

## The Challenges in Protecting Intangible Cultural Heritage: A Comparative Analysis of Pakistani Laws with WIPO Policy

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**Abstract:** *Intangible cultural heritage (ICH) protection is very important issue when discussing the approach of cultural diversity and identity in the context of globalization. Although the international instruments like the World Intellectual Property Organization (WIPO) present recommendations, the national law system still struggles to put in practice. This paper looks at the challenges of the protection of ICH in Pakistan through the prism of the legal framework with which it is possible to compare the policies of WIPO. The paper identifies the loop holes within the laws of Pakistan, bureaucracy, and the community in terms of preserving ICH, and also discusses possible ways to address those gaps. Based on a comparative assessment, this paper analyzes the effectiveness of the Pakistani laws and compares it to the WIPO standards and provides policy recommendations so as to align better the Pakistani practices with global best practices.*

**Keywords:** Cultural Preservation, Intangible Cultural Heritage, WIPO, Pakistan, Comparative Analysis, legal framework.

## 1. Introduction

### 1.1 Background of Intangible Cultural Heritage

The Intangible Cultural Heritage (ICH) can be described as the practices, representations, expressions, knowledge and skills which are considered by the communities as the part of their cultural heritage. ICH is intangible heritage unlike physical heritage like monuments and artifacts and ICH includes not only living traditions (oral traditions, performing arts, social practices, rituals and festivals), but also knowledge and skills (including those of craftsmanship), that people need to recognize in order to understand, interpret, practice and recreate them, thus safeguarding them.<sup>1</sup> The Convention of UNESCO on the Safeguarding of the Intangible Cultural Heritage in 2003 considered the ICH as an essential part of cultural diversity that requires safeguarding since it leads to social cohesion and sustainable development.<sup>2</sup>

The importance of ICH is that it is a way of preserving the culture especially in post-colonial and multicultural states such as the state of Pakistan where different ethnic groups such as Punjabis, Sindhis, Baloch, Pashtuns, among others share their own set of traditions. But these traditions are endangered because of the fast urbanization, globalization and dominance of digital media. There are many indigenous activities that are at risk of wanting into obscurity, like Sufi music (Qawwali), folk story

telling (Dastangoi) and traditional crafts (Ajrak, Phulkari) because they are not legally covered and there are no young people interested in it anymore.<sup>3</sup>

Saving ICH is not only about preserving customs, but also about making sure the communities maintain their cultural independence in the world that becomes more homogenous. Such dilution of ICH results in loss of indigenous knowledge, erosion of social structures and loss of cultural diversities.<sup>4</sup> Thus, there should be legal and policy engagement to ensure that there is a stop on cultural appropriations, exploitation and misrepresentation and the local communities are given a status as custodians of their heritage.

## **1.2 Significance of Protection of ICH in globalized world**

Globalization has not only led to different cultures getting to know each other, but it has also increased the rate at which the original cultures are dying down. In many places, the westernization of the media, consumerism, and digital technologies alienate local cultures, and the traditional ones are moving to extinction.<sup>5</sup> This is happening in Pakistan, where the young generation is becoming more exposed to the culture of the rest of the world, and very little space is left on neo-native art forms, such as, Kalash rituals, Punjabi folk poetry (Heer Ranjha), or even Sindhi embroidery. Preservation of ICH is vital due to the various factors that are mutually exclusive:

- a. Cultural Identity and Continuity: ICH acts as a link between new and old generations so that the cultural histories and sense of identification are preserved.<sup>6</sup>
- b. Economics Sustainability: A large number of traditional crafts and performances are sources of livelihoods. As an illustration, Peshawari pottery and weaving of Kashmir shawls are sources of livelihood to artisans.
- c. Community Cohesion: Such festivals as basant (spring festival), and Urs of Sufi saints bind people to each other and strengthen the relationship between different generations.<sup>7</sup>
- d. Tourism & Soft Power: Preserved ICH can encourage cultural tourism as can be in the case of the Lok Virsa Museum and Sufi shrines of Pakistan that have been attracting foreign tourists.<sup>8</sup>

International structures, especially World Intellectual Property Organization (WIPO), accommodate evidence on how to defend ICH using intellectual property (IP) law, databases of traditional knowledge as well as rights held by communities. The available differences between the legal approach followed by Pakistan and those initiated by WIPO can identify the gap and the areas where reform can be undertaken.

