

Law and Policy Review (LPR)

Volume 3 Issue 2, Fall 2024

ISSN(P): 2076-5614, ISSN(E): 3007-4290

Homepage: <https://journals.umt.edu.pk/index.php/lpr>



Article QR



Title: Comparative Analysis of the Intellectual Property Rights of Three Former British Colonies of the Sub-Continent- Bangladesh, India, and Pakistan

Author (s): Muhammad Haris Abbas

Affiliation (s): Superior Law College, Superior University, Lahore, Pakistan

DOI: <https://doi.org/10.32350/lpr.32.05>

History: Received: September 25, 2024, Revised: December 04, 2024, Accepted: December 20, 2024, Published: December 25, 2024

Citation: Abbas, M. H. (2024). Comparative analysis of the intellectual property rights of three former British colonies of the Sub-Continent- Bangladesh, India, and Pakistan. *Law and Policy Review*, 3(2), 84–96.
<https://doi.org/10.32350/lpr.32.05>

Copyright: © The Authors

Licensing:  This article is open access and is distributed under the terms of [Creative Commons Attribution 4.0 International License](https://creativecommons.org/licenses/by/4.0/)

Conflict of Interest: Author(s) declared no conflict of interest



A publication of
School of Law and Policy
University of Management and Technology, Lahore, Pakistan

Comparative Analysis of the Intellectual Property Rights of Three Former British Colonies of the Sub-Continent- Bangladesh, India, and Pakistan

Muhammad Haris Abbas*

Superior Law College, Superior University, Lahore, Pakistan

Abstract

The study examined the intellectual property rights, judicial effectiveness, and freedom of investment in the three British colonies of Asia-Pakistan, India, and Bangladesh. The aim of the study was to assess the progress these countries have made in protecting intellectual property rights, enhancing judicial effectiveness, and promoting freedom of investment. For this purpose, the researcher collected data from two international platforms: the International Property Right Alliance and the Economic Index of The Heritage Foundation, covering the last ten years excluding 2024, due to the unavailability of data for that year. Researcher comparatively analyzed the data from 2014-2023 on the protection of intellectual property rights, judicial effectiveness, and freedom of investment. Based on the analysis, the researchers concluded that the protection of intellectual rights is strongest in India, followed by Pakistan, and then Bangladesh. Using a seven-point Likert scale, India was found to be at the middle level of protection, Pakistan at middle to low level and Bangladesh at the lowest level of protecting intellectual rights. However, there is a negative significant relationship found between the protection of intellectual property rights and judicial effectiveness, but there is a positive significant relationship between freedom of investment and protection of intellectual rights.

Keywords: Bangladesh, British colonies, comparative study, developing countries, freedom of investment, India, judicial effectiveness, Pakistan, protection of intellectual property rights

Introduction

Intellectual property rights refer to the intangible properties of individuals such as the creation of minds, which include inventions like artistic or literary works, product designs, names, symbols, and images used in

*Corresponding Author: mianharrisabbas@gmail.com

commerce (WIPO). However, property rights include the rights of individuals' tangible assets like land which grant legal ownership right to individuals to control or use their property as they see fit (Kenton, [2024](#)). This study employs the comparative analysis of the protection of intellectual property rights of three British colonies of the sub-continent -Pakistan, India, and Bangladesh and their relationship with judicial effectiveness and freedom of investment.

According to the Heritage Foundation, an individual's autonomy or freedom to enjoy and acquire the economic resources depict the level of economic freedom of that country. Proponents of economic freedom argue that economic freedom lets individuals decide what is best for them and what they want for themselves, leading to self-directed lives rather than being dictated by the government or any other authority. The protection of Intellectual property rights directly impacts the economic growth of a country. Saravia et al. ([2017](#)) mentioned that secured intellectual property rights bring direct foreign investments into the country due to which the institutional environment of the country grows and likewise economic freedom of the country increases. However, Falvey et al. ([2006](#)) argue, citing WTO's and TRIPS agreement new development theory, that although intellectual property rights and economic growth of the country have a direct and positive relationship, this is not true for the low or middle-income countries. They added that the flow of innovation in low and middle-income countries used to be slow due to which even the robust rule of law of the country to protect intellectual property rights won't be good enough. According to the Economic Index 2023, economically free societies let their individuals work, invest, produce, and consume freely as they want and countries where anyone can invest freely show their robust rule of law for the protection of property and intellectual property rights (Tag & Degirmen, [2022](#)).

