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Title:

*“Order public and morality exclusions from patentability in a developing Muslim country-
Pakistan. Law, practice and way forward”*

Abstract:

The Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs) allows member countries to exclude from patentability inventions which are against the ‘morality’ or ‘order public’. However, neither of the said terms has been defined nor it is easy to define such terms. The terms ‘order public’ or ‘morality’ vary from country to country as the scope largely depends upon local cultures, practices and religion. Sometimes even within a country different cultural practices prevail among different communities which further dilute the concept of ‘order public’ or ‘morality’. Pakistan is a developing country where majority of the population is Muslim. The territory that now constitutes Pakistan was the site of several ancient cultures such as Indus Valley Civilization and was ruled by people of different faiths and cultures, including Hindus, Indo-Greeks, Muslims, Turco-Mongols and Afghans under different empires lastly, the British Empire. As per the Constitution Pakistan is an Islamic Republic and Islam is the state religion and all laws must be in accordance with the injunctions of Islam. The Constitution has also created certain institutions such as the Council of Islamic Ideology and the Shariat Court to channel the interpretation of Islam. Pakistan is a signatory to the TRIPs and has opted to provide ‘order public’ and ‘morality’ exceptions in the Pakistan Patents Ordinance, 2000. However, no definition and scope of ‘order public’ and ‘morality’ have been provided in the patent law which has made interpretation, applicability and enforceability of the said exceptions a challenge in an ethnically, culturally and linguistically diverse country like Pakistan. This paper will critically analyze the legal provision provided in the Pakistan Patent Law regarding ‘order public’ and ‘morality’ exclusion from patentability, current prevailing practices and way forward regarding adequacy, certainty, applicability and enforceability of such exclusions for all the stake holders.