## **1.3 Objectives and Questions of the Research**

This paper seeks to provide a critical analysis of the issues to be addressed in the protection of ICH in Pakistan in relation to the laws at national and international level defined by WIPO.

The following are the goals:

1. To analyze the current system of protection of ICH in Pakistan both in terms of law and institutions.
2. In order to determine how the WIPO's policies respond to the preservation of ICH and how the Pakistani laws are inadequate.
3. To bring forth policy recommendations that will improve the alignment with the global best practice.

### **Research Questions:**

1. What are the differences between the WIPO system of ICH and the domestic policies of Pakistan?

2. What are the key challenges which Pakistan faces in the implementation of ICH protection laws?
3. What needs to be done to amend the legislation of Pakistan to ensure better protection of ICH pertinent to the WIPO standards?

## 1.4 Methodology

The following qualitative method of legal analysis, namely:

1. Analysis of Documentary Materials the national laws of Pakistan (e.g., The Antiquities Act 1975, Copyright Ordinance 1962)) and international treaties (UNESCO 2003 Convention, WIPO Traditional Knowledge Framework, and so on).
2. Case Studies- Scouring down the particular examples of ICH in Pakistan (e.g. Shandur Polo Festival, Cholistan embroidery) to explore the preservation processes.
3. Comparative Analysis-Comparison of the legal processes in Pakistan and the policies in WIPO in order to locate the gaps.

The methodology of integrating these sources allows the study to present an in-depth analysis of the Pakistan situation in terms of the protection of its intangible cultural heritage as well as propose reform actions that should be put into force.

This chapter creates a compelling need to save intangible cultural heritage from collapse in Pakistan, and it lays out the cultural, economic, and societal importance of the intangible cultural heritage in Pakistan. It provides an overview of the research objectives and methodology and prepares a framework upon which a detailed examination of the legal structure within Pakistan against the policies within WIPO is going to be performed. In the following chapters, the text will explore more conceptual definitions, the laws that exist in Pakistan, a contrasting evaluation, and the suggestions to derail better ICH protection.

## 2. Conceptual framework of Intangible Cultural Heritage

### 2.1 Definition and Scope of ICH under UNESCO and WIPO

The practices, representations, expressions, knowledge, and skills, which communities accept as part of their cultural heritage, are to be called an Intangible Cultural Heritage (ICH). ICH, unlike material heritage e.g. monuments, artifacts, is dynamic, ever-changing and closely integrated with the social practice.<sup>9</sup> A set of two influential global agencies, UNESCO (United Nations Educational, Scientific and Cultural Organization) and WIPO (World Intellectual Property Organization) are the essential international organizations contributing to defining and protecting the ICH; however, they approach the problem differently.<sup>10</sup>

#### A. The Definition and Scope of UNESCO

The widely used definition of ICH is the one given by the 2003 Convention of the Safeguarding of the Intangible Cultural Heritage by UNESCO, that defined ICH as: The customs, representations, expressions, knowledge, skills, as well as the instruments, objects/artifacts and places of cultural importance with, and against which, communities, groups, and, in some instances, individuals associate themselves with as being theirs: as part of their cultural heritage.<sup>11</sup>

UNESCO focuses on paramount importance on community involvement, intergenerational transfer, and cultural diversity in its approach. It groups ICH into five wide domains:<sup>12</sup>

1. Expressions through talk (e.g., poetry, folktales, languages)
2. Performing arts (e.g. music, dance, theater)

3. Festive functions, rituals and social practices (weddings, religious ceremonies etc.)
4. Information and activities with regard to the nature and the universe (i.e. traditional medicine, farming methods, etc)
5. Classic skills (weaving, pottery, carpentry, etc.)

