Challenges In Proving Trade Secret Misappropriation: Evidentiary and Procedural Issues

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Abstract- Trade secrets, defined as confidential business information that provides a competitive advantage, play a critical role in fostering innovation and maintaining market leadership. These can include formulas, processes, designs, methods, or any proprietary knowledge not generally known to the public. Unlike patents or copyrights, trade secrets require no formal registration but rely entirely on their secrecy for legal protection. Despite their importance, trade secrets are vulnerable to misappropriation, which can lead to significant financial losses, reputational harm, and competitive disadvantages for businesses.

Proving trade secret misappropriation presents complex evidentiary and procedural challenges. Establishing that information qualifies as a trade secret under legal definitions often involves demonstrating its confidentiality, economic value, and measures taken to safeguard it. Moreover, proving misappropriation—through unlawful acquisition, use, or disclosure—is inherently difficult due to the clandestine nature of such acts. Victims frequently rely on circumstantial evidence, as direct proof is rare. Additionally, during litigation, there is a paradoxical risk of further exposing the trade secret, which can undermine the very basis of its protection.

Procedural challenges further complicate trade secret enforcement, particularly in an era of globalization and digital connectivity. Cross-border disputes are increasingly common, and inconsistencies in legal frameworks across jurisdictions exacerbate enforcement difficulties. Furthermore, procedural safeguards to protect the confidentiality of trade secrets during litigation, such as in-camera hearings or protective orders, vary widely and are not uniformly effective.

This dissertation delves into these evidentiary and procedural challenges, drawing insights from prominent case law, statutory analysis, and comparative legal studies. It identifies gaps in existing trade secret laws, such as inconsistent definitions and limited international enforcement mechanisms, and explores the tension between transparency in legal proceedings and the need for confidentiality. This dissertation proposes pragmatic solutions, including harmonization of international trade secret laws, enhanced procedural safeguards during litigation, and the development of clear evidentiary standards to reduce reliance on circumstantial evidence. Ultimately, this dissertation aims to contribute to the ongoing discourse on strengthening trade secret protection by addressing the legal and practical obstacles to proving misappropriation in a rapidly evolving global economy.

Keywords: ***trade secrets, misappropriation, intellectual property, evidentiary challenges, cross-border disputes, innovation protection.***

INTRODUCTION

The phrase "intellectual property" refers to a type of property created by human mind. The term "Intellectual Property Rights" (IPR) encompasses a wide array of intellectual property rights, such as patents, trade secrets, copyrights, trademarks, service marks, and designs. All components of intellectual property rights are based on knowledge. Intellectual property constitutes an intangible asset held by a firm. It ensures that financial institutions and business partners can invest in or participate with the company to fulfill the goals of profit maximization and business development. Businesses possess numerous strategies to augment the value of their intellectual assets, alongside safeguarding their innovations. They have the ability to franchise, lease licenses, or trade their intellectual property internationally. The owner will yield a greater profit as the property receives a more thorough global evaluation. It is essential to acknowledge and safeguard features of this kind in the present age of rapidly advancing globalization. [1]

[1] Acharya, N.K, Text book on Intellectual Property Rights, Asia law House, Hyderabad, 2006.

Governments implement laws to safeguard intellectual property in industry, research, literature, and the arts for two principal reasons. One approach is to explicitly delineate the moral and financial rights of artists about their creations, alongside the public's rights to access such creations. The second purpose is to foster equitable commerce, so facilitating economic and social advancement, while also promoting creativity as a strategic government policy, along with the distribution and implementation of its outcomes.[2]

The primary aim of intellectual property law is to protect authors and creators of intellectual works by conferring specific rights that govern the utilization of their contributions, particularly focusing on rights that are temporally restricted. These rights pertain not to the tangible object embodying the creativity, but to the intellectual work itself. Historically, intellectual property has been classified into two distinct categories: "industrial property" and "copyright."

In the modern period, globalization creates new chances and elements for the nation's growing market, while also presenting new obstacles that must be overcome. Currently, India is undergoing a phase of development that is profoundly shaped by globalization. The foundation of a country is shaped by globalization through various means, including the development of a robust service sector, industrialization, equitable economic rivalry, the generation of extra employment opportunities, and the enhancement of agricultural practices. Intellectual property rights can substantially enhance progress within globalization and development, contingent upon a fair and equitable protection framework. This pertains to the endeavor of development. To foster a knowledge-based economy, India can significantly benefit from the implementation of robust intellectual property rights (IPR). [3]

The protection of intellectual property is the paramount element of scientific progress and economic growth in the high technology sector. Businesses can exploit them, the general public can gain from them, and they can act as catalysts for technical advancement. The insufficient awareness of intellectual property rights across all societal levels poses a considerable hindrance for a developing nation like India, which possesses a fragile array of traditional, oral, folklore, customary, agricultural, and medicinal practices, including Ayurveda, among others. Moreover, India is deficient in substantial wealth and infrastructure. India is one of the countries that has considerable distance to traverse. At this point, the crucial part of patenting is to be both assertive and concentrated. It possesses the capacity to profoundly alter the national economy, encompassing both the knowledge-based sector and national and international trade.[4]

Researchers in science and technology, creators and interpreters of educational, cultural, entertainment, and informational works, and developers of marketing strategies for products and services all pursue legal safeguards against unfair competition to protect the value of their investments. Legal exclusivity in the marketplace is conferred by many subfields of intellectual property law, including patents, trademarks, designs, and copyright. The entitlement to prohibit others from exploiting ideas or information unjustly for personal economic gain is not a clearly delineated right. Intellectual property has become a specialized domain necessitating a sophisticated legal framework. Nonetheless, these intangible property rights are increasingly crucial in the fight to get and maintain market share. This is especially true in countries that emphasize industrialization and free market ideologies. A growing number of individuals must possess a fundamental understanding of their connected obligations.

