



INDIA'S LEGAL PROTECTION OF TRADE SECRETS

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1.1 ABSTRACT

Trade privacy have grown in importance in the age of globalization, particularly in light of the expansion of the global market and greater rivalry. Additionally, the preference for trade secret protection over patent protection as a means of protecting proprietary knowledge has enhanced its significance.

Laws safeguarding trade secrets are acceptable on a material constants if they are considered property. The paper offers logical and economic arguments for protecting trade secrets, which has cleared up any confusion regarding the issue of treating trade secrets as property. This report also provides a summary of the trade secret regime in place in India and highlights its shortcomings in light of the laws in place in other countries around the globe.

Additionally, the study focuses on the complexity of common law remedies for trade secret violation, which is made clear by a series of contradicting decisions by Indian courts. The emphasis is on the TRIPS mandate and India's obligation to enact laws on the "undisclosed information" issue. The need for a formalized framework, which is the only way to ensure strong and effective IPR protection and would also create new potential for economic growth, is emphasized in the paper.

Keywords: Intellectual Property, Trade Secrets, Confidential information, TRIPS, Contractual Remedies.

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1.2 INTRODUCTION

In today's knowledge-based society, ideas and information make up the largest portion of the economy. Currently, tangibles such as intellectual property and other related information are given the most consideration even more precious than physical assets are the assets that a corporation has. Compared to other types of intellectual property like brands, ownership, and concepts, trade secrets are not as well known. Despite the reality that company uses trade secrets most frequently³. Although trade secrets are the most frequently employed type of intellectual property for securing enterprises competitive advantages, most people appear to overlook them in favor of trademarks, patents, designs, and copyright.

Revealing personal details that businesses have is crucial for establishing & holding onto a competitive edge in the market. Businesses could sustain serious losses if private information with monetary worth is disclosed to third parties. Trade secrets are the name for this kind of knowledge. For instance, if Coke's chemical composition was kept "under lock and key in a bank vault" by the Coca-Cola Company might lose market share if the chemical formula for Coke, which it maintains "under lock and key in a bank vault,"⁴ is revealed to a rival. Trade secrets have economic worth since they are difficult for other companies to discover⁵.

The definition of a trade secret is highly determined by the nature of the firm. For instance, the Coca-Cola Company's trade secret formula for their signature beverage. Similar to this, a customer list, sales forecasts, marketing strategies, or any other sensitive information might be designated a trade secret other types of sensitive data may constitute a trade secret for an online retailer like Amazon⁶.

Since the beginning of trade, businesses have struggled to maintain ownership and control over their confidential information, especially their trade secrets. Patents, copyrights, trademarks, trade rules, and agreements between business entities are examples of normal techniques for protecting sensitive information. An information that is a trade secret is one that is not widely known or easily ascertainable in the industry, and reasonable efforts have been made to protect the information from disseminating so that it cannot be appropriated, giving the owner of the information a competitive advantage over others.

1.3 TERMS AND INTERPRETATION OF TRADE SECRETS

Any hidden customer data that gives a trade secret is something that gives a company a competitive advantage. Trade secrets involves both corporate and product- or industry-specific secrets. When such information is utilised without permission by persons other than the owner, it is deemed an unfair practise and a violation of the trade secret⁷. Any business-related knowledge that is not commonly known to the public and a trade secret represents something that has been kept a secret via proper measures. Trade secrets might differ in terms of

³ James Pooley, "Trade Secrets: the other IP right" Available at: <https://goo.gl/N3DA1v>.

⁴ Thomas Ronde. Trade Secrets and Information communicating. Journal of Economics and Management, 10(3), Fall 2001.

⁵ Department Of Trade. Uniform transact Secrets Act 1 (4)

⁶ Amazon. meaning of sales rank What sales rank mean. www.amazon.com, (August 2004)

⁷ http://www.wipo.int/sme/en/ip_business/trade_secrets/trade_secret_plans.htm

what is protected, what information is protected, and where they are protected, whereas other intellectual properties are territorial in nature, making it difficult to describe them precisely.