The framework adopted by UNESCO focuses more on the securing in the framework of documentation, education, and policymaking instead of a strict adherence to the law.

## **B. The Definition and Scope of WIPO**

UNESCO specifically addresses the issue of cultural protection but WIPO rather views ICH through the prism of intellectual property (IP) rights.<sup>13</sup> WIPO Intergovernmental committee on intellectual property and genetic resources, traditional knowledge and folklore, also known as IGC, deals with ICH as traditional cultural expressions (TCEs) and ICH as traditional knowledge (TK).

### **Major concerns of WIPO are:**

1. Not letting it be misappropriated (e.g. unauthorized commercialization of indigenous designs) community-fair benefit-sharing
2. Legal protection instruments (e.g., trademarks, geographical indicator, copyright extensions)

As compared to the rather cultural oriented approach used by UNESCO, WIPO focuses more on legal and economic rights and therefore its framework will be more applicable to the countries striving to preserve ICH against exploitation.<sup>14</sup>

## **1.4 Categories Intangible Cultural Heritage**

ICH appears in various forms and each form needs specific strategies of preservation. The major categories with examples in Scenarios of Pakistan and the world are provided below:<sup>15</sup>

### **1. Oral expressions and traditions Examples:**

Pakistan: Dastangoi (ended up story telling custom), Punjabi Heer-Ranjha poetics

World: Japanese Rakugo (folk story telling), Native American oral recitations

Threats: The academic documentation, loss of interest in youth, and a language erosion, are a current threat to these traditions.

### **2. Performing Arts Examples:**

Lalinde b. Qawwali-Muzik Sufi devotional from Pakistan, Kathak Natural dance from Pakistan, Luddi dance (SuLf folk dance from Pakistan)

Global: Flamenco (Espana), Kalbi presenzatore. Obstacles: The ritual is becoming too commercialized, in receive no support in an institution.

### **3. Social Rituals, rites, celebrated fiestas Examples:**

Pakistan: Basant (kite festival), Shandur polo festival, Shands ur celebrations World territories: State Cleansing (Brazil), Day of the Dead (Mexico) Problems: Excessive commercialization, oblivion of traditional values.

### **4. Degrees and Implementations with Regards to Nature Examples:**

Pakistan: Karez (conventional irrigation), bio-medicine (Unani) Global: Ayurveda (India), Maori fishing (New Zealand)

Threats: Replacing of traditional methods with the modernization, biopiracy.

## **5. Traditional Craftsmanship Examples:**

Pakistan: Ajrak(Sindhi block printing), Peshawari chappal (handmade footwear) World: glassmaking Venice (Italy), Persian carpets (Iran)

Issues: Mass production killing crafts people, no apprentices.

In the light of above chapter now the next chapter will make a clear comparison of Pakistan framework to align with WIPO and briefly explain the challenges which need to be address.

## **3. Comparative Analysis of Pakistani Laws with WIPO**

The existing international standards note that the protection of Intangible Cultural Heritage (ICH) needs an effective legal and policy framework to accomplish the same.<sup>16</sup> Although the World Intellectual Property Organization (WIPO) gives a detailed guideline on protection of ICH, the implementation and enforcement of the same lacks in Pakistan.<sup>17</sup> The current chapter compares the legal framework of Pakistan with the policies of WIPO to evaluate strengths and weaknesses of such an approach as well as main challenges of ICH preservation.

### **1.5 Prominent Ideas of WIPO in Its ICH Protection Ways**

The treatment of ICH by WIPO has been based on the intellectual property (IP) right, cultural preservation, and community involvement.<sup>18</sup> Such fundamental principles are:

#### **1. Tradition Knowledge and Cultural Expressions Recognition**

WIPO intergovernmental committee on Intellectual property and genetic resources, traditional knowledge and folklores (IGC) gives weight to the protection of traditional knowledge (TK) and traditional culture expressions (TCEs) by utilizing legal means.<sup>19</sup> This includes:

- Avoiding encroachment of the native cultural heritage.
- Benefit-sharing of community possessing ICH.
- Encouraging the recording and reporting of ICH to avoid loss.