In considering the safeguarding of intellectual property rights (IPRs), patents, trademarks, and copyrights are the primary categories that arise. A brief interval precedes the inclusion of "trade secrets" in the lists by certain individuals. Nonetheless, "trade secrets" and their considerable potential are generally

[2] Agarwal, K.B, Some Thoughts on Modern Jurisprudence of IPR: Essays on Socio- Legal Philosophy, University Book, Jaipur, 2005.

[3] Ali khan, Shahid, Intellectual Property and Comparative Laws, Aditya Books, New Delhi, 2006.

[4] Anderman, Steven's, Intellectual Property Rights and Competition Law, Cambridge University Press, Cambridge, 2007.

not as highly acknowledged as other forms of intellectual property rights.[5]

A "trade secret" refers to a method, technique, operation, design, instrument, pattern, or compilation of information that is not widely recognized or easily discoverable. Corporations utilize this information to gain a competitive economic advantage. Trade secrets are not exposed to the general public anywhere in the world. Conversely, the owners of trade secrets maintain the information related to "trade secrets" to protect it from competitors. They achieve this by executing particular protocols for its administration, together with technological and legal safeguards. The owner either limits access to the "trade secrets" to a select set of individuals essential for the firm's successful operation or retains the information privately to protect the business. It is essential to protect "trade secrets" as the holder has a monetary motivation to keep them confidential. A company's internal business processes may be deemed a trade secret if they confer a competitive advantage over other enterprises within the same sector. A corporation can attain a competitive advantage in low-cost production by safeguarding its trade secrets, leading to an increase in its client base and earnings. The term "trade secrets" refers to information that confers a competitive advantage to its owner, as long as it is not easily obtainable or identifiable by competitors. Internal procedures, methodologies, techniques, formulas, client lists, and technical data exemplify elements categorized as "trade secrets." The formulation of trade secrets is profoundly affected by information, its acquisition, and its application. The average populace is oblivious to any "trade secrets." The safeguarding of "trade secrets" relies on maintaining confidentiality to protect the asset's secrecy.[6]

Businesses can sustain their competitive advantage in the market by employing creative methods, products, and concepts while simultaneously promoting their economic interests. It is essential to establish procedures to prevent unauthorized individuals from obtaining new ideas and expertise, sometimes referred to as confidential information or "trade secrets."

The creation of legislation protecting "trade secrets" against unauthorized disclosure is mostly due to common law. The Restatement (First) of Torts, issued in 1939, was the first endeavor to codify the judicially created law regarding trade secrets. Chapter 757 was the only chapter of the "Restatement (Second) of Torts" that elucidated the definition of a "trade secret" and the concept of misappropriation. [7]

Intellectual property rights (IPRs) are predominantly enforced at the national level rather than the international level. Nonetheless, international standards have been established to protect what are known as "Trade Secrets." The primary safeguard is offered by the "United Nations Organization" (UNO). A specialized organization within the United Nations Organization is responsible for protecting intellectual property rights. The organization is named the "World Intellectual Property Organization" (WIPO). It has offered member states advice for establishing a legal framework that effectively protects "trade secrets." The World Intellectual Property Organization (WIPO) urges its member nations to adhere to "Article 10bis" of the 1967 Paris Treaty, which addresses unfair competition in relation to "trade secrets." Nonetheless, the fact remains that the "WIPO" ruling does not impose any legal responsibilities on its member states, including India. The "World Trade Organization" (WTO) will finally be founded within the framework of international trade. All member nations are required to comply with its mandate. Minimum standard standards for the safeguarding of intellectual property were instituted for member countries under the "Trade Related Aspects of Intellectual Property Rights" (TRIPS) accord.[8] Each member countries is expected to create or amend its intellectual property rights law to align with the specified minimum international standards. India must preserve "Trade Secrets" in alignment with the "TRIPS" principles, recognized as

[5] Bentley, Lionel and Sherman, Brad, Intellectual Property Law, Oxford University press, New York, 2009.
[6] Batra, G.S, New Studies in Commerce and Business, Deep and Deep Publications, New Delhi, 1999.
[7] Acharya, N.K, Text book on Intellectual Property Rights, Asia law House, Hyderabad, 2006.
[8] The Making of Modern Trade Marks Law: The Construction of the Legal Concept of Trade Mark (1860-80), Cambridge University Press, 2005.