Proprietary information are the newest and least well-established of the "big four" types of intellectual property (IP): patentable, rights, trademarks, and trade dress. Confidential company knowledge is a more ancient concept than company secrets, which are more recent. Trade secrets are not specifically protected by law in India, but on occasion, Indian courts have agreed that confidential company information falls under this category.

The High Court of Delhi heard the first trade secret-related lawsuit in India in 1987. In that instance, the plaintiff alleged that the defendants had been defrauded of technical data, drawings, plans, and specifications.⁸

A trade secret is a method or tool that is constantly used in commercial operations.⁹ The modern concept of a trade secret includes any information that could be used in the management of a business or other project and is confidential to provide an actual or potential financial advantage over others. Confidential information related to business and industry is frequently referred to as a "trade secret"¹⁰. Therefore, even though the material is in the public domain, it need not be for the collection of the information and the inferences to be made from it to be confidential. Information may also consist of multiple pieces pulled from the larger a pool of data, but its originality rests in its own distinct and recognizable storage, which renders it private.

1.4 STATEMENT OF PROBLEM

A favorable framework for innovation and investment is created by effective and practical legislative protection of "trade secrets" as "intellectual property rights" (IPR), which has a direct impact on the national economy. Section 27 of the "Indian Contract Act, 1872" currently protects "trade secrets" in India; Indian courts also apply the common law method and offer remedies when handling it. However, it has a constrained and incomplete scope. Investors and entrepreneurs are suffering significant financial losses as a result. This must be fixed right away or the country will lose out on an economic opportunity.

Due to the limitations of the current legal protection, the goal of this research is to create a complete, strong, and balanced legal framework for the protection of "trade secrets" in India.

1.5 OBJECTIVES OF STUDY

- (1) A concise description of the content of this analysis, particularly why India needs a trade secret legislation.
- (2) Intellectual property law and trips agreement evaluation of the trade secret.

⁸ John Richard Brady and Others v. Chemical Process equipment P. Ltd. and Anr., A.I.R. (1987) Delhi 372.

⁹ American Law Institute. Restatement of Law Torts (1939) sec.757. (Available at: <https://goo.gl/yX1q2y>)

¹⁰ AbhikGuha Roy, "Protection of Intellectual Property in the Form of Trade Secrets" 11(3) JIPR 195(2006).

A SIMPLE EXPLANATION OF THE PURPOSE OF THIS ARTICLE, SPECIFICALLY WHY INDIA NEEDS A TRADE SECRET FRAMEWORK

Why are trade secrets essential? This is a really crucial question. Trade secrets are useless if their owner cannot readily prevent others from utilizing them. There is currently no specific regulation in India that offers answers to all the problems related to trade secret. A strong legal framework to safeguard trade secrets would help in encouraging Indian businesses to innovate. Regardless of size, large, medium-sized, and small businesses all accord trade secrets the same tier of importance, implying that trade secrets and one's protection are crucial to all business sectors. This is consistent with trade secrets' widespread use and significance across nearly all Indian States. The protection provided by copyright, patents, and other protection methods are supplemented and enhanced by trade secret protection. Trade secret law protects technology and business knowledge that is not widely known in the industry and prevents unauthorized third parties from using it for commercial gain. By safeguarding the source of corporate knowledge, trade secret preservation aims to advance research and development while upholding ethical business practices. A trade secret, often known as confidential knowledge in the industry, must have commercial worth, contain secret information that no one else is aware of, and be protected with reasonable care. Any technique, pattern, compilation, programme, technique, or strategy that derives distinct financial benefit from becoming kept secret is considered a trade secret. Furthermore, trade secrets can be thought of as intellectual property rights on private knowledge that can be bought or licensed¹¹. India joined the World Trade Organization (WTO) in 1991 following the liberalization, and in 1994 it also signed the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). All signatories to the TRIPS Agreement were required to protect trade secrets and other confidential details that is consistent with Article 39 of the TRIPS Agreement.

In India, there is still no explicit law in place to safeguard trade secrets and confidential information. It is founded on common law and equity¹².

