as well as injunction as the remedies, and requires courts to notify the Registrar of decrees, which affects the register (s. 8(2)). An addition has been made in the Ordinance regarding the defence on the part of an innocent infringement who was unaware of the registration at the time of infringing the due right (s. 9), reflecting a more balanced approach towards enforcement.

The Registered Designs Rules, 2023 and Procedural Upgradation

The enactment of Registered Designs Rules, 2023 is yet another significant step towards procedural upgradation and administrative efficiency (IPO Pakistan, 2023b). These rules have been made to replace the long-standing Patents and Designs Rules 1933. These Rules 2023 introduced an electronic filing of applications, a standardized fee structures, and detailed guidelines for the examination and registration of industrial designs. The due adoption of the Locarno Classification system aligns Pakistan's design registration process with the classic international standards, facilitating cross-border recognition and protection simultaneously (IPO Pakistan, 2023c).

The Rules also provide for the publication of registered designs in the official gazette, opposition proceedings in case if any, and various mechanisms for the rectification and cancellation of an industrial design. These procedural safeguards enhance fairness and transparency and provide greater certainty for the designers and third parties. The implementation of the new Rules has been welcomed by the legal fraternity and the stakeholders as means of reducing administrative delays hence improving the quality of design examination (Ali & Associates, 2023; Global Law Experts, 2023).

Compliance with International set Standards

The upgradation of industrial design law through the Ordinance and thereafter subsequent Rules does reflect the country's commitment in fulfilling its international obligations with other member states of WTO, under the TRIPs Agreement and the Paris Convention. Article 25 of TRIPs Agreement does require member states to provide due protection for independently created designs subject to the condition, if they are new or original, while Article 26 mandates a minimum term of protection which is ten years (WIPO, 2000; UNCTAD, 2000). The Registered Designs Ordinance, 2000 meets these minimum requirements by establishing a clear criterion for the registrability while setting the maximum term of protection to thirty years.

The Ordinance also incorporates the principle of national treatment which ensures that foreign applicants receive the same protection as the national of Pakistan himself (Registered Designs Ordinance, 2000, s. 4). The adoption of the Locarno Classification and the publication of registered designs further has facilitated the compliance of national law with the international standards hence, promoting transparency in the registration process.

Remaining Ambiguities and Challenges

Despite significant progress, there remains certain ambiguities and gaps in the law. The criteria, to assess the "originality" and "novelty" on objective basis, remains subject to interpretation, which may vary from case to case. Therefore, there is a need of further statutory clarity to reduce this ambiguity and enhance predictability (IPO Pakistan, 2023a; Intel Legal PK, 2023). The Ordinance is further silent about

unregistered design rights, though these can be taken as protected under The Copyright Ordinance 1962, till the time the said design, if applied on an article, has not been reproduced more than fifty times by an industrial process either by the owner of the copyright or, under his license, by a third person (Government of Pakistan, 1962)

However, the unregistered designs are increasingly recognized in other jurisdictions as a means of protecting designs with short commercial lifecycles (Church, Derclaye, & Stupfler, 2019).

The effectiveness of the new procedural rules will be depending up on their consistent implementation and the capacity of the IPO to manage increased application volumes.

Findings

The comparative analysis of the Patents and Designs Act, 1911 and the Registered Designs Ordinance, 2000 reveals a clear path of upgradation and alignment with international minimum principles. The Ordinance has introduced more clear criteria for registrability, extension of the term of protection, and proper procedural safeguards that were not there, in the Act 1911. The adoption of the Registered Designs Rules, 2023 further will be going to enhance administrative efficiency and transparency. However, challenges remain in the areas of determining originality, effective enforcement, and the protection of unregistered designs. There is still a great need for legislative and institutional reforms to ensure that the design law fully adds into innovation and economic growth.

Conclusion

The recognition of industrial design rights in Pakistan from the colonial-era Patents and Designs Act, 1911 to the Registered Designs Ordinance, 2000 reflects the country's efforts to upgrade its intellectual property regime and comply with international set legal standards. The Ordinance and subsequent procedural rules have substantially added to the improved protection of industrial designs, incorporating clearer definitions, a longer term of protection, and enhanced procedural safeguards. Nevertheless, certain uncertainties and gaps persist, particularly in the determination of

originality and the enforcement of design rights. Addressing these issues through further legislative refinement and the development of specialized enforcement mechanisms will be necessary for ensuring that design law remains effective and responsive to the demands of innovators and the progress of the global economy.

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