the common minimum standard, as they fall under "TRIPS" protection. The member nations of the "TRIPS" agreement must comply with the "Protection of Undisclosed Information" stipulation, as specified in Article 39.1. Furthermore, Indian courts use the common law methodology and offer some remedies in the context of "Trade Secrets." At the national level, it is established that there exists an indirect, latent, and covert reference to the safeguarding of "Trade Secrets" under section 27 of the "Indian Contract Act, 1872." Therefore, it is essential for every nation seeking to implement a comprehensive and successful intellectual property rights regime to create legislation that protects trade secrets. Moreover, the implementation of a comprehensive and effective "Trade Secrets" law is a fundamental requirement for the prosperity of the national economy.[9]

Trade secrets, essential components of intellectual property, allow firms to gain a competitive advantage. The realm of trade secret law poses several hurdles in trade secret cases, which might intensify the difficulties related to the protection and enforcement of trade secrets. Businesses must have a thorough understanding of these challenges to effectively manage legal issues related to sensitive information. The protection of trade secrets is complicated by evidentiary challenges and jurisdictional issues, among other factors.

MEANING AND NATURE OF INTELLECTUAL PROPERTY RIGHTS

Before understanding intellectual property, it is essential to have a fundamental grasp of the notion of property. The only difference between intellectual property and other types of property is that the former is created via the utilization of human intellect, or, in other terms, by employing cognitive capabilities. Intellectual property, as a category of property, encompasses all the attributes of property.[10]

The term "property" includes all items that can be owned, whether corporeal or incorporeal, material or intangible, visible or invisible, real or personal, actionable choices, or any entity possessing value that can be exchanged or utilized to enhance one's wealth or estate. The Encyclopedia Americana characterizes property as "any entity, tangible or intangible, that can be possessed or subjected to ownership." This includes all entities that may be regarded as property.[11]

Intellectual property is considered intangible and includes property related to ownership. It can be managed like any other asset, including assignment, mortgaging, and licensing, as it is categorized as property. Intellectual property is categorized as property under legal definitions, as it can be owned and administered. Although common law intellectual property is acknowledged as conferring property rights, this does not suggest that statutory intellectual property is considered valid property rights. The predominant category of intellectual property rights is designated as "chooses in action" rights, excluding possessory rights. Litigation is the exclusive means by which these rights can be upheld. Channel L.J. presented the following explanation of a decision in action: "Chose in action is a recognized legal term that refers to all personal rights that can solely be enforced through legal action rather than by physical possession."[12]

This has ramifications regarding the necessity for consideration and the conveyance of rights (often referred to as assignment). The allocation of intellectual property rights is often specifically governed by legislation. In such instances, additional examination of the assignment is unnecessary. Intellectual property constitutes a form of property; yet, the rights associated with it differ from those conferred upon other property types.

[9] Bhansali, S.R, Information Technology and Trade secrets, University Book House, Jaipur, 2003.
[10] Bodenheimer, Edgar, The Philosophy and Method of Law, Universal law Publishing Co. Ltd., Delhi, Indian Economy Reprint, 2004.
[11] Bouchoux, Deborah E., Intellectual Property: The Law of Trademarks, Copyrights, Patents, and Trade Secrets, Ceneage learning India Pvt. ltd,3rd edition, 2012.
[12] Deere Carolyn, The Implementation Game: The TRIPS Agreement and the Global Politics of Intellectual Property Reform in Developing Countries, Oxford University Press, New York, 2009.

CONCEPT OF TRADE SECRET

It is plausible to infer that an individual will experience pleasure from utilizing or owning a piece of property when they develop or obtain it. This satisfaction can be achieved by either using the property for personal use or deriving financial gain from it. Substantial amounts of work, knowledge, financial resources, and cognitive ability are essential for the development of self-constructed properties. If the property's development requires increased intellectual effort, the owner of a portion of this property utilizes intellectual property rights for its protection. [13]

Contemporary commerce is largely characterized by concepts and knowledge. The worth of a product can be determined by assessing the extent of invention, research, design, and testing involved in its successful development. Due to swift industrialization and globalization, it is essential to safeguard these principles. This is because these notions enable commercial entities to develop a competitive edge, sustain market superiority, and promote their economic interests. Consequently, firms, especially those operating in many countries, are required to safeguard their discoveries, designs, and other creations against unauthorized use, and to utilize this entitlement to negotiate compensation for such usage. These are presently designated as "Intellectual Property Rights" in prevalent terminology.