Statistically, intellectual property rights have no direct impact on foreign direct investment inflows in a country, even after controlling for indogeneity (Hammami, [2019](#)). He also demonstrated that the performance of intellectual rights departments of developing countries does not affect the FDI flow of the country. However, he suggested that other variables like human capital, economic freedom index, and size of the market of the country may have an impact on foreign direct investment. Contrary to Hammami ([2003](#)) argued that "Intellectual property is the powerful full tool

for economic development and wealth creation that is yet no used with optimal effects, especially in developing countries”. He added that intellectual property assets such as information & knowledge (research), innovation and creativity are rapidly replacing tangible or physical property assets like land, capital, and labor which has also changed the driving force of economic growth and social well-being in the countries. According to the World Intellectual Property Organization (WIPO), intellectual property is a key cultural and developmental asset for all countries, contributing to societal progress. That is why it is necessary to protect the intellectual property rights of individuals because as the intensity of the judicial protection of intellectual rights increases, it will reduce the manipulation of research and development at the regional level and the country will grow automatically (Li & Pei, [2024](#)). Intellectual property rights of developing countries have a U-shaped relationship with the economic development of the countries which confirms that IPRs have a positive impact on innovations (Chen & Puttitanun, [2005](#)). Extensive literature has shown that there is a strong relationship between economic development & freedom of investment and judicial effectiveness & intellectual property rights. This study empirically explained the status of intellectual property rights, economic development, judicial effectiveness, and freedom of investment of three former British colonies - Pakistan, India, and Bangladesh. The study covers the last 10 years, excluding 2024, as complete reports for this year will only be available at the end of the year. Based on the literature review researcher has proposed the following hypotheses and research questions for this study.

Pakistan and India gained independence from Britain in 1947. However, Bangladesh became independent from Pakistan in 1971. Given their shared history and rivalry, the researcher aims to explore how these countries contribute to the global economy, the status of intellectual property rights in these nations, and their economic growth. That is why the research proposed the following research questions.

Research Question

Q1. In the last ten years, what is the ranking of these countries in terms of the protection of intellectual property rights?

Hypotheses

H1. There is a positive relationship between judicial effectiveness and the protection of intellectual property rights in these countries.

H2. There is a positive relationship between the protection of intellectual property rights and freedom of investment in these countries.

