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# A COMPARATIVE STUDY OF INDIAN TRADE SECRETS REGIME WITH THE INTERNATIONAL STANDARDS

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## ABSTRACT

*A piece of information that is only known to company that produces or provides it is known as trade secrets. 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. Same as all of the above mentioned outcomes of human mind get protection under the intellectual property rights law (IPR), the trade secrets, i.e., confidential information specially the method of making any product or any secret data which is also an outcome of human mind is supposed to get protection under the umbrella of Intellectual Property rights law. The IPR law protects the right of the creator from being duplicated or infringed. Trade secrets in India is not given protection in India under a codified law. It is just protected under the Indian contract Act, 1872 as a confidential information. Hence, in India there is no codified law to protect the trade secrets. Therefore, the treatment given to trade secrets cases varies from Court to Court just because of the absence of a codified law for the protection of trade secrets. This research paper is a doctrinal research which aims to deal with the complication that Indian businesses suffer in absence of the codified trade secret law. Business competition plays a vital role in the market. Now a days it has become an easy process to get establish the business by merely duplicating or adopting someone else's confidential information if the rights are not protected same as other aspects of intellectual property rights.*

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**KEYWORDS:** Trade Secrets, Confidential Information, Intellectual Property Rights, Undisclosed Information Secrecy, Competitive Advantage.

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## 1. INTRODUCTION

A piece of information that is only known to company that produces or provides it is known as trade secrets. 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.<sup>i</sup> Same as all of the above mentioned outcomes of human mind get protection under the intellectual property rights law (IPR), the trade secrets, i.e., confidential information specially the method of making any product or any secret data which is also an outcome of human mind is supposed to get protection under the umbrella of Intellectual Property rights law.

The IPR law protects the right of the creator from being duplicated or infringed.<sup>ii</sup> Trade secrets in India is not given protection in India under a codified law. It is just protected under the Indian contract Act, 1872 as a confidential information. Hence, in India there is no codified law to protect the trade secrets. Therefore, the treatment given to trade secrets cases varies from Court to Court just because of the absence of a codified law for the protection of trade secrets. This research paper is a doctrinal research which aims to deal with the complication that Indian businesses suffers in absence of the codified trade secret law. Business competition plays a vital role in the market.

Now a days it has become an easy process to get establish the business by merely duplicating or adopting someone else's confidential information if the rights are not protected same as other aspects of intellectual property rights. There are several ways to secure the confidential information in a business but still sometimes it leaks and causes a great damage to a business. Examples of trade secrets can include engineering information, processes, know how, formulas, computer programs, business strategies, proposals, day to day operation of a company, financial information, budgets, methods of calculating, information that relates to employees, etc. Hence, it covers all those information belonging to a business which contains any such information that should be kept personal and protected from getting it leaked to a third person who can take a wrongful advantage of such information.

It depends upon the owner of the business which information should be kept secret and which should be kept accessible to public. Now a days it becomes very easy to copy and store such data digitally. Especially in India, in the event of a trustworthy employee leaves a job from a company, easily transfers the secret information to a prospective company which leads to a great loss to the former

company. This is the most common source of leaking the confidential information in India.

## 2. TRADE SECRET PROTECTION IN INDIA

There are certain provisions in India to protect the confidential information, a person is contractually bound to not to disclose any such information that is known to him/her in confidence. There is no statute or legislation that governs the protection of trade secrets in India. The rights which get protected in respect of trade secrets are enforced through Indian Contract Act, 1872 on the basis of principles of equity. Section 27 of the Contract Act, 1872 declares a contract to be void if it is made for restraining the trade or business of a person. It is a common practice in law that a confidentiality clause may survive the contract, subject to the nature of the information.<sup>aw</sup> action for breach of confidence which in effect amounts a breach of contractual obligation.<sup>iii</sup>

In some cases, the courts have recognized information stored in the form of databases as copyrightable material. Normally any business stores its data electronically as a data base, information such as accounts, customer behavior, inventory, etc which becomes an easy mode of carrying data. Databases are protected under a copyright Act, 1957. It includes computer databases as "literary works".

## 3. INTERNATIONAL STANDARDS FOR PROTECTING TRADE SECRETS

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.<sup>iv</sup> The undisclosed information which is not accessible in general and which is meant to keep secret must have a value and must be the subject to reasonable action to maintain its secrecy. This general principle for the protection of trade secret has been adopted by over 100 of the 159 members of the World Trade Organization.

## 4. UNIFORM TRADE SECRETS ACT (UTSA)

Initially, protection of trade secrets was subject matter of state law, where in each State develops its own rules, definitions and fundamentals. In 1979, there was remarkable change as the Uniform Law Commission published the Uniform Trade Secret Act (UTSA) to make a uniform trade secret law all over the States. UTSA worked for many years but

difficulty with interstate and international enforcement led the federal Government to come to action. Defend Trade Secret Act (DTSA) was passed by the Congress in 2016 which provided its new set of definitions.<sup>v</sup>

## 5. SITUATION OF INDIAN BUSINESSES IN ABSENCE OF A CODIFIED TRADE SECRET LAW

Patents, trademarks, copyrights and designs are obtained through application to Government agencies and defended by law suits against infringers whereas, Trade Secrets are the neglected sibling and yet may represent the largest single contribution to intangible assets. Not all information can be protected as trade secrets because there are some sort of information that might not qualify to be trade secrets even if all the proper steps are taken for the maintenance of its secrecy level. Most commonly it involves the information which is already in public domain. As discussed earlier trade secrets in India are not given protection under a codified law. Trade secrets are also the outcome of a human mind same as trade mark, copyright, designs, geographical indications and patents. Unlike all these aspects of intellectual property rights, trade secrets also being a part of it, it is not protected separately under the umbrella of Intellectual property rights Act.