#### **2. Policies and Legal Instruments WIPO promotes:**

- Sui generis protection systems (special laws) of ICH.<sup>20</sup>
- The consolidation with the IP laws (the copyrights, trademarks, geographical indications).
- Easy enforcement mechanisms that can work in adaptive ways across national settings.

#### **3. Community-Centric Approach**

Contrary to the traditional IP laws, WIPO lays emphasis on community rights, assuring the indigenous groups of the control over their cultural expression.<sup>21</sup> This includes:

- Free, prior, and informed consent (FPIC) of using ICH in business.
- Training programs to strengthen the local heritage keepers.

### **1.6 The Force and the Feeble of Pakistan Legal Framework Against WIPO**

#### **A. Strengths**

##### **1. Constitutional Recognition of Cultural Right**

This right to the minorities to save their culture is enshrined in the Constitution of Pakistan in article 28. In the 18 th Amendment of 2010, cultural affairs were devolved to the provinces and this has enabled the protection of ICH locally.<sup>22</sup>

## **2. Current IP Laws that include ICH**

The folklore and artistic works are covered by Copyright Ordinance (1962). Acts such as the Geographical Indications Act (2020) are used to assist in the protection of traditional crafts (e.g. Multani blue pottery, Peshawari chappal).<sup>23</sup>

## **3. International Commitments**

Pakistan is a country that has signed the Convention to Protect the ICH of the World Tip on Safeguarding of 2003 signifying that the country shares the same goals as WIPO.<sup>24</sup>

## **B. Weaknesses**

### **1. Not having Specialized ICH Laws**

In contrast to the sui generis approach followed by WIPO, Pakistan has no specific ICH legislation and therefore the protection is fragmented.<sup>25</sup>

### **2. Poor Community Involvement**

The Pakistani laws do not include WIPO FPIC law thus making the indigenous community susceptible to exploitation.<sup>26</sup>

### **3. Weak Law Enforcement Mechanisms**

Although they are supported with such legislation as Geographical Indications Act, effective enforcement is crippled by corruption, ignorance and inefficiencies on the part of institutions.

### **4. Poor Documentation and Stock-take**

WIPO focuses on systematic documentation, and Pakistan has no national ICH inventory which results in the loss of heritage that is undocumented.<sup>27</sup>

## **3.3 Implementation and Enforcement Problems**

### **1. Institutional Fragmentation**

ICH management is decentralized with many bodies (e.g., PNCA, provincial culture departments) not coordinated together similar to the system at WIPO.<sup>28</sup>

### **2. Non-benefit-sharing Commercial Exploitation**

Pakistani craftsmen/women (e.g., Ajrak makers of Sindh, Kalash dancers) are the victims of exploitation by the companies without turning to the law hence contravening the norms of benefit-sharing under WIPO.

### **3. Awareness, and Capacity**

Rights of local communities are not always known to them and the officials have no training on ICH protection, which is not facilitating WIPO-compatible policies.

### **4. Cultural erosion and Globalization**

Oral traditions (e.g. Punjabi folklore, Sufi poetry) are under threat of westernization, and there are still no digital archiving initiatives suggested by WIPO in Pakistan.

Although Pakistan has initiated some minor efforts (e.g., GIs, UNESCO conventions) to preserve ICH, its legislative is not on the WIPO level.<sup>29</sup> The notable gaps are lack of special ICH law, poor implementation and low community involvement. Pakistan should adhere to the following in order to comply with the WIPO ideals:

- Adopt a special ICH protection law containing sui generis elements.

- Enforcement reinforcement by conducting a sensitization program and institutional reforms.
- Include the indigenous communities in policymaking through FPIC mechanisms.

In the absence of such reforms, the Pakistani rich intangible heritage is at stake as a result of globalization and ignorance of law.

