

1

Protecting Trade Secrets: An Interpretive Review in the Indian Context**Dr. Mohd Khalid,**

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ABSTRACT

Trade secrets are essential to guarantee a competitive edge in the marketplace and preserve the anonymity of business data. In India, TS lack a specific statutory structure, in contrast to patents, copyrights, and trademarks. Legal precedents, contractual obligations, and equity principles under common law safeguard them instead. The existing framework is devoid of explicit legislation, depending instead on ancillary provisions such as Section 27 of ICA and the Breach of Confidence doctrine. Judiciary in India always upheld protection of trade secrets, grounded in secrecy, economic value, public interest, and appropriate safeguarding methods. The existing system exhibits shortcomings, especially in tackling digital misappropriation, global conflicts, and enforcement challenges. Contrasting India's framework with the United States Uniform Trade Secrets Act underscores the necessity for autonomous legislation. A well-defined legal framework for trade secrets is essential to encourage creativity and entrepreneurship, attract foreign investment, and guarantee economic advancement. It advocates for the incorporation of modern concepts, such as misappropriation laws and whistle-blower protections, into India's legal framework and underscores the necessity for corporate education on comprehensive trade secret management practices. This paper employs an interdisciplinary methodology to advance discussions on intellectual property rights in India and highlights how a robust trade secret framework may bolster the nation's global economy.

Keywords

Intellectual property, Trade secret, Patent, Copyright, Trademark, UTSA.

¹TradeSecretOffice,WhyTradeSecretisImportant,availableat: <http://www.thetso.com/Info/important.html>> (last visited on 15/01/2025).

² Verma, S.K, "Legal Protection of Trade Secrets and Confidential Information" 44(3) Journal of Indian Law Institute 336-353 (2012).

³ Ibid.

A. INTRODUCTION

An important topic of discussion on a worldwide scale is the protection of confidentiality inside commercial businesses. This is especially true when the topic is considered in the light of the daily competitive climate that exists within the corporate world. Every business strives to acquire and safeguard knowledge, deemed intellectual property, in the current competitive and expansive market environment. As a consequence of this, firms, traders, and business experts engage in careful methods and carry out complete due diligence regarding their trade-related information. As a result, they restrict access to their proprietary codes to nothing more than their colleagues. When it comes to the pursuit of operational excellence, it is vital for every company to conduct a comprehensive analysis of the tactics and practices used by its rivals. This is because some businesses have significant advantages in the market where they operate. This could include any confidential information that the company considers valuable to the entire organization. Each area of commercial concurrence engages with trademarks, copyrights, patents, and designs relevant to their products, elevating the significance of trade secrets when it comes to other forms of intellectual property. Still, keeping track of trade secrets is the key foundation for their particularity. When it comes to supporting business success and providing necessary protections for corporate operations, there is no doubt that confidentiality plays a significant role. The legal framework that governs trade secrets provides protection only via contractual agreements. These agreements aim to maintain business secrecy according to the criteria outlined in these contracts.¹ In the event that the conditions of the agreement are not adhered to, the situation is considered a breach of contract, as opposed to a violation of a trade secret. There is a distinction between the two types of breaches.

B. NEED FOR PROTECTION

Globalization has led to the need for robust trade secret protections as corporations expand their operations and gain a competitive edge. For a company's benefit, trade secrets must remain private, and their definition varies depending on the specific company or trade involved. Pursuant to the standard law on trade secret protection in the United States, a trade secret is defined as all information that pertains to a trade, including any equation, approach, or procedure for fabricating something in particular, so long as the formula contains inherent worth and the method is not generally understood. Trade secrets are essential for maintaining a competitive edge and protecting goodwill and brand identity. Coca-Cola and other companies have effectively maintained trade confidentiality by securing their trade secrets in an Atlanta bank vault, which is only accessible by two workers simultaneously and requires prior approval from board members. No one with access to the vault in 2014 knew the identities of the personnel, and they further enhanced its security by not allowing the two to fly on the same plane. Safeguarding trade secrets is as crucial as other types of intellectual property rights, but it is important to differentiate them from other intellectual property rights. Trade secrets require continuous effort to ensure protection via legal action against infringers in the future, rather than relying on a single application and approval from a government body. Companies invest billions of dollars annually to ensure their trade secrets remain secure and inaccessible to outsiders. Passwords, dongles, secured premises, security name badges, and internet firewalls are some of the security measures that companies use in order to better safeguard their trade secrets. High court of Delhi has been trying to clarify the meaning of trade secrets, which includes different aspects such as undisclosed formulas, functional as well as

technological knowledge, along with specific business practices employed by an employer that are subsequently safeguarded.² Justice Staughton differentiates business secrets from confidential information by describing them as specifics that, if displayed to a rival, may give rise to significant consequences for the holder of the trade secret.