In the domain of intellectual property, individual creativity is essential. Intellectual property rights are regarded as a reward for innovative and proficient endeavors in the implementation of ideas. It is, in essence, more than just a recompense for the conception and execution of ideas. Intellectual property rights is a type of acknowledgment bestowed upon intellectual labor. These rights serve as an impetus for investors and innovators to develop and execute novel ideas and concepts within their communities. The holder of intellectual property rights will certainly have a competitive advantage in the commercial arena.[14]

In the contemporary age of globalization, the world is regarded as a unified market, leading to a substantial rise in competitiveness across all areas in many sectors. Given the current conditions, holding intellectual property rights will confer a significant advantage in the global arena. It is reasonable to say that the influence of "Intellectual Property Rights" has infiltrated every facet of human existence. Philosophers, ethicists, scientists, politicians, artists, lawmakers, entrepreneurs, economics, students, and the general public all derive value from it. It provides benefits to all individuals.[15]

The topic of intellectual property, inherently multifaceted, has attracted attention from individuals and places globally, regardless of their field or discipline. The contemporary period has raised a substantial issue with the safeguarding and management of intellectual property rights. The significance of intellectual property rights has been more acknowledged and comprehended by persons globally in recent times. As a result, the talks conducted under the General accord on Tariffs and Trade (GATT) led to the formation of the World Trade Organization (WTO), which included the Trade Related Aspects of Intellectual Property Rights (TRIPS) accord. The TRIPS agreement is seen critically significant in this perspective. This is a multinational agreement designed to safeguard the intellectual property rights of the signatory states. [16]

A notable category of intellectual property is a "trade secret." Although it does not adhere to the traditional notion of intellectual property, it has achieved considerable recognition in recent years. It is imperative to protect the interests of traders in the contemporary period of globalization. Traders are presently functioning on a worldwide level, with each individual responsible for sustaining market regulation. Although anti-competition laws exist to inhibit excessive market dominance, trade secret law

[13] Biagioli, Mario and Jaszi, Peter etal., Making And Unmaking Intellectual Property: Creative Production In Legal And Cultural Perspective, Chicago University Press, 2010.

[14] Blair, Roger D, Intellectual Property, Cambridge University, New York, 2005.

[15] Davidson, Alan, Law of Electronic Commerce, Cambridge University
Press, Cambridge, 2009.

[16] Acharya, N.K, Text book on Intellectual Property Rights, Asia law House, Hyderabad, 2006.

safeguards merchants' interests by protecting their business secrets. [17]

According to Oxford Dictionary, Trade means “the buying or selling of goods or services between people or countries”[18]. In common parlance or to put simply, trade refers to the commercial exchange of goods and services that involve utilization, licensing or transfer of an asset. Trade in relation to intellectual property rights highlights the relationship between commercial activity and the legal systems designed to safeguard intellectual property, driving innovation, economic growth and fair trade.

According to Oxford Dictionary, a secret means “something that is not or must not be known by other people”[19].

According to Section 1 clause 4, of the Uniform Trade Secrets Act, 1985[20], “Trade Secret means information, including a formula, pattern, compilation, program device, method, technique or process, that: (i) derives independent economic value, actual or potential, from no being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy”. [21]

A trade secret refers to any information utilized in the operation of a business or enterprise that is both valuable and confidential, providing an actual or potential economic benefit by giving an advantage over competitors.[22] A trade secret is a type of intellectual property consisting of confidential information that is not publicly available or easily accessible, holds economic value due to its secrecy, and is safeguarded through reasonable measures to ensure its confidentiality.

Trade secrets are a cornerstone of modern intellectual property law, enabling businesses to maintain a competitive advantage through proprietary knowledge, strategies, or methods that are not publicly known. These secrets can encompass a wide range of information, from formulas and recipes to marketing strategies, customer databases, manufacturing techniques, and software algorithms. For information to qualify as a trade secret, it must meet three key criteria: it must be secret, derive independent economic value from its secrecy, and be subject to reasonable measures to maintain its confidentiality.[23]

A "trade secret" is defined as any commercially valuable information or knowledge that is predominantly undisclosed. In actuality, "trade secrets" are protected under common law principles, notably the prohibition of "unjust enrichment" and "fiduciary duty." The principle of unjust enrichment dictates that it is impermissible for one individual to gain benefits at the detriment of another. By employing the "trade secrets" of others, you are effectively profiting off the labor of the individual who has dedicated time and effort to get knowledge or experience. This opportunity is exceedingly valuable. According to the notion of "fiduciary duty," an individual must abstain from exploiting knowledge in a manner that could harm the owner, if they have been permitted access to information and a relationship of trust is established. These approaches have been employed to safeguard what are known as "trade secrets." Moreover, the safeguarding of "trade secrets" under contract law can be accomplished by formulating a contract that mandates the obligation to preserve the confidentiality of the proprietary information. This is essential to maintain the secrecy of the information.

Article 41 of the "Paris Convention on Industrial Property" restricts the utilization of "trade secrets" owned by others, hence forbidding unfair competition in the economic domain. Such activities are deemed unethical competition under the treaty. Article 10bis of the Paris Convention addresses the safeguarding of "undisclosed information," highlighting the protection

[17] Chander, Harish, Cyber Laws and IT Protection, PHI Publications, New Delhi, 2012.
[18] Oxford Dictionary, “Trade”
[19] Oxford Dictionary, “Secret”
[20] Uniform Trade Secrets Act, as amended 1985
[21] Section 1 (4), Uniform Trade Secrets Act, 1985
[22] Section 39, Restatement (Third) of Unfair Competition, 1995
[23] World Intellectual Property Organization (WIPO), *What is a Trade Secret?*, https://www.wipo.int/tradesecrets/en/ last visited on 07 January 2025.

against "unfair competition."[24] This is enacted to protect "confidential information." It was constructed in the subsequent manner:

