

CONSTITUTIONAL AND STATUTORY FRAMEWORK GOVERNING PATENT PROTECTION IN PAKISTAN: AN ANALYTICAL STUDY OF LEGAL PROVISIONS AND INTERNATIONAL OBLIGATIONS SINCE 2000

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ABSTRACT

This research analyses the constitutional and statutory basis of patent protection in Pakistan and its obligations under international treaties. The study aims to critically evaluate the consistency of Pakistan's patent regime with international standards, to identify gaps in the legal framework, and to recommend reforms. The analysis covers core statutory provisions on patentability, rights conferred on patent holder, the enforcement mechanisms, and TRIPs flexibilities including compulsory licensing and parallel importation. The findings reveal that, although Pakistan has made considerable progress in updating its patent laws to meet international standards, there still remains shortcomings in the areas of enforcement, public health safeguards, and the accuracy of patentability criteria. The study recommends steered legal and institutional reforms, enhanced administrative capacity, and the adoption of international best practices to ensure that patent protection effectively promotes innovation while safeguarding public welfare.

Keywords: Patent protection, Constitution of Pakistan, Patents Ordinance 2000, TRIPS Agreement, compulsory licensing, intellectual property rights, public health, registration, WTO, WIPO, Doha Declaration.

1. INTRODUCTION

Protection of intellectual property rights (IPRs) is essential for innovation and economic development (WIPO, 2020). Patent grant inventors an exclusive right as well as incentivize research and development (Khan, 2015). After independence, patent in Pakistan was regulated by Patent and Deign Act 1911, however, it evolved in accordance with the international standards in the form of Patent Ordinance 2000, aligning with TRIPS obligations (Khursheed Khan & Associates, n.d.; WTO, n.d.). This paper analyses the constitutional and statutory framework of patents in Pakistan, assessing its compliance with international obligations, and identifying gaps and deficiencies, especially in public health.

2. Research Aim and Objectives

This study aims to analyse constitutional and statutory provisions relevant to patent protection in Pakistan with an intent to review its compliance with international obligations and to identify the deficiencies therein.

3. Research Questions

1. What are the constitutional provisions of Pakistan that supports patent protection?
2. Does the Patents Ordinance 2000 align with international standards?
3. What are the deficiencies in the statutory framework for patents that halts the proper protection of patent?

4. Theoretical and Legal Framework

The study is grounded in doctrinal legal research, analysing statutory texts, constitutional provisions, and international treaties. The framework integrates the Constitution of Pakistan (1973), Patents Ordinance 2000 (as amended), Patent Rules 2003 and international documents i.e. TRIPS Agreement, WIPO treaties, Doha Declaration.

5. Methodology

This study used qualitative, doctrinal legal research methodology. Primary sources include the Constitution, statutes, and treaties. Secondary sources include books, legal commentaries, peer-reviewed articles and newspapers.

6. Constitutional Provisions and Patent

6.1 Right to Property (Articles 23 and 24)

Article 23 of the Constitution, guarantees every citizen the right to acquire, hold, and dispose of property at his will, which courts have interpreted to include intangible property including patents (Khan, 2015). Furthermore, Article 24 protects against compulsory acquisition except in case where public interest is involved, but in accordance with law.

6.2 Freedom of Trade and Business (Article 18)

Article 18 of the Constitution ensures the right to conduct any lawful trade or business. Patent protection ensures this right on the grounds that inventors can commercially use their patented inventions singularly thus creating economic advancement both for themselves and the country (Khan, 2015).

6.3 Public Interest and Principles of Policy (Articles 37 and 38)

Articles 37 and 38 of the constitution, talks about social justice, economic welfare, and scientific advancement. These principles entail the balancing act between patent rights and public health, environment and the fair distribution of technology (Constitution of Pakistan, 1973).

7. Statutory Framework: Patents Ordinance 2000 and Patent Rules 2003

7.1 Overview

The Patents Ordinance 2000, replacing the Patents and Designs Act 1911, transformed Pakistan's patent law bringing it in compliance with TRIPs Agreement (WIPO, 2000).

7.1.1. Patentability Criteria (Section 7)

An invention must be novel, with an inventive step involved therein, and be industrially applicable. Exclusion to the definition of patent include discoveries, scientific principles, methods of agriculture or medical treatment, and inventions contrary to public order or morality.

Deficiency:

Unlike India's Patent Act (Section 3(d)), Pakistan's law lacks specific provisions against "evergreening" (the patenting of certain modifications), which can thereafter hinder access to affordable medicines (Singh, 2021). Evergreening keeps, patent rather exclusive rights of the patent holder alive till the time this provision gets invoked. It grants increased protection for inventions over an extended period of time. This is mostly exercised by the pharmaceutical companies which invests heavily in research and development and want to retain the protection of their investments from competitors as long for as long time as possible (Photon Legal, 2023).

7.1.2. Application and Examination for registration of patent (Sections 10–22)

Patent Ordinance with its Rules does provide for a detailed procedure to be observed for the grant of patent.

Procedure Step by step:

- **Filing:** an inventor needs to submit an application with provisional application (if has to save him from the formula of "first to file" and can't manage to prepare complete specification, then he can, to IPO-Pakistan. But then within a period of 12 months he is bound to submit the complete specifications, till then the scrutiny will be held in abeyance. However if an application is Convention application, then it must be accompanied with complete specification directly.
- **Formal internal Examination:** the controller marks the application to the examiner for extensive examination, i.e. as per the definition of patentability.
- **Publication:** Once it gets approved from within, the application gets published in the Patent Journal, as per Section 21 of the Patents Ordinance, 2000 for general public.
- **Opposition:** the published application is then open for opposition from public

(interested/related parties). Anyone having an objection has to raise that within a period of four months, which will then be heard by the Controller accordingly.