Intellectual property rights law is gaining importance as the awareness in India increases day by day. The creators are very much aware now a days about how to protect their rights under the shelter of IPR. For example, Small and medium scale enterprises (SMEs) indulged in manufacturing food items are not much aware that even their formulas can be stolen and easily applied by the competitor. This will lead only lead to unfair trade practices. The protection of trade secrets in India is very narrow as it is granted protection under Contract law which an owner of the information must have signed an agreement for its protection. It is complex method of justice, where in it becomes difficult for SMEs to raise awareness that even their rights may be protected same as other aspects of Intellectual property. Not only SMEs but even large scale enterprises have gone through the tough times so far as its trade secrets are under a codified law can be understood. Below mentioned are some significance of unified trade secret law:

The trade secret is any information that possess some financial value to the enterprise and it is also known as confidential information e concerned.

- Below mentioned are some significant International instances of trade Secrets:

### 5.1. *Walmart vs. Amazon.com*

Walmart initiated a lawsuit in a United States Court against Amazon.com. The core of the complaint was that Amazon was actively recruiting and luring away key personnel from Walmart, including experienced executives, employees, and even consultants.<sup>vi</sup>

The legal dispute was ultimately settled in 1999.

### 5.2. *Terms of Settlement*

Under the terms agreed upon, the following provisions were put in place:

- **Employee Reassignment:** Walmart was reassured and its employees were effectively reassigned or returned, ensuring the resolution of the staffing conflict.
- **Confidentiality Assurance:** Amazon provided assurances that any proprietary knowledge or information originating from Walmart would not be used by Amazon.

**Project Limitations:** The former Walmart employees who were working at Amazon.com were placed under limitations regarding the projects they could operate on at the company.

### 5.3. *The Coca-Cola case*

The recipe for Coca-Cola is one of the world's most famous trade secrets, representing a strategic choice in intellectual property protection.

### 5.4. *Trade Secret Over Patent*

Coca-Cola deliberately chose to protect its recipe as a trade secret rather than seeking a patent for its well-known soft drink.

- **Trade Secret Advantage:** A trade secret can be protected indefinitely, as long as the company maintains its confidentiality. It does not require disclosure of the ingredients.
- **Patent Disadvantage:** A patent would have required Coca-Cola to publicly disclose the recipe's ingredients. Furthermore, patent protection is limited to a finite term (e.g., 20 years), after which the formula would enter the public domain.
- **Historical Context:** One suggested, though historically debated, reason for choosing secrecy was that the original formula contained an amount of cocaine (which has since been removed). However, the primary legal and business reason is the desire for perpetual.<sup>vii</sup>

### 5.5. *Listerine case*

The history of Listerine demonstrates the long-

term financial value a trade secret can hold, even after its confidentiality is compromised.

- The inventor of the Listerine formula licensed the secret to Lambert Pharmaceuticals (now part of Pfizer).
- Lambert Pharmaceuticals continued to make royalty payments to the inventor's family for over 70 years, even though the formula was later publicly disclosed. This emphasizes that initial contractual agreements regarding a secret can outlast the secret itself.<sup>viii</sup>

## 6. CONCLUSION

Taking into account the Indian business situation, it can be concluded that unfair trade practices can be restricted if a uniform trade secret law is enacted in India. The future of SMEs will be much brighter if their undisclosed information gets protection under a properly framed law which is actually meant for the

subject matter. There are many such entrepreneurs who are unaware of their rights to protect their trade secrets, as such trade secrets are of some financial value. It is only treated as breach of confidence under the Contract Act and many a times it is being confused and so treated under Copyright law in India. This may result into establishment of different definitions and so as a result judgements which may not be able to set as an ideal precedent unlike other aspects of IPR laws. There are few ways of protecting the trade secrets in absence of uniform law such as confidence building amongst employees, restricting data accessibility, educating employees and signing non-disclosure agreement with any third parties. Apart from all these techniques if trade secrets also gets registration same as trade mark, patents and copyrights under the IPR law itself than many confusions in legal terms and commercial terms may get clarity and might also come to end.

## REFERENCES

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- <sup>i</sup> World Intellectual Property Organization (WIPO) (2016) *Understanding industrial property*.
- <sup>ii</sup> Lin, Thomas C.W. (8 October 2013) "*Executive Trade Secrets*"
- <sup>iii</sup> Weiler International Electronics (P) Ltd. V. *Punita Velu Samasundaram*, 2002 SCC online Bom 1006.
- <sup>iv</sup> World Trade Organization/ Intellectual Property (TRIPS)
- <sup>v</sup> "Uniform Trade Secret Act (UTSA) with 1985 Amendments" retrieved 2020-04-19
- <sup>vi</sup> WIPO/IP/HCM/03/2: Session 11: *Leveraging business/ Trade Secrets*.
- <sup>vii</sup> UTSA with 1985 amendments, Preparatory Note, *Approved by the American Bar Association Baltimore, Maryland, Feb 11, 1986*
- <sup>viii</sup> [Info.vethanlaw.com/blog/trade-secrets-10-of-the-most-famous-examples](http://Info.vethanlaw.com/blog/trade-secrets-10-of-the-most-famous-examples).