



HOW STRONG IS THE MORAL AND ECONOMIC FOUNDATION OF PAKISTAN: CASE OF PRIVATE PROPERTY RIGHTS



WITH SUPPORT FROM



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Introduction

Property refers to any tangible (physical) and intangible (intellectual) thing owned by or vested in a person. The terms land and property are often used interchangeably in literature. The concept of private property emerged from the natural instinct of humans to survive and pursue their vision of happiness. Private property right is a basic moral and economic precondition of attaining individual excellence. It is the bedrock institution of capitalism and is essential for the preservation of individual freedom.¹ The right to own property (in any shape or form) is intrinsically linked to personal wellbeing, which in turn maximizes the overall wealth of the society as a whole. Among all available instruments of investment that can bring to bear social security to a common household, there is nothing more important than owning a residential house in urban areas or a piece of cultivable land in rural parts of our country.

As far as private property rights in Pakistan are concerned, the Constitution of Pakistan, 1973, under its Article 23 provides the citizens the right to acquire, hold and dispose of property in any part of the country irrespective of the gender. The Articles 24, 172 and 173 also deal with the private property rights. Precisely, Article 23² states, '*Every citizen shall have the right to acquire, hold and dispose of property in any part of Pakistan, subject to the Constitution and any reasonable restrictions imposed by law in the public interest*'. While Article 24³ propagates, '*No property shall be compulsorily acquired or taken possession of save for a public purpose, and save by the authority of law which provides for compensation therefor and either fixes the amount of compensation or specifies the principles on and the manner in which compensation is to be determined and given*'. Article 172⁴ makes the following provision: '*Any property, which has no rightful owner shall, if located in a province, vest in the Government of that province and in every other case, in the Federal Government*'. On the other hand, Article 173⁵ states that the Federal and Provincial Government can grant, sell, dispose or mortgage any property that vests in them.

Despite various laws pertaining to the ownership, transfer, acquisition, taxation, registration, tenancy etc. of private property, tedious process of acquiring landed property and their weak protection remains one of the major hurdles in poverty reduction and economic progress of Pakistan. Over the years, Pakistan has witnessed massive rural to urban migration owing to better economic opportunities in cities. However, another significant yet ignored factor has been the weak state of private property rights. The market for private property is rife with disincentives and pitfalls.

¹ Younkins, 2000.

² UN-Habitat, 2012.

³ Ibid.

⁴ Ibid.

⁵ Ibid.

Although private property rights are relatively better established in urban centers, they still falter outside of legally exclusive arrangements such as housing societies and gated communities.

Landlessness remains a major cause of poverty and socio-political instability in Pakistan. The ownership of land is highly skewed in the Indus Valley region, where around 50% of the rural households remain landless.⁶ Furthermore, the laws pertaining to immovable property vary between rural and urban areas of Pakistan. The freehold land is often retained by families and passed on to generations through inheritance. Although there are formal laws mandating registration, the presence of various loopholes and complicated procedures deter the incentive for registering the land/property.⁷ Thus the loopholes in land administration and registration systems coupled with unequal land distribution have undermined the socio-economic development.

The dismal state of private property rights is evident from Pakistan's standing in some of the Global Economic Indices. According to the World Bank's Ease of Doing Business Report (2019), Pakistan ranks 136 out of 190 countries.⁸ On the other hand, in terms of Global Competitiveness Index it ranks 107 among 140 economies.⁹ Further in terms of Economic Freedom, Pakistan stands at 131 out of 180 countries.¹⁰ Lastly, the country's performance in international property rights index is also depressing, currently at 121 out of 125 countries.¹¹ Many of the sub-indicators of respective indices have implicit and explicit implications for private property rights. Thus it is pertinent to analyze the bottlenecks in the sub-indicators in context of Pakistan's economy and the possible ways to overcome these.

In the light of the aforementioned discussion, the policy paper aims to examine Pakistan's performance in property-related indicators in the context of Global Economic Indices as well as property registration procedure vis-à-vis Malaysia. It further aims to analyze the key bottlenecks in property registration, protection and land administration as well as housing finance. Recent improvements made in the property registration procedure would also be explored. For the purpose, the paper makes use of a mix methodology precisely, desktop research and interviews with industry practitioners and related stakeholders. The interviewees selected were stakeholders from real-estate and construction sector, architects, academia and government. Lastly, the paper seeks to propose plausible policy measures that may assist in enhancing country's performance in property-related indicators in Global Economic Indices.