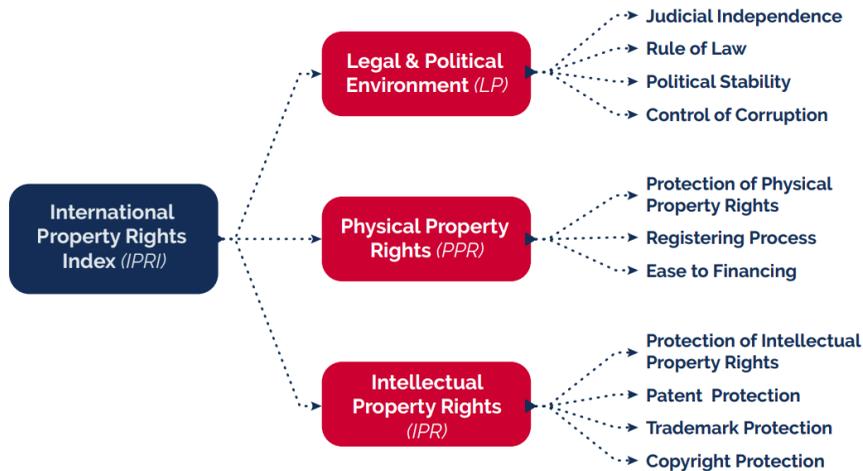
Methodology

The researcher adopted the methodology of Karim and Billah, (2021) and selected the sample of the last 10 years indexes of three countries. The time frame for the study spans from 2014 to 2023, with the year 2024 excluded due to the unavailability of completed reports from international organizations. This is an empirical study based on the postpositivist approach. The researcher took quantitative data from the index of economic freedom from “The Heritage Foundation” and the International Property Index of the International Property Rights Alliance”. There are 12 aspects of the economic freedom index report of The Heritage Foundation under four broad pillars -Rule of Law (Government Integrity, property rights, and judicial effectiveness), Government Size (Fiscal Health, Tax Burden, and Government spending), Market Openness (Trade, Financial, and investment freedom), and Regulatory Efficiency (Business, Monetary, Labor freedom). As mentioned above researcher took two components from two broad pillars of the economic freedom index - Rule of Law (Judicial effectiveness) and Market openness (investment freedom) and compared them with the International property right index of the International Property right Alliance”- Intellectual property rights and ranking of the countries protection of intellectual property rights. There are 11 components of the International Property Rights Index under the umbrella of three core components (see Figure 1).

The International Property Right Index report’s 3rd component intellectual property rights is part of this study. The original data scale to calculate the protection of intellectual rights was (1-7), 7 is the best score and 1 is the worst.

Figure 1

International Property Right Index Structure



Results and Discussion

The average score of the yearly protection of intellectual property rights index of Pakistan, India, and Bangladesh indicates that India has better protected its intellectual property rights compared to Pakistan and Bangladesh in the last ten years. According to the International Property right index, countries ranking criteria on 7 points Likert scale is as follows: 1.8-2.7 (lowest in protecting IP rights), 2.8-3.7(lower level), 3.8-4.7(middle to low level), 4.8-5.7(Middle), 5.8-6.7(Middle to high),(6.8-7.7(high level),7.8,8.7 (highest in protecting IP rights). However, for Judicial effectiveness index and investment freedom index, the countries are ranked on a 5 points Likert scale according to which if the country is 80-100 points on a scale of 100 then its Judiciary is highly effective, and if 70-79.9 then it mostly effective, 60-69.9 it's moderately effective, 50-59.9 (mostly ineffective) and if 0-49.9 then it is repressed. The same scale goes with the freedom of investment index. The average means of ten years shows that Pakistan is at the middle to the lower level, Bangladesh at the lower level of protecting the intellectual rights of their citizens and India is at the middle level as shown in Table 1..

Table 1
Average Score of Protection of Intellectual Property Rights

| Name of the Country | Yearly Protection Intellectual Property Rights Index | | | | | | | | | | |
|---------------------|--|-------------------|------------------|-------------------|-------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | Average |
| Pakistan | 4.3 (Middle to low) | 3.577 (Lower) | 3.684 (Lower) | 3.474 (Lower) | 3.637 (Lower) | 3.874 (Middle to low) | 4.142 (Middle to low) | 4.211 (Middle to low) | 3.814 (Middle to low) | 3.824 (Middle to low) | 3.853 (Middle to Low) |
| India | 5.5 (Middle) | 5.15 (Middle) | 5.22 (Middle) | 5.564 (Middle) | 5.639 (Middle) | 5.82 (Middle to high) | 5.708 (Middle) | 5.547 (Middle) | 5.143 (Middle) | 5.072 (Middle) | 4.922 (Middle) |
| Bangladesh | 3.4 (Lower) | 2.564 (Lowest) | 2.777 (Lower) | 3.117 (Lower) | 3.365 (Lower) | 3.313 (Lower) | 3.293 (Lower) | 3.395 (Lower) | 3.577 (Lower) | 3.73 (Lower) | 2.9218 (Lower) |