Article 10bis: Unfair Competition

1. The member states of the Union must guarantee that their citizens are sufficiently protected against unfair competition.
2. An act of unfair competition is characterized as any competition that directly contravenes professional rules of conduct within industrial or commercial contexts. Specifically, the subsequent items are unequivocally forbidden:
    - any acts designed to induce misunderstanding regarding the establishment, products, or commercial operations of a competitor;
    - false claims made during commercial transactions aimed at undermining the reputation of a business, its products, or the industrial or commercial endeavors of a rival; assertions or indications that, when employed in trade, may mislead the public about the nature of the products, the manufacturing process, their attributes, appropriateness for intended use, or the quantity of the products themselves.[25]

Article 39 of the "Agreement on Trade-Related Aspects of Intellectual Property Rights" (TRIPS) of the "World Trade Organization" (WTO) also pertains to the safeguarding of undisclosed knowledge. The TRIPS Agreement was enacted on January 1, 1995, establishing an international norm for WTO member nations to protect secret information. The agreement, while not specifically referencing "trade secrets," includes "confidential information" or "undisclosed information," which encompasses "trade secrets." Section 7 pertains to the "Protection of Undisclosed Information." It was constructed in the subsequent manner:

The TRIPS Agreement, Section 7: Article 39: 1. To ensure effective protection against unfair competition as stipulated in Article 10bis of the Paris Convention (1967), members must protect undisclosed information as per paragraph 2 and data submitted to governments or governmental agencies as per paragraph 3.[26]

Natural and legal entities possess the capacity to obstruct the unauthorized disclosure, acquisition, or utilization of information lawfully under their control in a manner that contravenes ethical commercial practices, provided that the information is:

(a) confidential, meaning it is not widely known or easily accessible to individuals within the relevant industry;
(b) commercially valuable due to its confidentiality; and
(c) has been protected through reasonable measures by the lawful holder to maintain its secrecy. [27]

When members require the submission of undisclosed test or other data, the generation of which demands considerable effort, to authorize the marketing of pharmaceutical or agricultural chemical products utilizing new chemical entities, they must protect the data from unfair commercial exploitation. Furthermore, members must safeguard such data against disclosure, except in circumstances where it is essential to protect the public interest or when there are no mechanisms in place to prevent unjust commercial exploitation of the data.

The protection of "trade secrets" in member states is dependent on their compliance with the stipulations of the "TRIPS Agreement." In several nations, trade secrets are protected by distinct laws. In India, "trade

[24] Agarwal, K.B, Some Thoughts on Modern Jurisprudence of IPR: Essays on Socio- Legal Philosophy, University Book, Jaipur, 2005.
[25] Deere Carolyn, The Implementation Game: The TRIPS Agreement and the Global Politics of Intellectual Property Reform in Developing Countries, Oxford University Press, New York, 2009.
[26] Brennan, Paul, Encyclopedia of Information Technology Law: law for IT Professionals, Universal Law Publishing, Delhi, 2007.
[27] Brian, Bix, Jurisprudence Theory and Context, Sweet and Maxwell, London, 2009.

secrets" are governed by common law principles and contractual responsibilities.[28]

The Indian government has released a draft of the "National Innovation Act" to foster research and innovation. The objective of this legislation, promulgated by the "Department of Science and Technology," is to create a comprehensive framework that fosters innovation. The aim of the "Draft National Innovation Act, 2008" is to provide a thorough legislative framework that fosters innovation and research. The draft of the Act submitted by the "Department of Science and Technology" incorporates three distinct techniques. This initiative is committed to fostering innovation via a framework supported by the public sector, the private sector, or a public-private partnership. It is also developing into a "National Integrated Science and Technology Plan," which represents the second option. Thirdly, the codification and consolidation of secrecy legislation to enhance the protection of sensitive information, "trade secrets," and innovations. [29]

NATURE AND DEFINITIONS OF TRADE SECRETS

The phrase "trade secret" in a business context refers to any confidential commercial information that confers a competitive advantage to a trader over other merchants. Industrial or manufacturing secrets, together with commercial secrets, are designated as "trade secrets." The unauthorized use of trade secret information by anyone other than the proprietor is deemed an unfair practice and a breach of trade secret rights. The preservation of "trade secrets" may rely on particular statutes or case law that set precedents for maintaining sensitive information, or it may be part of the broader principle of protection against unfair competition. This is dependent on the existing legal framework.

Trade secrets generally encompass sales techniques, distribution systems, customer profiles, advertising strategies, supplier and client listings, and manufacturing processes, defined in broad terms. These exemplify the diverse categories of material categorized as trade secrets. Industrial or commercial espionage, contractual violation, and breach of confidentiality are all actions that are unequivocally unjust concerning confidential information. Other practices that are clearly unjust include these, although the final determination of whether information becomes a trade secret will depend on the specific circumstances of each case. This category may include a formula, software, a procedure, a method, a device, a methodology, pricing data, customer databases, or any other proprietary knowledge.