⁶ Caron, 2018.

⁷ Ibid.

⁸ World Bank, 2019.

⁹ World Economic Forum, 2018.

¹⁰ The Heritage Foundation, 2018.

¹¹ Property Rights Alliance, 2018.

Global Economic Indices: Pakistan vis-à-vis Malaysia

In a recent visit to Malaysia, Pakistan's Prime Minister, Imran Khan said that the country intends to replicate Malaysian Economic Model specifically, that pertaining to trade, investment and ease of doing business¹². Thus, it is useful to compare Pakistan's performance in various Global Economic Indices as well as the property registration process with that of Malaysia so as to examine the areas in which Pakistan lags behind.

1. Ease of Doing Business Index

The ease of doing business score captures the gap of an economy from the best regulatory performance observed on each of the 10 indicators across all economies in the Doing Business sample since 2005. An economy's ease of doing business score is reflected on a scale from 0 to 100, where 0 represents the lowest and 100 represents the best performance. One of the relevant indicators in ease of doing business index is the '*Registering Property*' which captures the cost, time and number of procedures to transfer the property as well as the quality of land administration system. Table 1 depicts the score and rank of each country with respect to registering property indicator and ease of doing business index. Pakistan ranks 136 and 161 out of 190 countries in terms of ease of doing business and property registration respectively while Malaysia stands at 15 and 29 in the said categories as of 2018. Thus, it is relatively easier for firms to start up business as well as registering property in Malaysia compared to Pakistan.

Table 1: Rank in Ease of Doing Business

Indicator/Country	Malaysia	Pakistan
Ease of Doing Business Rank	15/190	136/190
Registering Property Rank	29/190	161/190

Source: Doing Business 2019, World Bank Report.

Figure 1 shows the score of both countries with respect to one of the pillars of ease of doing business that is, registering property. As evident, Malaysia's scores 80 out of 100 while Pakistan scores 45.63 thus implying procedural simplicity, time and cost efficiency and higher quality of land administration system in Malaysia.

¹² *Pakistan intends to replicate Malaysian economic model: PM Imran*, 2018. The Express Tribune.

Figure 1: Score in Registering Property



Source: Doing Business 2019, World Bank Report.

Table 2 compares the property registration process of Malaysia with that of two major cities of Pakistan namely Karachi and Lahore. The number of procedures, days and cost of registering property in Malaysia is lesser than that in Karachi. Also, the quality of land administration is relatively superior in Malaysia in comparison to both the cities of Pakistan. Although the number of procedures are the same in both Malaysia and Lahore however, the time and cost is relatively lesser in the former.

Table 2: Property Registration Process

Indicator/Country	Malaysia	Pakistan	
		Karachi	Lahore
Procedures (number)	6	8	6
Time (Days)	11.5	208	25.5
Cost (% of property value)	3.5	4.2	4.2
Quality of land administration index (0-30)	27.5	7.0	14.0

Source: Doing Business 2019, World Bank Report.

Property Registration Procedure: A Comparative Analysis

The speed of getting property registered is one of the elements that impact a country's competitiveness. Onerous processes and procedures for property registration affect the ease of doing business. In Pakistan, each province governs the property registration under its own regulatory framework. This property registration system has intra-provincial similarities, whereas each province has its peculiarities in terms of efficiency.

The local property registration can broadly be divided into three steps which are given as under:

Step 1: Obtaining a Fard

- NADRA Verification
- Identification of Land and Rights Holder in Records
- Get Fee Challan
- Deposit Fee
- Fard Received

Step 2: Fee process

- Get Challan from Website
- Visit any Branch of Bank of Punjab
- Pay Challan
- Receipt of Stamp Paper

Step 3: Registration

- Submission Documents at Sub-Registrar Office
- Online Verification of Receipt of Stamp Paper and Fee
- Online Verification of Fard
- Electronic Capturing of Deed Details
- Approval of Registry by Sub-Registrar
- Scanning of Passed Registry and Online Transmission to Arazi Record Center
- Automatic Attestation of Mutation by Assistant Director Land Record