Table 2
Comparative Analysis of Countries Protection of Intellectual Rights, Judicial Effectiveness, and Investment Freedom

| Name of the country | | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | Average |
|---------------------|-----|------|------|------|-------|-------|-------|-------|-------|-------|-------|-----------------------|
| Pakistan | IPR | 4.3 | 3.57 | 3.68 | 3.47 | 3.64 | 3.87 | 4.14 | 4.21 | 3.81 | 3.82 | 3.853 (Middle to Low) |
| | JE | N/A | N/A | N/A | 34 | 34 | 40 | 43 | 40 | 28 | 36 | 43 (Repressed) |
| | INF | 35 | 40 | 50 | 55 | 55 | 55 | 55 | 55 | 60 | 60 | 52 (Mostly unfree) |
| India | IPR | 5.5 | 5.15 | 5.22 | 5.56 | 5.64 | 5.82 | 5.71 | 5.55 | 5.15 | 5.07 | 4.922 (Middle) |
| | JE | N/A | N/A | N/A | 44.40 | 54.30 | 61.60 | 64.10 | 55.90 | 51.50 | 42.20 | 53.43 (Mostly unfree) |
| | INF | 35 | 35 | 35 | 40 | 40 | 40 | 40 | 40 | 40 | 40 | 38.5 (Repressed) |
| Bangladesh | IPR | 3.4 | 2.56 | 2.76 | 3.12 | 3.37 | 3.31 | 3.29 | 3.40 | 3.58 | 3.73 | 2.9218 (Lower) |
| | JE | N/A | N/A | N/A | 26.0 | 32.6 | 34.5 | 36.1 | 35.4 | 28.1 | 22.5 | 30.74 (Repressed) |
| | INF | 55 | 45 | 45 | 50 | 50 | 45 | 45 | 45 | 50 | 50 | 48 (Repressed) |

Indexes of the Protection of Intellectual Rights index shown in Table 1 are collectively the combined indexes of Trademark protection, copyright protection, and patent protection. Lower levels of protection of intellectual property rights make international or regional firms believe that protection is too weak to invest in any kind of joint venture and to transfer any kind of new technology or subsidiary in that country. India's protection of intellectual rights is better than Pakistan and Bangladesh but thirty percent of US firms perceive India as having insufficient protection for intellectual property. This perception discourages them from investing in joint ventures in India, as noted by Mansfield (1994).

The researcher didn't find available data for judicial effectiveness for the years 2014, 2015, and 2016, so the comparison for judicial effectiveness and protection of intellectual property rights in this study is based on data from 2017 to 2023. . The data suggests that, on average, from 2017 to 2021, judicial effectiveness in Pakistan and India increased, along with an improvement in the protection of intellectual property rights but in 2022 and 2023 judicial effectiveness decreased and so did the intellectual property rights in the case of Pakistan and India judicial effectiveness and protection of intellectual property rights are directly proportional to each other.

***H1.** There is a positive relationship between judicial effectiveness and the protection of intellectual rights indexes of the countries.*

According to the data the researcher collected from both international organizations, it seems that H1 proved that there is a positive relationship between intellectual property rights and judicial effectiveness in Pakistan and India. However, in the case of Bangladesh judicial effectiveness increased and decreased regularly but protection of IP rights keeps on increasing as shown in Table 2. However, overall to check the relationship between intellectual property rights and judicial effectiveness researchers applied the Pearson correlation to test both variables and found that the Pearson correlation coefficient between intellectual property rights and judicial effectiveness for all three countries is -.539. P value observed from the Pearson correlation test is less than 0.01 for sample size 30 as shown in table 3 which means there is a significant relationship between judicial effectiveness and intellectual property rights but negative coefficient value shows that relationship is inverse. The statistical analysis shows a significant relationship between intellectual property rights and the judicial effectiveness of Pakistan, India, and Bangladesh is a warning to improve

the judicial effectiveness in the country to protect intellectual property rights. Judicial effectiveness in the country to protect intellectual property rights positively affects corporate digital innovation (Zheng et al., [2023](#)) but Increased IPR protection in developing countries with unstable judicial effectiveness can be detrimental to the innovation by local firms in the country (Auriol et al., [2022](#)).