Trade secret protection in India is subject to variation due to the territorial nature of IPR legislation. Due to the geographical character of IPR regulation, proprietary information security in India is variable. It would be impossible to enumerate every item which Indian courts might deem to be a trade secret or private. However, judicial statements state that there are a number of pieces of knowledge which the court has long-standing recognized as trade secrets. The secrecy of trade secrets, not their novelty, is what matters most¹³.

A trade secret is no longer a secret if it is disclosed or generally recognized as public knowledge. Because of the benefits that have been more widely known, trade secrets are now a preferred alternative for intellectual property. Designing proprietary information legislation that is compatible with India's understanding and use of intellectual property rights, however, presents certain challenges. Trade secrets are one type of property rights that has lately gained increased recognition. Trade secrets are exempt from the rules controlling royalties,

¹¹ <https://www.wipo.int/tradesecrets/en/>

¹² Intellectual Property rights and International Trade Secrets Regulations: The TRIPs Agreement

¹³ *Dionne v. Southeast Foam, Inc.*, 240, 297, 302 (1990)

trademarks, and patents that apply to the other standards and procedures mentioned above. In order to qualify for a patent, an invention must be both valuable and original, unique, and non-obvious. Even while ideas or content are not covered by copyright, once an idea has been given shape, it is. Such data is protectable since it is afforded the same protection upon revelation. Even if the product itself causes disclosure, this is still true. Even while ideas or content are not covered by copyright, once an idea has been given shape, it is. Such data is protectable since it is afforded the same protection upon revelation.¹⁴.

EXAMINATION OF THE TRADE SECRET UNDER TRIPS AGREEMENT AND INDIAN INTELLECTUAL PROPERTY LAW

The world is in the “knowledge Age”. Ideas and information are an increasingly important part of the economy. Intellectual property, data and other similar information, which are intangibles, are often the most valuable assets owned by a business, even more so than physical assets¹⁵.

The majority of high-tech items in the healthcare, entertainment, and other industries are the result of invention, creation, innovation, research, design, or testing. Numerous of these assets are legally protected as copyrights, trade names, patents, designs, or other intellectual property, subject to some restrictions. Trade secrets are a type of intellectual property as well, however many nations do not have laws protecting them. Trade secrets might turn out to be fleeting since they can never be recovered once they are gone, like the classic horse that has gone from the stables. In the contemporary digital era, when data, including trade secrets, is held and disseminated in electronic format, the speed in which "private information" are misplaced is concerning. In the contemporary digital era, when data, including trade secrets, is held and disseminated in electronic format, the speed in which "private information" are misplaced is concerning¹⁶.

It is challenging to define and understand "trade secrets" in difficult words given their ambiguous nature. Due to their extended secrecy and confidentiality, "trade secrets" are arguably the most hardest type of intellectual property to secure. Owners are able to protect their "trade secrets" by filing lawsuits, asking for summary judgement against wrongful use and revealing of their information, and recovering damages. Criminal charges for breaching confidentiality may also be brought against the individual who divulges "trade secrets."

Because modern IPR regulations are designed to provide transparency and integrity to knowledge management, trade secrets are a challenging sector of the IPR world. Trade secrets still maintain their secrecy and had strict requirements for IP protection¹⁷.

¹⁴ Supra note.9 at pg.3, Harvey Barnett, Inc vs. Shidler, 143 F.Supp.2d 1247, 1252-1253 (D.Colo.2001) .

¹⁵ Poorvi Chothani, “Trade Secret”, 2(4) MIPR 33 (2007).

¹⁶ Ibid.

¹⁷ 4 Gaurav Wahie, “Evaluating Trade Secret under the IPR Paradigm: the Hypothesis of Trade Secrets as Rights Analyzed in the Pure Hohfeldian Sense”, available at: www.legalserviceindia.com (last visited on December 28, 2022).

It became clear that "GATT" was not designed or structured to solve many of the new global trading difficulties that were emerging in the 1980s as the global economies became more globally integrated in trade and commerce. The largest trade negotiations in history thus started in 1986. Given that it was held in Punta del Este, Uruguay, it was referred to as the "Uruguay Round." The establishment of the "WTO" was one of this round's ultimate successes. The "General Agreement on Tariffs and Trade" (GATT), which had been in effect since 1948, was superseded by the "WTO."