On the other hand, in Malaysia processes have been streamlined to the extent that it generally takes 2 working days for a standard property to be registered. Precisely, it is a three-step procedure given as under:

Step 1: Pre-registration Stage

- Sale and Purchase Agreement (SPA)

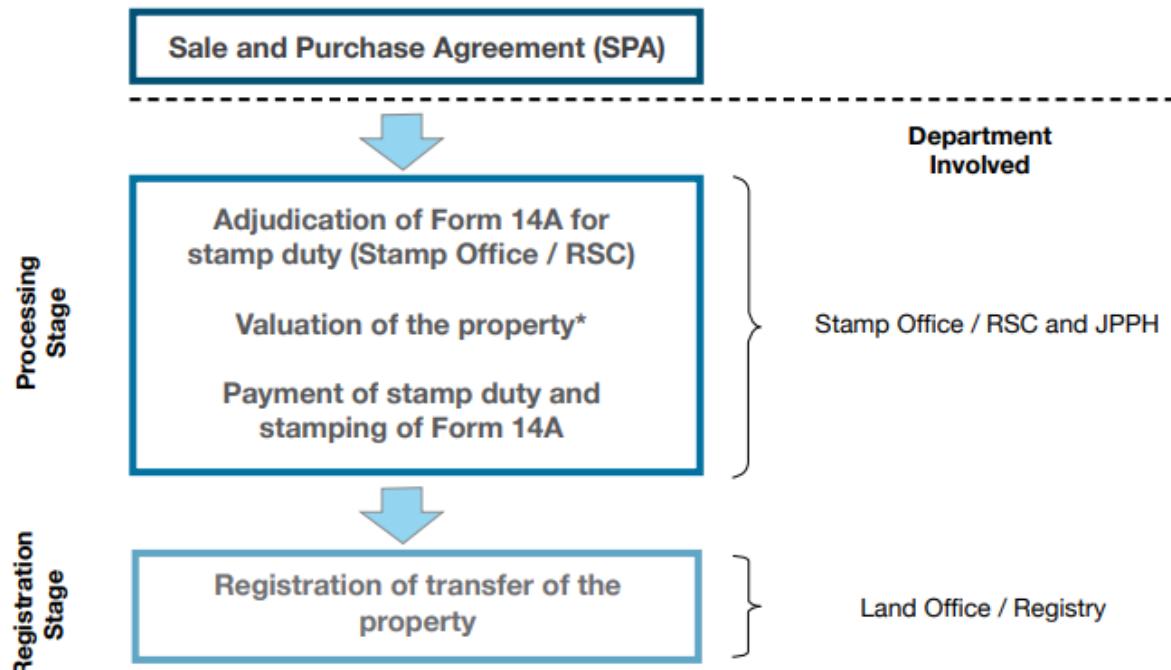
Step 2: Processing Stage

- Adjudication of Form 14A (Memorandum of Transfer) for stamp duty (Stamp Office / RSC)
- Submission for Adjudication
- Valuation of the property
- Payment of stamp duty and stamping of Form 14

Step 3: Registration Stage

- Registration of transfer of the property
 - Assignment of Property

Figure 2: Property Registration Procedure in Malaysia



**valuation by JPPH is part of the stamping process by Stamp Office / RSC*

Source: Pemudah, 2010.

Thus it is evident from figure 2 above that Malaysia has a relatively simpler property registration procedure as compared to Pakistan.

2. Global Competitiveness Index

The Global Competitiveness Index (GCI) captures the determinants of long-term growth. Its scale ranges from 0 to 100 and is based on 12 pillars which are further divided under four categories precisely, enabling environment, markets, human capital and innovation ecosystem. One of the pillars under enabling environment is the institutions. Under institutions, two relevant indicators are the property rights and quality of land administration.¹³

¹³ The Global Competitiveness Report 2018, World Economic Forum.