Table 3

Correlation between Intellectual Property Rights and Judicial Effectiveness

| Sample size | Correlation coefficient | <i>p</i> value |
|-------------|-------------------------|----------------|
| 30 | -.545 | 0.002 |

H2: There is a positive relationship between freedom of investment in the country and protection of intellectual rights.

H2 was confirmed in the case of Pakistan, where an increase in the protection of intellectual rights was associated with an increase in freedom of investment. However, in the case of India and Bangladesh, despite improvements in intellectual property protection, freedom of investment decreased. Competitive policies along with protection of intellectual property rights are required to promote competition for freedom of investment in the countries (Maskus, [2000](#)) and it could be that Bangladesh and India despite being somehow good in judicial effectiveness and protecting intellectual rights are unable to define competitive policies and that is why they are repressed for foreign direct investment.

H2 proposes that there is a positive relationship between freedom of investment in the country and protection of intellectual rights just like Khan and Samad ([2010](#)) conclude that protection of intellectual rights has a positive impact on freedom of investment in the country. To test H2 researchers applied Pearson correlation to test both variables and found that the Pearson correlation coefficient between intellectual property rights and freedom of investment is .456 for sample size 30 and the p-value is 0.011 which is less than the significant value 0.05 as shown in table 4. Results of the test shows that there is a significant positive relationship between intellectual property rights and freedom of investment which means H2 has approved.

Table 4

Correlation between Intellectual Property Rights and Freedom Of Investment

| Sample size | Correlation coefficient | <i>p</i> value |
|-------------|-------------------------|----------------|
| 30 | .456 | 0.011 |

Conclusion

Over the past ten years, protection of intellectual property rights in Pakistan has ranged from middle to the low levels, middle levels in India, and lower levels in Bangladesh. Through an extensive literature review, the researcher proposed that intellectual property rights are directly proportional to judicial effectiveness and freedom of investment. Researchers found that the protection of intellectual property rights is directly proportional to the judicial effectiveness in India and Pakistan but this is not true in the case of Bangladesh as Cychosz (2003) explained patent laws are ineffective without a robust enforcement mechanism, which is crucial for ensuring the protection of intellectual property rights.

While intellectual property rights protection is generally thought to attract foreign direct investment (FDI), this hypothesis was not proven in the study. In fact, the researcher found that the protection of intellectual property rights in developing countries does not necessarily lead to an influx of FDI. Baijou and Aguenou (2016) have studied that protection of intellectual rights and freedom of investment are insignificant to foreign direct investment and negatively related. Where several studies have proved that the protection of intellectual rights brings foreign investment into the country but it couldn't be true for all countries and partial freedom of investment may depend on the institutional differences of the host countries (Saravia et al. 2017). In conclusion, the researcher found out that in developing countries if the rule of law and judicial effectiveness is good, a country can protect the intellectual rights of their citizen but it cannot guarantee freedom of investment. Protection of intellectual property rights alone cannot close the innovation gap which can bring foreign direct investment in the countries. In the case of Pakistan, India, and Bangladesh statistical analysis shows that an insignificant negative relationship between judicial effectiveness and intellectual property rights is a warning sign for the policy maker to improve the judicial effectiveness in the country. However, a positive significant relationship between intellectual property

rights and freedom of investment may be a sign for the policymakers to improve the judicial effectiveness to protect intellectual property rights for the freedom of investment in the countries.

Limitations and Suggestions

This study is based on the secondary data set. It is recommended that future researchers work on the primary data collection from policymakers and lawmakers for better insights into the topic.

Primary data collection methods, such as, interviews or surveys could be expensive. However, if future researchers secure funding, they may consider utilizing these methods for a more comprehensive analysis.

The researcher has already planned to work on the same topic using a primary data set if he gets funding in the future.

Conflict of Interest

The author of the manuscript has no financial or non-financial conflict of interest in the subject matter or materials discussed in this manuscript.