The "WTO" acts as a venue for agreements with the goal of lowering barriers to international commerce and making sure that everyone is subjected to fair testing circumstances, so promoting economic development and growth. The "WTO" also offers a legal and administrative framework for carrying out, overseeing, and resolving conflicts related to the application and interpretation of these treaties. The present corpus of trade agreements that comprise the "WTO" consists of the 16 distinct cooperation negotiations, to which all "WTO" countries are participants, and the 2 distinct trilateral agreements, to which only certain "WTO" members are parties. In recent years, the "WTO," which was established in 1995, and the "GATT," which served as its precursor organisation, have significantly boosted global commerce.¹⁸

On April 15, 1994, the "WTO Agreement" on "Trade Related Aspects of Intellectual Property" (TRIPS) was finalized. It went into effect on January 1, 1995. "TRIPS" is a significant development in the history of IP protection and a milestone on the path to securing, regulating, and internationalizing intellectual property.

The expansion of IP systems worldwide. It is an international agreement that establishes minimal requirements for member nations to have robust domestic intellectual property protections. To facilitate the execution of the "TRIPS Agreement," the Council for "TRIPS" and "WIPO" came to an agreement on interaction between "WIPO" and the "WTO," which became effective on January 1, 1996. The Preamble to the "TRIPS Agreement" expressly states that the "WTO" intends to work together with the "WIPO." In accordance with the agreement, cooperation is required in the following three areas: Use of guidelines for the safeguarding of the nation's symbols, access to and interpretation of national laws and regulations, and technological cooperation¹⁹.

The "TRIPS Council," which signed the "Cooperation Agreement" with the "WTO" on December 22, 1995, together with "WIPO," is in charge of keeping track of the implementation efforts taking place all around the world. In accordance with the "WTO-WIPO Cooperation Agreement," both parties will work together to create an electronic database of intellectual property laws and rules and to implement "TRIPS." Additionally, both organizations pledged to maintain "frequent communication and exchange non-confidential information" and to handle the other organization's members in the same manner as they do their own. Togetherness was agreed upon by the two groups "so as to maximize the effectiveness of those activities and ensure their mutually supportive nature"²⁰.

¹⁸ Available at: www.wto.org

¹⁹ Available at: www.wto.org (last visited on December 28, 2022).

²⁰ Supra note 12

Types of Information Considered Trade Secrets

Even if "trade secrets" aren't included in the "TRIPS Agreement" per se, they are referred to under the phrase "Undisclosed Information". It will be considered "trade secrets" if the information passes the confidentiality test. The following are some instances where "trade secrets" protection has been authorized by various courts around the world and is thought to be confidential information:

Equation

Ideas

Models

Proposals

Designs

Tangible Things

Procedures

Technologies

Awareness

There may be other types of knowledge that can be referred to as "trade secrets," hence the preceding list is not all-inclusive. It has been noted that various courts may come to conflicting decisions about the validity of trade secrets with respect to the information must be of a confidential nature, the owner must take reasonable precautions to keep the information confidential, and the information should not be accessible to the general public in order to be held as "trade secrets," regardless what may appear to be comparable topics

In contrast to other types of intellectual property protection, which are only valid for a set amount of time, "trade secret" protection can, in theory, exist perpetually. In the past, keeping cutting-edge military technology hidden from powerful adversaries was what was meant by "trade secrets," but in modern society, technical advancement has made "trade secrets" a universal concept²¹.

If kept secret, "trade secrets" are safeguarded for all time. If the information's secrecy is compromised, it ceases to be a secret. Being a significant economic force in the globe, India, it is crucial to safeguard the interests of company owners, dealers, and entrepreneurs. India, a signatory to the TRIPS Agreement and a member of the WTO, must comply to its terms in order to protect "trade secrets" through intellectual property.

Different types of intellectual property rights are recognized by the "TRIPS Agreement." The pact aims to acknowledge and defend intellectual property rights around the globe. The agreement brought about global legal parity for intellectual property. The agreement serves as a guide for regulating and protecting intellectual property rights. All of the "TRIPS" agreement's signatory governments have enacted new laws or amended

²¹ Cynthia M. Gayton, "Commercial Satellite Imagery: Confidential Information Knowledge Management and Trade Secret Law" 37 (2) JIKMS 192-206 (2007).

their existing ones to reflect the agreement's terms.