Table 3: Rank in Global Competitiveness Index

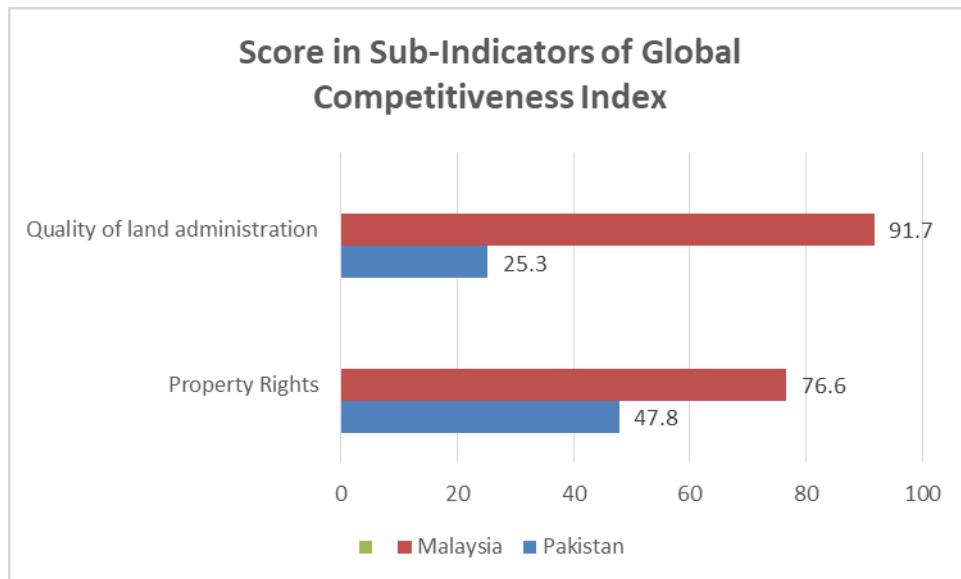
Indicator/Country	Malaysia	Pakistan
Global Competitiveness Index	25/140	107/140
Property Rights Rank	22/140	105/140
Quality of land administration Rank	6/140	117/140

Source: The Global Competitiveness Report 2018, World Economic Forum.

Table 3 shows the comparative ranking of both countries in terms of Global Competitiveness Index and its sub-indicators (property rights and quality of land administration) as of 2018. Malaysia ranks 25 out of 140 economies while Pakistan stands at 107 with respect to global competitiveness.

Figure 3 depicts the score with respect to property rights and land administration quality and as evident, Pakistan scores lesser than Malaysia. It ranks lower in both indicators thus indicating unreliability of infrastructure, lack of information transparency, weak land dispute resolution and property protection in the country.

Figure 3: Score in Sub-Indicators of GCI



Source: The Global Competitiveness Report 2018, World Economic Forum.

3. Economic Freedom Index

Economic freedom Index measures the degree of economic freedom. The index is based on 12 pillars and focuses on four key aspects of the economic environment over which governments typically exercise policy control precisely, rule of law, government size, regulatory efficiency and market openness. The score ranges from 0 to 100.¹⁴

¹⁴ 2018 Index of Economic Freedom, The Heritage Foundation.

Under its Rule of Law pillar falls the property rights and judicial effectiveness indicators which are relevant to the scope of this paper. Table 4 depicts the rank of both countries in terms of Economic Freedom Index as of 2018 and as expected, Malaysia's rank in terms of economic freedom is far superior to that of Pakistan.

