



PROTECTION OF TRADE SECRETS IN INDIA

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ABSTRACT

Information technology services and business process services have emerged as important markets in India. Since India's industries have developed rapidly, the growth of intellectual property has risen exponentially as well, Improved IP enforcement techniques are necessary to protect IP. Several statutes already exist in India that protects “patents, trademarks, copyrights, and designs”. There is, however, a lot of information generated by emerging or existing industries/businesses that are confidential, as well as processes and technical know-how that qualify as trade secrets. In order to promote creative initiatives, global investment, and fair competition, trade secret security needs to be ensured. This research article aims at clarifying the “regulatory structure” of this IP protection in India. The study will examine the current laws governing trade secrets in India. A company's trade secret represents a key competitive advantage, so it is imperative that its business secrets are successfully protected against the competition. Modern trade concealment is very crucial and is becoming extremely popular, mainly because in the age of increasing globalization, the success or failure of any company is based on its secrets, causing these to remain secrets of government or consumers. The author of this paper is outlining the laws concerning trade secrets in India through a paper like this.

Keywords: IP, TRIPS, Trade Secret, TRIPS, HC, and SC.

UNDERSTANDING TRADE SECRET

In order to differentiate themselves from their competitors, businesses use creative and innovative ideas that are not heard of by their competitors. A “trade secret” is a kind of quasi-intellectual property information that is not generally known by competitors or protected by confidentiality agreements may qualify protection under “tort and contract law”. It is irrelevant how big a business is to qualify for a trade secret and protect it.¹ In order for an organization to survive and thrive, trade secrets must be protected. In the globalized world of today, businesses need to protect their trade

¹ Shraavan, Trade Secret Violation – A Hypothetical Indian Case Scenario, Bananaip Reporter (2019)



secrets against competitors in circumstances in which there is a fear of disclosure, especially if new hires are involved in strategic development projects or launching new products and services.²

1. DEFINING “TRADE SECRET”

General classifications of information include confidential and public. Further classifications of confidential information include trade secrets, government information, personal information, and know-how. According to “Black's Law Dictionary”,³ a "trade secret" is any electronic, mechanical, or biological formula, device, method, technique, or additional business information that is reserved secret to enjoy an unfair benefit over player.

1. This means that the value derived from its disclosure or use cannot be easily discovered or discovered by those who can derive economic value from its disclosure or use, is valid; and that does not usually generate economic value from its disclosure or use;
2. To maintain its confidentiality, reasonable efforts should be made.

In “**Tata Motors Limited v State of West Bengal**”⁴, the Calcutta High Court relied on this definition.

In “**Indian Farmers Fertilizer v. Commissioner of Central Excise, the Customs, Excise and Gold Tribunal of Delhi**”⁵ provided the following definition of “trade secrets”. A “trade secret” is a field of knowledge which is not usually well-known to the in the public domain, and it is beneficial to its holders economically, and it has to be reasonably kept secret with reasonable safeguards.

INTERNATIONAL CONVENT ON TRADE SECRETS

Being a party to the “**Paris Convention**”, it is important to note that “Article 1(2) of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)” provides that “intellectual

² Ganguli P. Intellectual Property Rights. Imperatives for the knowledge industry. World Patent Information, 2000; 22: 167.

³ Black's Law Dictionary, 8TH Edn. 1133.

⁴ Tata Motors Limited v State of West Bengal , G.A. No. 3876 of 2008 in W.P. No. 1773 of 2008.)

⁵ Indian Farmers Fertilizer v. Commissioner of Central Excise, the Customs, Excise and Gold Tribunal of Delhi, 2007 (116) ECC 95.

property” also includes protection of undeclared information. TRIPs Article 39 also stipulates that effective protection must be provided contrary to inequitable competition as outlined in Paris Convention “Article 10”, which protects information that:⁶

- is not readily available or normally known;
- The secrecy of the information makes it valuable commercially;
- Secrecy has been ensured through reasonable measures.⁷

Trade Secrets can be considered simultaneously in the context of the contract, competition, and intellectual property law without the requirement of a statute. Contractual protections, such as nondisclosure agreements, can help to guard the business. Also, under common law, trade secrets may be protected against misappropriation by a claim against a person who has breached an implied or explicit duty of confidentiality, as well as by a lawsuit against a party who has stolen them.⁸

CLASSIFICATION OF INFORMATION AS A TRADE SECRET

The Hon'ble HC of Bombay ruled in 2010 “**Bombay Dyeing and Manufacturing Co Ltd v. Mehar Karan Singh**”⁹, listed the subsequent criteria for the characterization of information as a “trade secret”:

- a. Information that is available outside the organization;
- b. Knowing how much it is known by the insiders, i.e., by “the employees”;
- c. the measures employed to safeguard the “trade secret”;
- d. The savings that can be realized by the holder due to having the information over competitors, and;

⁶ Seetharaman R, Legal protection of trade secret, 1 Supreme Court Cases (2004) 22.

