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A RESEARCH PAPER ON: UNIFORM TRADE SECRETS ACT: A REVOLUTIONARY ACT PROTECTING INDIAN BUSINESS SCENARIO

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ABSTRACT

A trade secret is any information that is confidential in nature. In other terms it is a piece of information which is kept secret with the owner of that information for example, a method of making a product or any data of maintaining accounts, business strategies or any kind of information which is not to be disclosed to any other person who is not authorized for its receipt. Such information is an outcome of human mind which also needs to be protected same as other aspects of Intellectual Property i.e., trademarks, copyrights, designs and Patents. In India it is not so difficult to grab someone else's confidential information especially methods, recipes, business strategies, etc. and implementing the same in their respective businesses. This technique has become very common nowadays due to increasing in unhealthy competition in the small and medium scale enterprises (SMEs) in our country. Such instances affect the overall growth of the nation by boosting up unfair trade practices by means of exploiting other's established business. Keeping in mind the sustainable development goals, trade secrets shall be given protection under the umbrella of intellectual property rights act. In India there is absence of uniform law for treating the trade secret matters. The cases are entertained variedly in different court of law because it is considered under the Indian Contract Act, 1872 as the principles of equity or by way of a common law action for breach of confidence. Many a times it is confused with other intellectual property right aspects, especially patents. According to Article 39.2 of the Trade Related Aspects of Intellectual Property Rights (TRIPS), any information that is secret must be given protection which has commercial value. Hence, in this research paper the researcher aims to elaborate the effects of having the uniform trade secret act (UTSA) which the USA has adopted and the effects of not having a specific act in India.

KEYWORDS: Trade Secrets, Intellectual Property Rights, TRIPS, Uniform Trade Secrets Act (UTSA), Commercial Value.

1. INTRODUCTION

A trade secret is any information that is confidential in nature that has commercial value. In other terms it is a piece of information which is kept secret with the owner of that information for example, a method of making a product or any data of maintaining accounts, business strategies or any kind of information which is not to be disclosed to any other person who is not authorized for its receipt.ⁱ Keeping in mind the sustainable development goals, trade secrets shall be given protection under the umbrella of intellectual property rights act.

Any creation of the human mind such as inventions, literary and artistic works, designs and symbols, trade names and images get protection under the Intellectual property rights Act. Trade secrets include methods, process, formulas, technical information and know-how, business plans and strategies, budget and information relating to the business on any aspects which also includes engineering information. These are the type of information which needs to be protected from getting leaked to any other person who is not authorized. Intellectual property rights act protects its owner's right in case of infringement i.e., unauthorized use of trademarks. Copyrights, patents and designs as they are of a commercial and economic value as wellⁱⁱ. All these aspects are given equal treatment as they are protected under the umbrella of Intellectual property rights (IPR) act in different courts of law in India. But the situation is different with the trade secrets as it is not recognized as one of the aspects of IPR even being the outcome of the human intellectual and having commercial value in the businesses.ⁱⁱⁱ Trade secrets are given varied treatments in different courts as it is sometimes confused with patents, copyrights and on the other hand it is treated under the Indian contract Act, 1872 as the principles of equity or by way of a common law action for breach of confidence.^{iv} Same as trademarks, patents, designs and copyrights are recognized by the common people nowadays due the increasing awareness in the people who are into such businesses especially small and medium scale enterprises (SMEs). Protecting trade secrets in SMEs is becoming challenging in the current scenario. Different types of circumstances arise which gives rise to the leaking of such information which needs to be kept secret for example: if an employee who is working with an enterprise since many years leaves his job and start working with a different enterprise which is into a similar business, in this situation the employee will pass on the information of the former enterprise to his current work place and so on. This is the classic case in which the trade secret remains unsecured. If there is a separate uniform trade secret act in India then the awareness to protect the trade secrets will increase like the other

aspects of the IPR. International standards for protecting trade secrets also known as undisclosed information were established as a part of TRIPS agreement in 1995. Article 39 of the TRIPS agreement provides that the member states shall protect undisclosed information against unauthorized use in a manner contrary to honest commercial practices which includes unfair competition, breach of confidence and breach of contract.^v Hence, in this research paper the researcher aims to elaborate the effects of having the uniform trade secret act (UTSA) which the USA has adopted and the effects of not having a specific act in India.