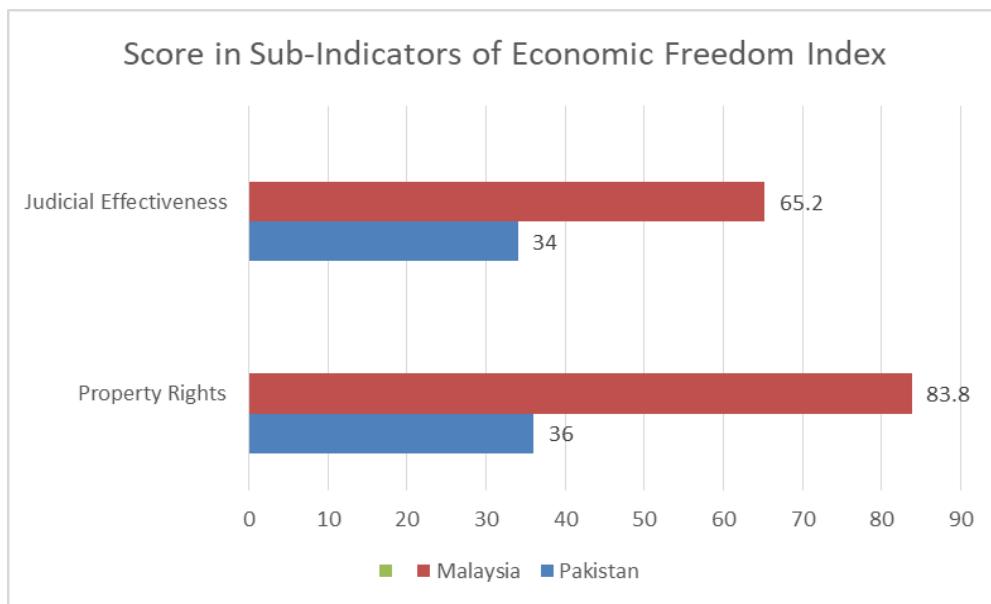
Table 4: Rank in Economic Freedom Index

Indicator/Country	Malaysia	Pakistan
Economic Freedom Index Rank	22/180	131/180

Source: 2018 Index of Economic Freedom, The Heritage Foundation.

Figure 4 depicts the score of both countries in terms of sub-indicators of Economic Freedom Index. The poor score of 34 and 36 out of 100 in judicial effectiveness and property rights respectively implies that Pakistan's legal system provides inadequate protection for the disposition and acquisition of property rights.

Figure 4: Score in Sub-Indicators of EFI



Source: 2018 Index of Economic Freedom, The Heritage Foundation.

4. International Property Rights Index

The International Property Right Index (IPRI) measures the state of property rights in all countries of the world. It is constructed under three headings precisely, Legal and Political Environment, Physical Property Rights, and Intellectual Property Rights. Under the head of Physical Property Rights, there are three indicators namely, protection of

physical property, registering property and ease of access to loans.¹⁵ Table 5 shows the rank and score of both countries with respect to International Property Rights and its sub-index (Physical Property Right) as of 2018. Once again, Malaysia outperforms Pakistan in terms of overall ranking in IPRI as well as in its sub-indicator.

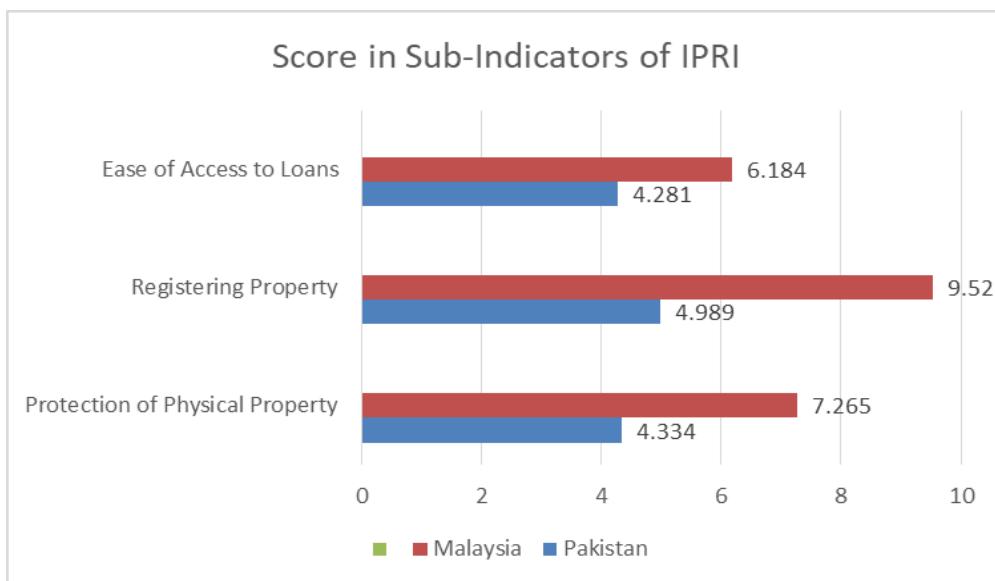
Table 5: Rank and Score in International Property Rights Index

Indicator/Country	Malaysia	Pakistan
International Property Rights Index Rank	34/125	121/125
Physical Property Right Score	7.656/10	4.535/10

Source: International Property Rights Index 2018, The Property Rights Alliance.