⁷ Verma SK, Legal protection of trade secrets and confidential information, Journal of the Indian Law Institutes, 44 (3) (2002) 336-353.

⁸ Id.

⁹ Bombay Dyeing and Manufacturing Co Ltd v. Mehar Karan Singh , 2010 (112) BomLR375.



- e. The time and money that was spent collecting, developing, and documenting the information; and
- f. Duplicating and acquiring information takes a lot of time and money.¹⁰

As a matter of settled law, “confidential information” is secluded as a “Trade Secret” because that information is highly confidential. Even if third parties obtain confidential information without permission, the quality of the confidentiality may be lost if a reasonable effort is not made to keep the information secret or if reasonable efforts can't be proved.¹¹

LEGISLATION GOVERNING TRADE SECRETS IN INDIA

Indian law protects confidential information even without a formal definition of trade secrets or a unified recognition of it. Different types of confidential information are recognized and protected by the following statutory provisions:¹²

- (1) **“Section 27 of the Indian Contract Act”** prohibits a contrary to a contract; a person cannot disclose information obtained from it.
- (2) **“Section 72 of the Information Technology”** In the case that a person obtains or accesses private information, books, registers, information documents, or additional data with no consent of its owner, and that first individual unveil such data; effective remedies may include imprisonment and a fine.

Trade secret owners have the following remedies at their disposal:

- A court order prohibiting licensees, employees, vendors, or anyone else from divulging a trade secret;
- Confidential and proprietary information must be returned.

¹⁰ Id.

¹¹ “Emergent Genetics India Pvt. Ltd. vs. Shailendra Shivam, Suit No. 50/2004, High Court of Delhi.”

¹² “Radcliffe M F et al., Patent, trademark and trade secret, (26 September 2008), <http://library.findlaw.com/1999/Jan/1/241479.html>”

- In the event of a trade secret disclosure, compensation may be given.¹³
- (3) “In 2009, the **Information Technology Act, under Section 43A**”, compensation should be given to individuals whose personal data has been compromised. Rules promulgated under the Act provide additional details on how to handle sensitive personal data.
- (4) The “**Securities Exchange Board of India Act (Prohibition of Insider Trading) Regulation, 1992**” provide that using and disclosing confidential information in the public domain shall be prosecuted if it is done by a insiders.
- (5) “The **Copyright (Amendment) Act, 2012, under Section 65A**”, endow It should be criminally punishable when technical measures implemented to protect works that have copyrights are circumvented, especially if the violation of the copyright results in the violation of the copyright. As part of the same Act, “Section 65B” imposes a criminal penalty for unauthorized viewing, alteration, or destruction of digital rights management data, which usually falls under online contracts.

It was held in “**Govindan v Gopalakrishna**”¹⁴, which concerned a compilation, that although a compilation contains a small amount of originality, it is still protected by law. In such work, it is not permissible to steal or appropriate someone's intelligence, skills, or labor.

The Indian trade secret law currently exists as a judicial creation based on ethical principles and “common law” harassment events against the “breach of confidence”; the main point of the jurisprudence is the employee's duties and obligations toward the “employer” concerning “confidential information” obtained through employment. Several important aspects of Indian trade secret law are unclear, including:¹⁵

- The scope of damages when confidential information is breached;
- Business competitors stealing business secrets;

¹³ Ganguli P. Intellectual Property Rights. Imperatives for the knowledge industry. World Patent Information, 2000; 22: 167.

¹⁴ Govindan v Gopalakrishna AIR 1955 Mad 391.

¹⁵ Thomas, "The Role of Trade Secrets," January 15, 2014, 4.