2. UNIFORM TRADE SECRETS ACT

The United States have adopted uniform trade secrets act which lays down special provisions for the protection of the trade secrets complying with the provisions of the TRIPS agreement. It is published by the Uniform Law Commission (ULC) in 1979 and amended in 1985 is a uniform act promulgated for the adoption by the states in the United States. Historically, the law governing misappropriation of trade secrets developed in each state. Section 1 presented definitions of key terms as they are used throughout the act. Sections 2-4 provided remedies for potential wrongs committed in violation of the act including injunctive relief, damages and attorney's fees. Sections 5-12 made additional provisions related to the implementation of the law and the relationship to other laws^{vi}. As of June 2019, the UTSA has been adopted by all the states except New York and North Carolina but its law is very similar and seems to borrow heavily from the act. On May 2, 2013 Texas enacted Senate Bill 953, becoming 47th state to adopt the UTSA. States are not required to pass the act exactly as it is, some have made amendments. Uniform Trade Secrets Act enables the Court to proceed in the prescribed manner as the act itself specifies various definitions and the instances which represents the trade secrets, damages and injunctive relief. There is no varied treatment given in the different courts of justice just like other aspects of IPR.^{vii}

3. INDIAN SCENARIO IN TERMS OF TRADE SECRETS

As discussed earlier, there is no specific treatment given to the issues related to trade secrets. It is confused with various acts i.e., Copyrights Act, 1957, Patents Act 1970, Indian Contract Act 1872 and Criminal Procedure Code, 1973. Trade secrets are given varied treatments in the Indian Courts due to absence of a Uniform Trade Secrets Act. UTSA in the USA lays down uniform treatment to the trade secrets issues as there are uniform provisions enacted in it same as the other aspects of the IPR. Whereas, in

India, the situation is complicated for the businesses and the judicial proceedings. c If the UTSA is enacted in India, the SMEs will recognize the importance of protecting its trade secrets which shall eventually protect the future of their businesses. The current act fails to properly entertain

4. LEGAL AND JUDICIAL COMPLICATIONS

This complexity stands in contrast to jurisdictions like the United States, where the Uniform Trade Secrets Act (UTSA) provides a harmonized legal foundation. The UTSA lays down uniform treatment for trade secret issues, similar to other established aspects of Intellectual Property Rights (IPR). Whereas, in India, this fragmented legal situation creates immense complications for businesses and significantly protracts judicial proceedings. Judges often have to interpret common law principles, such as breach of confidence and contractual obligations, rather than applying specific statutory provisions for misappropriation. This uncertainty increases litigation costs and makes predicting outcomes difficult for all parties.

5. ECONOMIC IMPACT AND VULNERABILITY

The absence of codification also translates directly into a lack of awareness and proactive protection strategies among entrepreneurs, particularly within the small and medium scale enterprises (SMEs), which are the maximum sufferers. Given that many SMEs build their competitive edge on proprietary processes, customer lists, or unique technical know-how, their vital information is highly vulnerable. Due to this unprotected situation, proprietary information can be easily leaked, stolen, or implemented by competitors, leading to a rise in unhealthy competition and unfair means of achieving success through the simple duplication of the methods, processes, or means the existing business has implemented. This easy leakage stifles innovation by removing the incentive to invest time and capital into developing secret, valuable

information.

6. CONCLUSION

Treating trade secrets variedly in different courts of law in India would adversely affect the overall economic growth of the nation. Patents Act prevent the inventor's right for their innovative invention whereas trade secret is disclosed information which protection is cost effective. In India it is often confused with patents. Copyrights act protects the right of the authors of the artistic and literary works. Many a times, trade secrets are considered as copyrights but copyrights protect the rights of the creators of software to handle the data base whereas trade secrets are the information that is stored in such data base. Hence, it is treated unequally unlike the other aspects of IPR. If the UTSA is enacted in India, the rights of the SMEs will be protected. Therefore, the trade secrets should be recognized as one of the aspects of the IPR and shall be given protection under the same umbrella. As discussed earlier, trade secrets are the undisclosed information which should kept secret by its owner in a certain manner. Sometimes, the entrepreneur fails to take certain measures for its protection but if the UTSA is enacted in a proper manner in India including the measures to be taken by the owner for its protection. The UTSA will work as boon for the SMEs. The enactment of a dedicated Uniform Trade Secrets Act (UTSA) in India is therefore critical. Such a law would clearly define a trade secret, establish the grounds for misappropriation, and set forth consistent remedies (like injunctions and damages). If the UTSA is enacted, the SMEs will not only have a clear path for legal recourse but will also recognize the importance of actively protecting their trade secrets, which shall eventually secure the future of their businesses and support the national drive toward innovation and economic growth. The current patchwork of acts fails to properly and efficiently entertain trade secret issues, making statutory reform an urgent necessity.

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