- **Grant of patent:** Once the case gets decided on the part of the Controller in favour of the owner, he must apply for the grant of patent within certain specified period and then he would be granted with a seal (patent granted).
- He gets all the rights of patent holder.
- **Official Gazette:** The grant of the patent is then published in the Patent Gazette, which is the official record of granted patents in Pakistan (Government of Pakistan, 2000).

Deficiency:

The pre-grant opposition process is underutilized due to lack of public awareness as rarely there is a possibility that one would be regularly visiting websites to check the gazette. Likewise, there is procedural opacity (Jamil, 2021).

7.1.3. Rights of Patent Holder (Section 30)

Patent holders have exclusive rights to prevent others from making, using, selling, or importing the patented invention for a period of 20 years from the date of filing (Patents Ordinance, 2000, s.30).

7.1.4. Compulsory Licensing and Parallel Importation (Sections 48–51)

The Ordinance allows compulsory licensing of patented product, against the consent of the patent holder, for non-working, public interest, or anti-competitive practices, and parallel importation of patented products legally sold elsewhere, in a manner provided by the law (Butt & Akhter, 2023).

Deficiency:

Procedural complexity and lack of clear guidelines have limited rather held in abeyance, the practical use of compulsory licensing and parallel importation, especially in public health emergencies. Unfortunately, this privilege has never been availed ever by the government of Pakistan till date (Kiani, 2012; Arfat & Hussain, 2022).

8. International Obligations: TRIPs Agreement, World Intellectual Property Organization (WIPO) And Doha Declaration 2001

8.1 TRIPs Agreement 1995

TRIPs mandate minimum standards for patent protection, including a 20-year term and flexibilities such as compulsory licensing with various other detailed provisions dealing with the protection of intellectual property rights (WTO, 2001). Article 5, and Articles 27-34 deals exclusively with patents, the adoption of which has been made mandatory on all the member states of World Trade Organization

8.2 Doha Declaration 2001

The Doha Declaration was made by the highest decision-making body of the World Trade Organization, with an intent to promote a balanced interpretation and implementation of the provisions of the TRIPs Agreement in such a manner which is supportive of right to protect public health and promote access to medicines for all, of the members of WTO (South Centre, 2011). This document affirms members' rights to use TRIPs flexibilities to protect public health (Deere, 2009).

Deficiency:

Pakistan's law incorporates TRIPs flexibilities but imposes procedural hurdles that undermine their effectiveness in practice. (Arfat & Hussain, 2022).

9. Challenges and Gaps

- There are certain procedural complexities which had made it difficult to enjoy the flexibilities provided by TRIPs Agreement. This is one of the reasons that compulsory licensing and parallel importation are rarely rather never used due to complex procedures and lack of practical implementation (Kiani, 2012).
- Institutional limitations in the Intellectual Property Organization of Pakistan (IPO-Pakistan) and weak inter-agency coordination hinder effective enforcement of patent rights (Imdad et al., 2024).
- The omission of statutory deadlines for the IPO, which was there in the original text of 2000, to complete substantive examination leads to significant delay in the grant of patent, which further reduces the tenure of the patent holder to enjoy the benefits of patent which is then granted to him, for the reason that the period of protection starts

from the time of filing the application and not from the grant of patent (Imdad et al., 2024).

- There is a lack of clear policy and legal rules to balance patent protection with public health and economic development objectives (Hippler & Ahmed, 2022; Azam, 2014).
- The absence of an explicit provision like Section 3(d) of India's Patent Act allows "evergreening" and undermines access to affordable medicines (Singh, 2021).

10. Recommendations

- There is a need to introduce provisions similar to India's Section 3(d) to explicitly prevent evergreening and ensure only genuine innovations. A new clause is recommended to be added specifying that patent shall not be granted for medicines, if the mere discovery of a new property of already known substance does not result in enhancing the known efficiency or strength of that substance. In addition, derivatives of a known substance shall be taken as a same substance unless they show some efficacy as per their properties.
- There is need to once again fix certain statutory deadlines for the IPO to complete substantive examination in order to keep a check on the concerned authority and also to expedite the process of granting or not granting patent, whichever fits the most.
- To streamline and state clear provisions regarding the process for issuing compulsory licenses and parallel importation in order to improve access to medicines.
- There is a need to establish transparent policies in order to balance patent rights and public health, with maximum use of TRIPS flexibilities.
- To conduct awareness programs to inform stakeholders about patent rights, its due enforcement, and public interest safeguards.
- To expand options for resolving IP disputes outside the courts with an intent to reduce litigation delays and cumbersome proceedings.

11. Conclusion

The patent regime of Pakistan is grounded in the constitutional guarantees and a defined statutory framework in conformity with international set standards. While significant progress has been made, deficiencies remain in enforcement, public

health safety, and clarity of patentability standards and certain uncertainties in the legal provisions. By addressing these gaps-especially by the adoption of international best practices like explicit anti evergreening provisions, there is an increased chance of Pakistan to foster innovation, to attract investment, and to ensure equitable and an easy access to the technological and medical advancements.

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