- The procedures to be followed when a legal dispute arises.¹⁶

In addition, there is no particular law protecting trade secrets, which is why in determining whether a work of literary art is protected by copyright, the courts ruled in favor of the owner.¹⁷

Indian lawmakers approved the **“National Intellectual Property Rights Policy on May 12 of 2016”**. To protect IP rights effectively, we need a legal and legislative framework that is effective. A first step towards reaching this goal is the recognition of vital study and investigating areas for “future policy development”. Protecting trade secrets was one of the areas under consideration.¹⁸

With the National IP Rights Policy recently created, there are hopes that a trade secret law may be enacted. One of the objectives of the policy is the enactment of such a law. The date by which this objective will be achieved has not been established, but one can be sure that a trade secrets law will be implemented soon. ¹⁹

TRADE SECRET INFRINGEMENT REMEDIES

In the event of infringement, damages or an injunction may be awarded. In India, the Specific Reliefs Act, of 1877 can be used to grant asylum to the wronged if they meet certain conditions. Nevertheless, a prima facie case must be established, along with a balance of convenience and irreparable loss. An injunction has been denied in many cases due to an insufficient prima facie case. To get relief under equitable principles, the plaintiff must conceal material facts to be able to obtain an injunction. A court should not grant an injunction that cannot be specifically enforced, as stated by “Section 41(e) of the “specific relief act”.²⁰

Confidence Breach:

¹⁶ Id.

¹⁷ Lall S. Indicators of the relative importance of IPRs in developing countries., Research Policy, 2003; 32: 1657.

¹⁸ Ramakrishna T. In: Basic Principles and Acquistation of IPR. CIPRA, NLSIU, Bangalore, 2005.

¹⁹ Id.

²⁰ Narayananan P. In: Patent Law, 2nd ed, Eastern Law House, 1997.

The original covenant of confidentiality between a third party and an Indian court may also be the basis for granting trade secret protection. According to “**Diljeet Titus v. Alfred Adevare & Ors**”²¹ and “**Zee Telefilms Ltd. v. Sundial Communications Pvt. Ltd**”²², it has been held that determining whether it was a direct or indirect breach of confidence is also possible based on the circumstances. In addition, confidentiality may vary based on the relationship.²³

Equity:

In its decision in “**John Richard Brady v. Chemical Process Equipments P. Ltd**”²⁴, in this case, the Delhi HC held that even when there were no contracts that bound the defendant to confidentiality, the circumstances could determine such obligations. Equitable behavior depends on the fact that, when the licensee knows the process, he can't maintain secrecy.²⁵

Trade secrets can be protected in various ways, including:

1. Information that is marked as confidential.
2. Engaging employees in non-disclosure agreements.
3. A confidentiality agreement must define its scope.
4. Accessing secret databases with limited authority.
5. Sensitizing people to the significance of protecting “trade secrets”.²⁶

If In the Indian scenario, “trade secrets” are confined by a merger of the law of contracts, torts, and competition. Despite the efforts of the Indian judiciary to clarify certain aspects, there is still ambiguity in some areas. There may be unclear aspects of a case, such as the extent of damage that will result if confidential data is leaked, business secrets are stolen by competitors, and safeguards that must be taken during the trial. The important conclusion to draw is that “trade secret” safeguard in “India” is still in its infancy and much effort should be put into creating a business-

²¹ Diljeet Titus v. Alfred Adevare & Ors, 2006 (32) PTC 609 Del.

²² Zee Telefilms Ltd. v. Sundial Communications Pvt. Ltd, 2003 (5) BomCR 404.

²³ Id.

²⁴ John Richard Brady v. Chemical Process Equipments P. Ltd, AIR 1987 Delhi 372.

²⁵ Id.

²⁶ Ms. Anjali Sharma, Protecting Trade Secrets in India, Vol.3 & Issue 2, Law Audience Journal (e-ISSN: 2581-6705), Pages 38 to 63 (17th August 2021), <https://www.lawaudience.com/protecting-trade-secrets-in-india/>



friendly environment. As a result of the “**National Innovation Act that the Department of Science and Technology**” implemented to protect innovation as well as any confidential information related to it, we can also feel optimistic. Although it is just the beginning, there is a long way to go.²⁷

CONCLUSION

Although “trade secrets” law fits within the present outline of torts law, contracts law, and “competition law”, there are a few difficulties associated with its creation in the field of intellectual property. The separation of trade secrets from other intellectual property would also eliminate this disparity. Developing nations, such as India, should have strong laws protecting trade secrets. According to the TRIPS Agreement, TRIPS "Member States" must modify their regulation and introduce new legislation to adhere to the agreement's obligations. Therefore time has come for statutory laws to be introduced in India that protect trade secrets and confidentiality as well as make appropriate amendments to prevent misappropriation and regulate the use of that confidential financial information. To ensure effective transparency in the marketplace, there is an urgent need to enact regulations in such a way that the trade secret of an Indian company is adequately protected in addition to fair market competition. In order to eliminate trade secret safety ambiguity, India needs to frame detailed rules and regulations. The protection of trade secrets is therefore imperative.

²⁷ Ganguli P. Intellectual Property Rights in transition. World Patent Information, 1998; 20: 171.