Being a member state, India did follow suit by changing its patent and copyright laws as well as by passing new laws pertaining to trademarks, geographical indications, industrial designs, and integrated circuits. On "trade secrets" and confidential information, there is still no law. India only falls short in this area in terms of protecting intellectual property rights²².

CONCLUSION

In order to safeguard the interests of business owners and traders, a rising nation like India must offer comprehensive "trade secret" protection. This will hasten the country's economic development. It is crucial to adapt trade regulations to meet international norms in the age of globalization. India, a global leader in international trade and a participant in a number of international trade organizations, is required to adhere to international norms. In the past, cultures generally speaking, including India, did not support the idea of a monopoly over knowledge and information. 85% of India's population was directly or indirectly reliant on agriculture at the time of independence. This number has decreased after nearly seven decades of freedom. India is quickly shifting from an agricultural economy to other economic systems, such as the "Knowledge Based Economy."

As technology and research have advanced, commerce has expanded quickly. Profits are something that traders and investors always strive for; in fact, the entire trading system is based on identifying effective strategies to increase profits. The ultimate goal of business is to attract new clientele while retaining existing ones. Anyone who creates intellectual property wants to make the most of it possible. Since intellectual property has been acknowledged as property, protecting it has become of utmost importance. Since the nineteenth century, when patents, trademarks, and designs were given the status of industrial property, efforts have been undertaken on occasion to preserve intellectual property. Later, when copyrights and geographical indications are added to the lists, a new term known as "intellectual property rights" is introduced.

It is becoming increasingly popular to perform medical testing and outsource research and production to India, which is rising as a hub for "Software Technology and Information Technology Enabled Services" (ITES). The attitude of the Indian public, judiciary, and government toward effective protection and enforcement of intellectual property rights is improving in the current era of "knowledge and information technology," as well as with globalization and the liberalization of trade policy. Even more so, laws governing intellectual property rights have experienced significant changes²³.

India, a signatory to the "TRIPS Agreement," changed its intellectual property laws to comply with the agreement's requirements²⁴.

²² N.S Sreenivasulu and M.S Sowmya, "TRIPS Complaint Intellectual Property Regime in India: Implications of TRIPS in modifying the cantors and canons of our system", 3(2) MIPR A-79- 80(2007).

²³ Sunil B. Krishna, "Enforcement of Intellectual Property Rights in India", 3(2) MIPR (2007)

²⁴ Supra note 28

The role of "trade secrets" law under "TRIPS Agreement" and Indian intellectual property law can be summed up as follows:

- (1) "TRIPS Agreement" and "WIPO" both contain provisions for the protection of confidential information, and both international documents are standards that are adhered to by the vast majority of countries worldwide.
- (2) India lacks a formal law protecting "trade secrets," while being a signatory to the "TRIPS Agreement" and a member of the "United Nations".
- (3) Trade secrets shall be referred to properly as "trade secrets" and not by a broad phrase like "undisclosed knowledge" or "confidential information." To ensure that "trade secrets" are properly recognized as intellectual property rights (IPRs), the term "trade secrets" should be utilized.
- (4) Although Indian courts have attempted to safeguard "trade secrets" through various intellectual property laws, including "Copyright," "Trade Mark," and "Design laws," their "trade secrets" are not properly protected. The court's decisions are not consistently made.
- (5) The Indian government advanced in reaction to the "TRIPS" agreement by publishing a "Draft National Innovation Act" in 2008 to encourage research and innovation.
- (6) The government's interest in recognizing "trade secrets" as particular intellectual property is indicated by the adoption of the "National Intellectual Property Rights Policy," which is a significant step. The objective 3.8.4 demonstrates that although the government is reluctant to codify "trade secrets" legislation in India, it is considering future policy development for the protection of "trade secrets."
- (7) It is crucial to recognize and safeguard "trade secrets" as a "intellectual property right" under one general heading. Additionally, the creation of an organization for the global recognition and protection of "trade secrets" is urgently needed, and this initiative by WTO.

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