#### **4. Case Studies of ICH Protection in Pakistan**

Pakistan has a variety of traditions that are considered Intangible Cultural Heritage (ICH) which includes folk music and oral story telling, handicrafts, festivals and system of knowledge. Nonetheless, even though the aspects of ICH are culturally important, Pakistan has a myriad of issues in protecting ICH especially towards international frameworks e.g. the ones developed by the World Intellectual Property Organization (WIPO).<sup>30</sup> The next case examples cast light on the existing differences in the domestic regulations of the country and the WIPO standards, challenges of implementing them, and possible improvements that would enhance the ICH protection in the country

##### **4.1 Case Study: Fall of Kalash Culture**

Kalash people, an aboriginals in Chitral district of Pakistan, have their own cultural heritage, such as rituals, festivals (Chilam Joshi and Uchal) and traditional music. Nevertheless, their culture is at the risk of forced conversions, cultural appropriation, and absence in laws to protect their heritage.<sup>31</sup>

##### **WIPO Standards Comparison:**

- WIPO Solution: WIPO focuses on community involvement and rights protection and endows members of the indigenous people in control of their cultural expressions.
- Legal Gap in Pakistan: There are no specific laws in Pakistan in which a collective intellectual property rights of the Kalash is recognized. Although cultural preservation, in terms of the 18<sup>th</sup> amendment, was devilled to the levels of provinces, Khyber Pakhtunkhwa (KP) has not passed strong laws on ICH.<sup>32</sup>

##### **Problems of implementation:**

- Lack of Benefit-sharing: The tourist business and media are using Kalash cultures without any benefit sharing.
- Weak Enforcement: The current laws such as the Antiquities Act (1975) are too much tangible based and they ignore the intangible aspects of the heritage.<sup>33</sup>

##### **Recommended Reforms:**

- Legislation Recognition: Legislation on the protection of indigenous knowledge should use sui generis laws (comparable to the model used by WIPO).
- Community-Based Documentation: Government and the Kalash should work together to ensure that their heritage is both documented and registered according to WIPO Traditional Knowledge (TK) provisions.

##### **4.2 Case Study: Sufi Music and Case of the Shah Jo Raag Festival**

One of the major ICH sources is the Shah Jo Raag Festival of Sindh that celebrates the Sufi poetry of Shah Abdul Latif Bhittai. But its credibility is threatened by illegal commerce and absence of copyrighting devices.<sup>34</sup>

##### **WIPO Standards comparison:**

4.2.1 Protection by WIPO: WIPO endorses protection of folklore through copyrights and related rights

so that the communities can enjoy commercialization.

4.2.2 Legal Void in Pakistan Modifying the Copyright Ordinance (1962) does not directly concern the folk music, which makes the Sufi traditions susceptible to abduction.

#### **Problems of Implementation:**

4.2.3 Piracy and Misappropriation: Sufi music is copied and recreated without often giving credit to the original meaning thereby watering down the cultural music.<sup>35</sup>

4.2.4 Institutional Lack of support: The culture departments of the provinces are not financially able to maintain and publicise such traditions.<sup>36</sup>

#### **Recommended Reforms:**

- Revise Copyright Laws: Pakistan needs to revise its copyright protection to cover folk expressions, as recommended in the 2017 draft articles on TK protection, by WIPO.
- Create a National ICH Registry: a central database (such as ICH Lists of UNESCO) would allow tracking and recording the Sufi traditions.

### **4.3 Case Study of Multani Blue Pottery Techniques of Craftsmanship**

The art of Multani Blue Pottery, which dates back several centuries, is now on the decline because of imitation articles manufactured in large scales and deprivation of the right of the artisans.<sup>37</sup>

Comparison screening against WIPO Standards:

- Method of WIPO: WIPO Geographical Indications (GIs) secure region-based handicrafts and only genuine workers prosper.<sup>38</sup>
- Legal Gap in Pakistan: Pakistan has a GI Law (2020) in place but it is not yet very strong and most artisans do not know about their rights.