C.LAW GOVERNING PROTECTION OF TS

Information about a company's activities that the general public does not generally know or understand is known as a trade secret. In Indian law, the concept of information confidentiality has its roots in equitable jurisdiction and has evolved from there. It is the responsibility of the person receiving the information to maintain its secrecy. As the case of *Coca v. Clarke*, 1969 shows, confidence is similar to trust. A person may be able to use the concept of equity as a defence when one of their contracting parties reveals important information to a third party. According to TRIPS Agreement's Article 39(1), which states that all contracting countries and businesses must safeguard their "undisclosed information," trade secrets are considered a matter of public policy.³ This clause restricts the employee's ability to sell the company's goodwill and engage in similar business activities in the future, and it prevents them from disclosing information that is essential to the company's commercial operations. However, the clause did not provide a criminal remedy, suggesting that the Indian legal system lacks a mechanism for criminal recourse for contract breaches, including those involving trade secrets. A person's credibility may take a major hit with only one lie, according to the Springboard Doctrine. An unauthorized third party's intrusion into another party's private knowledge or information constitutes a breach of confidentiality. The case between Waymo, Uber Technologies, and Otto Moto revolves around the alleged violation of confidential information related to Google's Self-Driving Car Project. The company accused one of Waymo's original members of

stealing from it. This individual went on to form a new start up and purchase Uber, which dragged Waymo into a scandal. A notable feature of the compromise of proprietary trade secrets is the participation of 14,000 crucial LiDAR circuits.⁴ Indian law only holds the ex-manager of Waymo legally responsible for issues related to contract breaches. The employer's ability to commence legal proceedings against the employee for the unauthorized disclosure of trade secrets (TS) is dependent on the contractual agreements outlined between the employer and employee at the time of exposing sensitive information. Since no separate legislation addresses trade secrets in India, the Indian court can only interpret S: 27 ICA, which addresses necessity of prevent a breach of contract. Determining whether a violation of private information occurs when a person acquires new skills and competences while employed is a challenging task for the Indian judiciary. Individuals' understanding gained from their professional experiences and the application of industry-specific principles cannot be considered secret; hence, distinguishing between simple know-how and private information is of utmost significance. Until recently, TS protection laws were non-existent but the National Innovation Act of 2008 does, however, include sensitive information-related restrictions, especially in Chapter VI. The United States Trade Representatives produced a Special 301 report in 2016, highlighting the absence of a trade secret protection framework within India's jurisdiction. However, it should be noted that no specific actions have been taken so far to protect trade secrets, even though this was a key recommendation of the 2016 National Intellectual Property Rights Policy.

D.EXISTING IP REGIMES

TS protection extends beyond other intellectual property forms like trademarks, which only protect the written word or image associated with a product or service in the marketplace. Trade secrets exhibit a timeless quality and do not fall under any category

6 Zafar, M., Nomani, M. and Rahman, F, "Intellection of Trade Secret and Innovation Laws in India" 16 Journal of Intellectual Property Rights, 341-350 (2016).