The information must remain confidential and hidden from the public; it must require particular intellectual efforts; the holder of the information must regard it as confidential and have taken all possible steps to preserve its secrecy; and the information must possess distinct commercial value. These elements collectively form a "trade secret." [30]

Although the terminology used to define "trade secrets" may vary among definitions, three aspects are always applicable to all such definitions. The information must possess commercial value as a confidential asset. It must not be broadly recognized or easily obtainable by persons who generally handle such information. To maintain the confidentiality of the information, the rightful owner must implement adequate safeguards.[31]

The common law legal system has adopted a functional approach to the notion of "trade secrets." Historically, the courts have preferred to differentiate between information that resides in the public domain and that which does not. The defendant in Thomas Marshall Ltd. v. Guinle resigned from the post of managing director before the contractual period ended. He was barred from using or revealing any confidential information belonging to the company, both during his employment and after to his leave, in accordance with the stipulations of his employment contract. The plaintiff sought to maintain the

[28] Campbell, Dennis, E-commerce and Law of Digital Signatures, Ocean Publications, New York, 2005.
[29] Carey and Peter, Data protection: A Practical Guide to UK and EU law, 2nd Ed., Oxford University Press, 2004.
[30] Carswell, Consolidated Intellectual Property Statutes and Regulations 2001, Carswell, Toronto, 2001.
[31] Chander, Harish, Cyber Laws and IT Protection, PHI Publications, New Delhi, 2012.

confidentiality of this information. The defendant was obligated to comply with the court's directive to protect the confidential information.

The Law Commission of England and Wales has delineated four specific forms of knowledge that might be designated as "trade secrets." This category includes publicly showcased private collections of individual items. These secrets pertain to confidential compilations of data, strategic commercial intelligence, technology trade secrets, and highly specialized products.

Moreover, a "trade secret" is not need to have affirmative knowledge, such as a particular formula. It may also encompass study data that is ambiguous, unfavorable, or adequately indicative. This information would provide a knowledgeable individual with a competitive advantage that would not exist without the owner's investment in study. [32]

TRADE SECRETS AS INTELLECTUAL PROPERTY RIGHT

"Trade secrets," like to other forms of intellectual property rights, can be highly beneficial for an organization's growth and sustainability. Companies implement necessary strategies to safeguard their proprietary information, technological knowledge, and operational procedures from competition. The ownership of such data or information may be driven by commercial objectives to gain a competitive advantage over other enterprises in the sector. [33]

The protection of "trade secrets" is an essential aspect of intellectual property. Trade secrets were positioned just below patents and above copyright, trademark, and other protections according to a widely acknowledged index designed to measure the extent of intellectual property protection in emerging economies, particularly in Latin America, including Chile and Mexico. Furthermore, the index identified trade secrets as the paramount protection. The level of protection afforded to trade secrets directly impacts investment choices. Corporations may commit disproportionate resources to the physical protection of their secrets instead of investing in innovation if trade secrets are insufficiently protected or relevant laws are not enforced rigorously. Conversely, it may completely restrict business investments.[34]

The Spotless Group, an Australian hospitality firm, prevailed in its 2010 case against a former employee for the improper use of confidential information in the United States. Paul Reynolds was employed for Spotless from 2007 to 2009. Despite his employment at Spotless, Mr. Reynolds commenced exploring alternate prospects and initiated contact with Blanco Catering, a rival catering firm. Upon acquiring an investment in Blanco, Mr. Reynolds commenced supplying the company with various confidential information, including client and supplier details, unique financial models, and sensitive financial data. Mr. Reynolds aided Blanco in submitting a bid concurrently with Spotless's proposal for a significant long-term catering contract to service conference facilities at the Adelaide Zoo. The Zoo contract was granted to Blanco, as Blanco's final rental estimate matched Spotless's final rental bid precisely. The Federal Court of Australia determined that Mr. Reynolds violated his commitments to Spotless. Nonetheless, the court concluded that Spotless failed to sufficiently prove that it would have successfully obtained the Zoo contract had Mr. Reynolds not misappropriated confidential information belonging to Spotless. Consequently, the court faced difficulties in ascertaining the suitable amount of damages to grant to Spotless. Spotless demanded damages over one million dollars for the income loss incurred by the Zoo effort. The court awarded $100,000. This case illustrates the implementation of protections for trade secrets and the recognition of such secrets. [35]

A separate instance is also cited in this context. In 2012, federal prosecutors in the Eastern District of Virginia charged Kolon Industries, Inc., a South Korean corporation, along with some of its executives. They were accused of conspiring to obtain trade secrets from the Japanese firm Teijin and the American

[32] Chander, Harish, Cyber Laws and IT Protection, PHI Publications, New Delhi, 2012.
[33] Desai, R.G, Information Technology and Economic Growth: Study for Leading States in India, Rawat Publications, Jaipur, 2005.
[34] Colston, Catherine and Middleton, Kirsty, Modern Intellectual Property law, Cavendish, London, 2006.
[35] Acharya, N.K, Text book on Intellectual Property Rights, Asia law House, Hyderabad, 2006.