Figure 5 illustrates the score of both countries with respect to the sub-indicators of physical property right under IPRI and as evident, Pakistan lags behind Malaysia in terms of protection and registration of property in addition to the ease of obtaining loans.

Figure 5: Score in Sub-Indicators of International Property Rights Index



Source: International Property Rights Index 2018, The Property Rights Alliance.

The above analysis reveals Pakistan's performance in various global economic indices and respective physical property sub-indicators to be lackluster in comparison to Malaysia. Thus, it is pertinent to examine the loopholes in the structure regulating the private property rights that undermine the country's performance in Global Economic Indices and its property-related sub-indicators.

¹⁵ International Property Rights Index 2018, The Property Rights Alliance.

Loopholes in the Regulating Structure of Private Property Rights

In Pakistan, various challenges are encountered in terms of registration, transfer and protection of property in addition to land administration and obtaining housing finance.

Loopholes in Property Registration and Transfer

In order to get hold of ground issues pertaining to private property rights, a structured interview was conducted with number of related stakeholders. Respondents include representatives from real-estate and construction sector, academia and government. The analysis of survey revealed some key bottlenecks in property registration and transfer procedure summarized as under:

- The property registration and transfer procedures are cumbersome, requiring physical presence of the buyer and seller at the CDA and interference of a third party i.e. agent/broker/patwari/tehsildar whose charges are not justifiable. In other words, property registration and transfer procedure impose significant monetary (transaction cost, travel cost, taxes etc.) and non-monetary costs (time cost, reputation at stake etc.) on the buyer/owner of property.
- There is an absence of a centralized land registration system that can conclusively record all rights pertaining to property from where a potential buyer can investigate title and probe any encumbrances.
- The DC value or FBR value declaration is problematic. In some instances, seller and buyer both agree to transfer property on FBR values however at other times when one opts to transfer at actual value, the charges to such transfer and taxes are so high that it becomes difficult to comply.
- CDA's one window operation lacks transparency and efficiency as not all the steps pertaining to property registration take place under its so called "one window". For instance, the payments and taxes have to be paid at banks. Moreover, the individuals are directed to several rooms or sub-departments of CDA such as record room, NDC room etc. for fulfilling various procedures.
- Frequent delays are faced in acquiring certificate of completion from CDA. To make matters worse, CDA does not consider it to be an issue but rather cites it as "time taken for the process". Moreover, bribery is a key to obtaining the certificate within the stipulated time.
- Lack of awareness among general public with regards to private property rights and property registration and transfer procedures creates the room for third party interference such as brokers who end up exploiting the buyers/owners.
- Generally, the property registration procedure of private housing societies is superior to that of government's as it is simpler, less time consuming and does

not require excessive vetting of the buyer/owner. The only pitfall in the private housing scheme is the lack of NOCs which makes the investment risky.

- The procedural complexity for filing property taxes discourages the buyers/owners from declaring their assets or complying with the tax payments and hence encourages tax evasion. Moreover, the recent budget revisions pertaining to property taxes have slowed down the growth of the real estate sector as the government's restriction on non-filers has shied away overseas investors who have ceased investing in property business.

Loopholes in Property Protection

With regards to property protection, following shortcomings were deduced from survey analysis:

- There is weak enforcement of laws pertaining to protection of private property rights. This is evident from the fact that several property-related disputes are lingering in the court for resettlement. Currently, various property-related issues continue to prevail such as encroachment issues, land measurement issues, land grabbing, multiple property owners, low value declaration, issues related to property taxes and transfer charges, inheritance issues etc.
- In case of land acquisition by government, there have been numerous complaints about below market compensation and there are cases where even no compensation was provided.
- In case of property disputes, the individuals are reluctant to approach judiciary owing to the inefficiency of courts in resolving such matters. The cumbersome and lengthy procedures not only inflict monetary costs but also non-monetary costs (psychological strain, time cost etc.) on the plaintiff.
- Although technically independent, the justice system is marred by such endemic problems as corruption, intimidation, a large backlog of cases, and insecurity. Many public officials face allegations of bribery, extortion, nepotism, patronage and embezzlement.