7 Supra note 1

of patentable subject matter; additionally, their protection does not require disclosure. The standard criteria for patentability, including novelty and non-obviousness, are not applicable in this context; rather, the sole requirement is that the invention must demonstrate utility. Trademarks signify goods or services that the public widely recognises and accepts, and are formally associated with a specific company or business entity. Trade secrets encompass a considerably broader range of information and remain undisclosed to the general public. While these legal safeguards can stop others from using the exact same mark, they are not applicable to actions like generating identical products or marketing comparable products or services under a different mark. The trademark law of 1999 requires the trademark and patent office to record trademarks used in commerce between states or internationally.⁵ Because of TS, entities and individuals safeguard information that is critical to their business operations or commercial dealings. The breadth of trade secret protection is extensive, encompassing a variety of initiatives that may provide an enterprise with a competitive advantage, as well as concepts related to the development of software or websites addressing specific issues. Trading secret acts as an encryption system for private company data, which is intended to be obtained exclusively by authorized employees. This information is vital to the operations of the company and is especially susceptible to unapproved disclosure. It incorporates features such as advertising approaches, expenses, and models of pricing. Copyright law protects the creative works of authors, including musical compositions, visual arts like paintings and sculptures, literary works like books, computer software, architectural designs, and cinematic productions. To benefit from the law, the author must register the work with the relevant authority. Trade secrets refer to proprietary data that remains unavailable to the general public, and their

protection relies on the owner's adherence to necessary and adequate safeguards to prevent it from becoming public knowledge. There is a significant⁵ Ibid. debate regarding the interaction between the safeguarding of trade secrets and the protection of patents, as neither alone provides adequate defences for inventive creations. However, the realm of protecting trade secrets is incredibly expansive, as it doesn't necessitate disclosing information about the subject or issue under consideration. Furthermore, the protection and enforcement of trade secrets during instances of theft could lead to a reduction in expenses.

E.PROTECTION OF TS IN INDIA

Because the Indian market is getting more and more competitive, it is more important than ever to keep important data safe so that business can keep running easily. Copyright, patents, along with logos, which are common forms of intellectual property, are not enough to solve this problem. This is the reason the idea of dealing with secrecy involves any regulations that must be followed to keep their interests harmless. There aren't any clear legal procedures in the Indian judiciary at this time towards safeguarding proprietary information. Conversely, the regulations that regulate trade secrets are based on property rights, agency theories, quasi- contractual obligations, tort law, compensation, and commercial arrangements.⁶ In particular, the Indian contract law is the legislation that determines the framework for maintaining proprietary information in India. Contracts limiting trade and business are not valid according to Section 27 of the Act. However, there are exceptions to this rule that protect the rights of people who have given their credit to another company. The goal is to protect people's interests, so these limitations make sense. To keep information safe, you can use this part to write a non-disclosure and non-compete deal. In the case of Krishan Murugai v.

Superintendence Co. of India Pvt. Ltd., the plaintiff sued the defendant, saying that the defendant had broken the terms of their contract. The Supreme Court's decision says that trade secrets can only be protected by injunctions that last longer than the length of an employee's job. In 1957, the Copyright Act was passed to make sure that trade secrets were protected in a wide range of ways. In the Puneet Industrial Controls case, the court sided with the plaintiff and said that the plaintiff owned the work in question, which included copyright-protected designs. When this case came up, the High Court sided with the plaintiff and ordered the defendant to stop making goods that were similar to those of the plaintiff. The National Innovation Bill of 2008 aims to create an Innovation Support System. This can be done by government bodies, private companies, or agreements between the public and private sectors. In order to encourage more study in India, the plan wants to change the National Annual Integrated Science and Technology Plan (NAISTP) and other laws that are already in place. This is being done to improve motivation for study. The Bharatiya Nyaya Sanhita, a complicated set of rules for preserving secrets of commerce informally makes it illegal to do things like theft and breaking trust in the year 2023. Section 316 of the Criminal Provisions Act spells out the exact situations in which a worker, clerk, or helper can break the law by breaking trust. Section 318 says it is illegal to use technology knowledge in a way that goes against a service agreement. This section defines cheating.

F. IMPLICATIONS OF NOT HAVING LAWS

At the moment, rather than relying on a single piece of legislation regarding trade secrets, India relies on pre-existing legal provisions such as contract law, “common law principles of breach of confidence, and laws under the Information Technology Act of 2000 and the Indian Contract Act of 1872”. However, the lack of specific regulations for trade secret protection can sometimes make it challenging