Data Availability Statement

Data will be provided by corresponding author upon reasonable request.

Funding Details

No funding has been received for this research.

References

- Auriol, E., Biancini, S., Paillacar, R., Gourdon, J., & Savoye, B. (2022). *Intellectual property rights protection and trade: An empirical analysis*. Éditions Agence Française de Développement. <https://shs.cairn.info/journal-afd-research-papers-2022-240-page-1>
- Baijou, A., & Aguenau, S. (2016). Impact of economic freedom, piracy losses, and intellectual property rights on foreign direct investment: evidence from mena countries. *ACADEMICIA: An International Multidisciplinary Research Journal*, 6(2), 119–132.
- Chen, Y., & Puttitanun, T. (2005). Intellectual property rights and innovation in developing countries. *Journal of Development Economics*, 78(2), 474–493. <https://doi.org/10.1016/j.jdeveco.2004.11.005>

- Cychosz, A. (2003). The effectiveness of international enforcement of intellectual property rights. *Journal of Marshall Law Review*, 37, 985–1016.
- Falvey, R., Foster, N., & Greenaway, D. (2006). Intellectual property rights and economic growth. *Review of Development Economics*, 10(4), 700–719. <https://doi.org/10.1111/j.1467-9361.2006.00343.x>
- Hammami, S. (2019). Foreign direct investment inflows, intellectual property rights and economic freedom: Empirical evidence from middle-and low-income countries. *African Journal of Science Technology Innovation and Development*, 7(2), 1–11. <https://doi.org/10.1080/20421338.2019.1587909>
- Idris, K. (2003, February 12). *Intellectual property: A power tool for economic growth*. World Intellectual Property Organization. https://www.wipo.int/pressroom/en/prdocs/2003/wipo_pr_2003_337.html
- Karim, D. M. R., & Billah, M. (2021). An analysis on the protection of property rights and the intellectual property rights: Comparison between Bangladesh and China. *International Journal of Scientific and Research Publications*, 11(2), 268–276. <https://doi.org/10.29322/IJSRP.11.02.2021.p11032>
- Kenton, W. (2024, May 10). *What are property rights and why do they matter?* Investopedia. https://www.investopedia.com/terms/p/property_rights.asp
- Khan, M., & Samad, G. (2010). Intellectual property rights and foreign direct investment: Analysis of 14 South East Asian countries, 1970–2005. *Applied Econometrics and International Development*, 10(1), 219–230.
- Li, Q., & Pei, J. (2024). Judicial protection of intellectual property rights and manipulative behaviors in corporate research and development expenses. *Finance Research Letters*, 65, Article e105611. <https://doi.org/10.1016/j.frl.2024.105611>
- Mansfield, E. (2000). Intellectual property protection, direct investment and technology transfer: Germany, Japan and the USA. *International Journal of Technology Management*, 19(1-2), 3–21. <https://doi.org/10.1504/IJTM.2000.002805>

- Maskus, K. E. (2000). *Intellectual property rights and foreign direct investment* (Policy Discussion Paper No. 0022). Centre for International Economic Studies. https://www.iatp.org/sites/default/files/Intellectual_Property_Rights_and_Foreign_Direc.htm
- Saravia, A., Canavire-Bacarreza, G. J., & Rios-Avila, F. (2017). Intellectual property rights, foreign direct investment and economic freedom. *Global Economy Journal*, 17(2), Article e20170017. <https://doi.org/10.1515/gej-2017-0017>
- Tag, M. N., & Degirmen, S. (2022). Economic freedom and foreign direct investment: Are they related?. *Economic Analysis and Policy*, 73, 737–752. <https://doi.org/10.1016/j.eap.2021.12.020>
- Zheng, P., Li, Z., & Zhuang, Z. (2023). The impact of judicial protection of intellectual property on digital innovation: Evidence from China. *Finance Research Letters*, 58, Article e104257. <https://doi.org/10.1016/j.frl.2023.104257>