Loopholes in Land Administration

Land administration in Pakistan suffers from various economic, social, technical, legal, political and institutional issues. The survey analysis brought forward following barriers pertaining to land administration and institutional capacity:

- The country is economically less developed and therefore lacks necessary funds to retain and train quality human resources and invest in technologies related with land administration.

- Some of the social barriers impeding effective land administration include low literacy rate especially in rural areas, increased urbanization leading to informal settlements, lack of awareness and readiness, asymmetric access to land record information and absence of portal.
- Land administration also suffers from cumbersome legal framework including weak legislation pertaining to land rights. There are redundant and restrictive laws and regulations along with various legal administration bodies for dealing with classified land.
- Political instability and corruption has prevented land administration reforms from being undertaken thus raising mistrust among citizens.
- The current infrastructure and institutional capacity is inadequate to deal with the land records of current population; a problem that is likely to intensify in future.
- The relevant institutions lack technical expertise and necessary equipments to efficiently maintain the land records (lower level of digitization).
- The personnel in public organizations lack ethics and have behavioral issues, which is one of the major reason as to why general public is hesitant in approaching the public civic agencies such as Capital Development Authority (CDA), etc. for any redressal of grievances.
- There is lack of role clarity and coordination between various public authorities/agencies responsible for property registration and transfer. The overlapping functions of different authorities not only complicates the process of property registration and transfer but also raises administrative costs as numerous people are employed for undertaking similar tasks. This in turn cuts down the budget which otherwise could be allocated for R&D or digitization of procedures.

Loopholes in Housing Finance

In terms of obtaining mortgage, following difficulties are encountered as per the survey analysis:

- Issues such as high interest rate spread, deteriorating quality of service, information asymmetry act as major barriers to obtaining housing finance (mortgage) by a common citizen.
- Mortgage facilities are only available at CDA, DHA, Bahria and Naval housing societies. In other words, the mortgage facility is implicitly available for the rich segment of the society. Those who actually deserve it do not qualify for it.
- Private financial institutions remain conservative in business approach. Their target market seems to be concentrated among high net worth individuals, who

- have a credible credit track record. This niche market needs money for the purchase or construct / renovate large villas and are willing to pay high mark-up.
- The creation of Mortgage Refinance Company (MRC) to facilitate loan extension to large-scale construction companies has its own separate set of prudential regulations and procedures for housing finance which defeats the facilitation purpose for which it was initially setup.
- The unreliable and inefficient system of ascertaining the bona-fide of property titles has forced banks to maintain a “negative list” thereby impeding the access of housing finance to a certain number of localities.

Recent Developments in Property Rights

In World Bank's ease of doing business global ranking 2019, Pakistan has jumped 11 places landing at 136th. The country undertook three business reforms during the past year in the areas of starting a business, registering property and resolving insolvency. In terms of registering property, several improvements have been made. For instance, in Lahore property registration procedures have been streamlined and automated. In addition, the transparency of land administration has also been increased. On the same lines, in Karachi the transparency of land registry has been improved by publishing online the fee schedule and the list of documents necessary to complete any property registration. The reforms in both the cities have resulted in reducing property registration time by 13 days. However, the average number of days it takes to register a property in Pakistan is still 144, which exceeds the South Asia regional average of 114 days.¹⁶

On the other hand, Sialkot has introduced One Window Operation for the sale and purchase of property. The registration system has been digitized and linked with National Database and Registration Authority (NADRA). This initiative has curbed illegal transfer of property in the city. Similar developments have taken place in other cities such as Gujrat and Faisalabad.¹⁷ However, in Faisalabad, shortage of staff in addition to the absence of online verification through National Database Registration Authority (NADRA) have undermined the success of the scheme.¹⁸ As far as the quality of land administration is concerned, in 2016, ownership and land records were digitized in both Karachi and Lahore. Access to credit information was also improved by guaranteeing borrowers' rights to inspect their own data.¹⁹

¹⁶ Pakistan jumps 11 places to 136th in WB ease of doing business index 2019. Pakistan Today.

¹⁷ Properties' computerized registration launched. Pakistan Today.

¹⁸ Property transfer automation begins. Pakistan Today.

¹⁹ Iqbal (2018).

Despite improvements in certain aspects, the overall state of property rights remain dismal as evident from the survey analysis. The reason being that, although improvements have been made in few cities, majority of the country continues to suffer from outdated property-related practices and underperform in property right sphere.