to appropriately safeguard them. Within the context of *Tata Motors Ltd. V. State of Bengal* (2008), the court acknowledged the need to protect confidential information; yet, it chose to rely on fundamental principles of confidentiality instead. This case brought to light the fact that the laws that are now in place do not effectively address the problem of protecting trade secrets. In the 2006 case of *American Express Bank Ltd. v. Priya Puri*, the court expressed its agreement with the employer and highlighted the breach of trust.⁷ On the other hand, the case demonstrated that there is not a robust framework in place to protect trade secrets; rather, the responsibility for doing so lies with the contracts between employers and employees. In the case of *Homag India Private Limited v. Mr. Ulfath Ali Khan* (2016), the Karnataka High Court turned to contract law as a means of conducting its decision-making process. The court noted the importance of protecting intellectual property and private information while making this decision. Furthermore, the absence of specific regulations addressing trade secrets further complicated the situation. The 2009 case of *Zuari Agro Chemicals Ltd. v. Shree Mangal Moorthi Corporation* exposed this gap in Indian law. The case demonstrates that issues pertaining to trade secrets constantly develop in the realm of unfair competition or misappropriation. The Delhi High Court announced an injunction in order to avoid the illegal exploitation of confidential knowledge pertaining to the matter of *Dr. Reddy's Laboratories Ltd. v. Manu Kosuri & Anr.* (2001). The court handed down the order of protection grounded in passed common law principles, compared to counting on specific business secrets regulations.

G. THE 22ND LAW COMMISSION REPORT ON TS

The 22nd Law Commission of India has proposed a new legislative framework to address disputes involving trade secrets. The current Indian legal system, which relies on equity, inter parties'

contractual duties, and common law remedies for breach of trust, fails to adequately protect trade secrets. The Parliamentary Standing Committee on Commerce has recommended the creation of separate laws or a framework to safeguard trade secrets. Judge Pratibha M. Singh of the High Court of Delhi highlighted the importance of data and trade secrets in the context of artificial intelligence, technology, and start-ups. The ASSOCHAM also emphasized the need for separate, codified trade secrets legislation. The Trade Secrets Commission (LCR) of India has proposed a unique statute to address the lack of adequate protection for trade secrets on a global scale.⁸ The LCR suggests excluding cases involving compulsory licensing, the public interest, and whistle-blowers and implementing inherent secrecy safeguards. The draft bill of Trade Secret Protection of 2024 aims to use, codify acquisition, and TS disclosure.

CONCLUSION

The protection of TS is pivotal for incentivizing innovations and regulating competitive practices in the marketplace. The growth of a company is fundamentally dependent on safeguarding its trade secrets, and any modifications to the governing regime would significantly incentivize foreign investment. The United States has a distinct legislative framework known as the UTSA, which comprehensively addresses the safeguarding of TS. The statute provides a precise definition of "trade secret," elucidating its scope, nature, and encompassing elements that are already within the public domain. The Economic Espionage Act (1996) also pertains to the safeguarding of TS, criminalising the unauthorised appropriation. According to this law, the relevant information can't be publicly available or widely known. The courts in the United States have maintained the concept of inevitable disclosure. This concept posits that if an

employee, aware of a company's specialised trade secrets, opts for a position similar to a competitor's, there is a high likelihood of trade secret theft. This doctrine elucidates the principle that when a former employee chooses to engage with a competitor of their previous employer, they are likely to draw upon the knowledge and information acquired during their prior tenure to perform effectively in their new role. In India, the regulation of trade secrets predominantly occurs through contractual agreements. However, establishing a consistent legal framework and precisely defining "trade secrets" is crucial to adequately articulate its scope. Despite the fact that confidentiality and non-competitive agreements provide some degree of protection for trade secrets, the amount of protection that is now available is rather limited. The protection of TS is of utmost significance, primarily because it fosters innovation and technological advancement, upholds commercial ethics, and enhances the overall standard of the intellectual property regime. Furthermore, the act of inventing more contributes to increased competition within the realm of intellectual property. India faces significant challenges in protecting trade secrets due to a lack of specific legislation pertaining to trade secrets, inconsistent application of common law principles, and disparate outcomes in cases that share identical factual circumstances. We must employ statutory law to effectively regulate unfair competition and address the prevailing circumstances. Subsequently, India has undergone significant modifications to its intellectual property rights legislation, such as the reintroduction of Section 3(d) of the Indian Patents Act, following the implementation of the TRIPS agreement.