#### **The issues of Implementation:**

- Cheap Fakes Storming the Market: The Chinese imitations strike at authentic Multani pottery.<sup>39</sup>
- Ignorance: Artisans fail to enjoy the protection of law because of limited literacy and bureaucracy.<sup>40</sup>

#### **Recommended Reforms:**

- Enforce GI Strong Invention: Pakistan needs to have special GI courts that can help fight against counterfeits.
- Artisan Cooperatives: The cooperatives that are human- and government-aided can assist the artisans in legalizing themselves and selling their products

Such case studies indicate fatal gaps in Pakistan ICH protection scheme. As much as WIPO has the detailed guidelines, the Pakistani laws are dispersed, barely given legal thoroughness and are dated. In order to conform to the global standards, Pakistan needs:

- Pass New ICH laws (referring to the TK protection of WIPO).
- Improve Provincial Co-ordination (because, now culture is a provincial subject in the wake of the 18 th Amendment).
- Policymaking should be more community-based to guarantee grassroots security.

In the light of above content, next chapter will conclude my research paper and give

recommendations for future directions.

## **5. CONCLUSION AND RECOMMENDATIONS**

ICH in Pakistan is richly endowed, beginning with Sufi music and the native Kalash culture and included craft items such as Multani blue pottery. Nevertheless, the legal and policy regime in the country is not sufficient to the extent that the comprehensive guidelines of WIPO on the protection of ICH. Though Pakistan has already made some efforts, including the ratification of the UNESCO 2003 Convention, as well as the adoption of the Geographical Indications Act (2020) there is still no special law on ICH and community rights, documentation systems and measures to enforce these rights have not been fully incorporated as recommended by WIPO.

In order to overcome this gap, Pakistan should work on integrating the important aspects of WIPO policy framework into the internal legislation:

### **1. Implement Sui Generis ICH Protection law**

Model Provisions: Pakistan ought to compose a Protection of Traditional Knowledge and Cultural Expressions Act on the premise on the 2017 draft Articles on TK & TCEs of WIPO.

The most important areas to cover:

- Definition and Scope (including oral traditions, performing art, rituals, and crafts-work).
- Community Ownership Rights (value ascribed to indigenous population as being the keepers of their culture).
- Benefits-Sharing Mechanism (providing compensation in the use of ICH commercially).
- Free, Prior and Informed Consent (FPIC) (stipulating that individuals can only be exploited with the consent of the community).

### **2. Powerful stance of the old IP Laws**

Revise the Copyright Ordinance (1962) and make it expressly include folklore, folk music and oral traditions (as per the Model Provisions of TCEs of WIPO) and improve the GI Act (2020): to fight the counterfeiting of products (e.g., fake Multani pottery), a special GI court should be created.

### **3. Improvement through Institutional Reforms**

Establish a National ICH Registry (as UNESCO with its Intangible Cultural Heritage Lists) to catalogue and track the elements of heritage and put in place an ICH Protection Authority (which will be under the Ministry of Culture) to harmonize the provincial work and integrate the law enforcement.

### **4. Community-Centric Safeguarding**

Formalizing of Indigenous rights through a new law of ICH (e.g. Kalash, Sindhi Sufi communities) and capacity-Building programs to inform the artisans and the locals about their legal entitlement.

In recommendations for future directions I would mention few points, which includes:

#### **1. Legal & Policy Reforms**

- Draft a National ICH Policy in consultation with WIPO and UNESCO, ensuring alignment with international standards.
- Introduce Penalties for ICH Misappropriation (e.g., fines for unauthorized commercial use of Sufi music or Kalash rituals).

#### **2. Documentation & Digital Preservation**

- Launch a Digital ICH Archive (with WIPO/UNESCO support) to record oral histories, folk songs, and artisanal techniques.

- Use Blockchain for Authenticity (to prevent forgery of traditional crafts like Peshawari chappals).

### 3. International Collaboration

- Seek Technical Assistance from WIPO to train policymakers, judges, and law enforcement on ICH protection.
- Join WIPO's Traditional Knowledge Division to access global best practices and funding opportunities.

### 4. Public Awareness & Education

- ICH in School Curricula (to promote cultural pride among youth).
- Media Campaigns (highlighting the economic and cultural value of heritage preservation).

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