Concluding Remarks and the Way Forward

Property rights are the core of economic development. A strong property rights regime commands the confidence of people in its effectiveness to protect private property rights. It also provides for unified transactions related to registering property and allows access to credit required to convert property into capital. As innovation and creativity abound in markets around the globe, Pakistan's economy is in dire need of strong property rights. In a recent visit to Malaysia, Pakistan's Prime Minister expressed the intention to replicate Malaysia's Economic Model pertaining to trade, investment and ease of doing business. Since property rights are strongly correlated with the commerce sector, it is pertinent to analyze the performance of both countries in terms of property rights. Thus, the present paper examines the performance of Pakistan vis-à-vis Malaysia in context of property-related indicators in Global Economic Indices. Further, it compares property registration procedure of both the economies and explores various anomalies in the current structure regulating private property rights in Pakistan. On a positive note, it highlights advancements in property registration and land administration procedures that have taken place in recent years.

The analysis reveals Pakistan's lackluster performance in various property-related indicators of Global Economic Indices relative to Malaysia. The property registration procedure is comparatively complex and lengthy in Pakistan. Survey analysis revealed numerous issues in registration, transfer and protection of private property in addition to obtaining housing finance. These issues range from complex procedures, high transaction and time cost to corruption, lack of technical expertise and inadequate institutional capacity. Moreover, land administration is weak and more complex than it appears to be, due to diverse nature of issues ranging from policy, economic, social, technical, legal, political and institutional as identified and discussed in the paper. Furthermore, property disputes are quite prevalent although legal and judicial processes exist for their resolution but the courts dealing with property disputes are beset with backlogs, poor training and corruption. Despite few improvements made in some cities to digitize and simplify the property registration and transfer procedures, the lack of efficient human resource and transparency overshadows any progress.

The Way Forward

In order to overcome the challenges facing private property rights and improve Pakistan's standing in Global Economic Indices, there are certain policy recommendations which can plausibly enhance the case of property rights. The suggested approach is based on the notion that the reform agenda should be comprehensive and coherently link together the full range of needed actions as given under:

- **Strengthen Titling and Record System:** Government should digitize the land registration nationally, gradually lower the registration fees and stamp duties, link real estate transaction databases to the registration entries, link registration to the authentication of deeds and adjust the legal framework so as to consider only formally registered transfers as binding.
- **Improve Policy Implementation:** In order to improve land administration, various departments pertaining to land administration should be synchronized and aligned so as to improve communication and policy implementation efforts.
- **Develop a Financial Model:** In order to meet the operational and implementation cost of land administration, a detailed financial model should be developed and adopted with the consultation of all relevant stakeholders.
- **Alternate Dispute Resolution:** The existing complex legal framework causes procedural delays in resolution of property disputes. Thus, instead of solely relying on judiciary for resolution, it is suggested to include professionals of various disciplines such as land surveying and mapping, remote sensing and GIS along with legal experts to assist in resolution of property-related matters.
- **Enhance Institutional Capacity:** In order to expand the capacity of institutions governing property rights, digitization and training of personnel is of utmost importance. Government should employ high qualified IT trained officials. Moreover, government should sign MoUs with bodies such as ITC and Survey of Pakistan (SoP) to enhance capacity of the institutions pertaining to property rights.
- **Single Agency Required:** There is need for a single authority which ensures the titles of the land rather than registers the documents only. This responsibility can be undertaken by the Excise and Taxation Department of each province since the provinces deal in the property.
- **Proper Demarcation of Boundaries:** In order to minimize property-related disputes, government should have a clear and proper demarcation of boundaries based on geospatial technologies.
- **Property Right Awareness:** Awareness campaigns should be launched through public-private partnership so as to inform and guide the common people about property rights, dispute resolution and land administration mechanism.
- **Establishment of Real Estate Investment Trusts:** In order to increase the availability of housing finance for common citizens, the government needs to improve the regulatory environment for Real Estate Investment Trusts (REITs). It has remained a viable instrument of pooled capital that enhances liquidity and transparency in property markets.
- **Property Tax Reforms:** Government needs to reform and restructure local property taxation so as to minimize the evasions and distortions while simultaneously strengthening resource mobilization.

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