corporation DuPont. Kevlar para-aramid fiber, produced by DuPont, and Twaron para-aramid fiber, produced by Teijin, were the only para-aramid fiber products widely available for commercial usage for several decades. Para-aramid fiber is utilized in body armor, fiberoptic cables, and industrial and automotive equipment. Kolon aimed to develop a para-aramid fiber to rival Kevlar and Twaron. From July 2002 to February 2009, Kolon engaged current and former employees of the two companies as "consultants," during which he solicited the disclosure of secret information. This information included specifics about the manufacturing process, client and price lists, costs and profit margins, market trends, and company strategies.[36] A forfeiture of $225 million is being sought in connection with the indictment. Additionally, Kolon executives could face a maximum term of thirty years in jail for obstruction of justice and theft of trade secrets if deemed guilty. In 2009, DuPont commenced a civil complaint against Kolon. The plaintiff's success in civil action depends on the defendant's duty to maintain and provide relevant evidence. This sharply contrasts with a criminal case, where the prosecution can secure a search warrant to gather evidence. In this instance, numerous communications were deleted by prominent Kolon workers in contravention of the law shortly after DuPont initiated its lawsuit. DuPont successfully substantiated its case against Kolon due to the loss of evidence, resulting in a verdict of $920 million and an injunction against the defendant.

Indian courts have consistently affirmed the safeguarding of trade secrets, typically by a common law action for breach of confidence, which is effectively analogous to a breach of contractual duty, and grounded in equitable principles. The proprietor of "trade secrets" may seek various remedies, including the issuance of an injunction, the prohibition of the licensee from disclosing the "trade secrets," the retrieval of confidential and proprietary information, and restitution for any damages incurred due to the disclosure of "trade secrets." [37]

IMPORTANCE OF TRADE SECRET IN BUSINESS

1. Competitive Advantage

Trade secrets are a cornerstone of a company's competitive strategy. They enable businesses to sustain an advantage by safeguarding proprietary knowledge that others do not have access to. For example, the formula for Coca-Cola has been one of the most well-guarded trade secrets in the world, giving the company a unique edge in the beverage industry for over a century. By keeping such information confidential, businesses can differentiate themselves and secure a unique position in the market.[38]

2. Cost-Effective Protection

Unlike patents or other forms of intellectual property, trade secrets do not require a formal registration process, which can be costly and time-consuming. Companies can avoid legal fees, application costs, and the long waiting periods often associated with patent applications. This makes trade secrets an attractive option for businesses, especially startups and small to medium enterprises (SMEs) that operate on limited budgets.[39]

3. Flexibility and Longevity

Trade secrets offer a level of flexibility that other forms of IP protection cannot. For example, patents have a limited duration (usually 20 years from the filing date), after which the information enters the public domain. In contrast, trade secrets can be protected indefinitely, provided they remain confidential and retain economic value. This feature is particularly advantageous for businesses seeking to maintain long-term competitiveness without the constraints of an expiration date.

Trade secrets are an indispensable asset for businesses, enabling them to safeguard valuable information,

[36] Principles of Intellectual Property Law, Cavendish Publishing Ltd., London, 1999.
[37] Carswell, Consolidated Intellectual Property Statutes and Regulations 2001, Carswell, Toronto, 2001.
[38] Kewanee Oil Co v Bicron Corp, 416 US 470 (1974).
[39] Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), Article 39.

maintain a competitive edge, and drive innovation. Their cost-effective and flexible nature makes them particularly attractive for companies of all sizes, from startups to multinational corporations. However, protecting trade secrets requires a proactive approach, including the implementation of robust security measures, the use of confidentiality agreements, and compliance with legal frameworks.

While trade secrets offer significant advantages, they also come with challenges, such as the risk of unauthorized disclosure and the need to balance confidentiality with transparency. By understanding the importance of trade secrets and adopting best practices for their protection, businesses can unlock their full potential and contribute to a dynamic and innovative global economy.[40]

TRADE SECRET AND MISAPPROPRIATING

Misappropriating intellectual property, such as trade secrets, involves the unauthorized acquisition, disclosure, or use of confidential information that belongs to someone else. In the context of trade secrets, misappropriation typically occurs when an individual or entity unlawfully obtains or exploits this information without the owner's consent, often in violation of legal agreements, trust, or statutory obligations. Misappropriation can occur in various scenarios, such as a former employee sharing a company's proprietary information with a competitor or a business partner using trade secrets beyond the scope of a partnership agreement. Common examples of misappropriation includes – theft or espionage, breach of contract, improper disclosure, unauthorized use. Misappropriation of trade secrets occurs when someone unlawfully acquires, uses, or discloses such confidential information without the owner's consent. This can happen through various means, including theft, breach of confidentiality agreements, industrial espionage, or improper disclosure by employees or business partners. The consequences of trade secret misappropriation can be severe, often resulting in significant financial losses, reputational damage, and diminished competitive advantage for the affected business.3 Proving trade secret misappropriation is often challenging due to the complex evidentiary and procedural requirements involved. These challenges arise from the need to demonstrate the existence of a trade secret, establish that it was misappropriated, and show that harm resulted, all while safeguarding the very information at the heart of the dispute.[41] The main challenges include:

EVIDENTIARY CHALLENGES

One of the fundamental difficulties in trade secret litigation is proving that the information in question qualifies as a trade secret. Unlike patents or trademarks, which require formal registration, trade secrets rely on their inherent secrecy and commercial value. Plaintiffs must demonstrate that:

- The information was indeed a trade secret (i.e., it had economic value due to its secrecy).
- Reasonable steps were taken to protect its confidentiality (such as NDAs and security protocols).
- The defendant misappropriated the trade secret through improper means.[42]

A significant issue in India is the absence of a dedicated trade secret law. Misappropriation cases are usually litigated under contract law, common law principles, or through other statutes such as the Information Technology Act, 2000, which does not provide comprehensive protection. [43]

In the United States, the Defend Trade Secrets Act (DTSA), 2016, provides a structured legal remedy, but plaintiffs still face significant hurdles in gathering evidence due to the clandestine nature of misappropriation. [44]

[40] WIPO (n 1).
[41] Cornish, William, Intellectual Property Omnipresent, Distracting, Irrelevant?, Clarendon Law Lectures, Oxford University Press, London, 2004.
[42] World Intellectual Property Organization (WIPO), *WIPO Guide to Trade Secrets and Innovation*, https://www.wipo.int/web-publications/wipo-guide-to-trade-secrets-and-innovation/en/
[43] Raman Mittal, "Trade Secret Protection in India: A Comparative Perspective", Indian Journal of Law and Technology, Vol. 14, pp. 59-72 (2018).
[44] US Defend Trade Secrets Act (DTSA), 2016, 18 U.S.C. §1836 (b)(1).

Unlike patent infringement, which can be established through publicly available records, trade secret misappropriation typically involves covert theft, making evidence collection difficult. [45]

1. Establishing the Existence of a Trade Secret: Plaintiffs must prove that the information meets the legal definition of a trade secret. This involves demonstrating that it is confidential, provides economic value due to its secrecy, and is protected by reasonable measures. Courts may scrutinize the plaintiff's efforts to maintain confidentiality, such as security protocols or use of non-disclosure agreements (NDAs).
2. Proving Misappropriation: Direct evidence of misappropriation (e.g., theft or unauthorized use) is rare. Plaintiffs often rely on circumstantial evidence, such as unusual behavior by a former employee or similarities between the defendant's product and the alleged trade secret. Connecting these dots convincingly can be difficult.
3. Quantifying Damages: Plaintiffs must establish that the misappropriation caused tangible harm, such as lost profits, diminished market share, or unjust enrichment of the defendant. This often requires complex financial analysis and expert testimony, which can be heavily contested in court.[46]

PROCEDURAL CHALLENGES

Procedural challenges vary significantly between jurisdictions. In India, the lack of a dedicated legal framework results in inconsistent enforcement. Courts rely on contract-based claims or principles of equity, confidentiality, and breach of trust, leading to uncertainty in judgments.[47]

In contrast, U.S. courts allow for civil and criminal remedies under the Economic Espionage Act, 1996, and DTSA, 2016, which include injunctive relief and monetary damages. However, procedural hurdles persist, such as establishing that the misappropriated information qualifies as a trade secret and meeting the high burden of proof required for civil litigation. [48]

The European Union introduced the EU Trade Secrets Directive, 2016, to harmonize trade secret protection across member states. However, national variations in implementation and enforcement create inconsistencies, making cross-border litigation complex[49]

1. Protecting the Trade Secret During Litigation: Litigation involves disclosure of evidence, which risks exposing the trade secret to the opposing party or the public. Protective orders, sealed filings, and in-camera reviews (where evidence is reviewed privately by the judge) can help, but they are not foolproof and require careful management.
2. Discovery Limitations: Plaintiffs may need access to the defendant's internal documents or processes to prove unauthorized use. However, courts may limit discovery to protect the defendant and his legitimate business interests, making it harder for the plaintiff to gather evidence.
3. Proving Causation: Plaintiffs must show a clear link between the misappropriation and the harm they suffered. For example, proving that a competitor's success was directly tied to the use of a stolen trade secret can be challenging, particularly if other factors contributed to their success.[50]

Proving trade secret misappropriation is a challenging and multifaceted legal process. Central to a successful claim is establishing that the contested information

[45] Michael Risch, "Why Do We Have Trade Secrets?", Marquette Intellectual Property Law Review, Vol. 11, No. 1, pp. 1-22 (2007)
[46] Drahos, Peter, The Philosophy of Intellectual property, Dartmouth Publishing Company, Aldershot, England,1996.
[47] Priya Garg, "The Legal Regime of Trade Secret Protection in India: Issues and Challenges", Journal of Intellectual Property Rights, Vol. 24, pp. 193-206 (2019)
[48] Economic Espionage Act, 1996, 18 U.S.C. (1831-1839)
[49] European Commission, *Directive (EU) 2016/943 on the Protection of Trade Secrets*, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016L0943
[50] Dreyfuss, Rochelle C., Strandburg, Katherine J. (ed.)., The Law and Theory of Trade Secrecy: A Handbook of Contemporary Research, Massachusett, USA. 2011.

qualifies as a trade secret. This involves demonstrating that the information is not publicly available, provides a significant competitive advantage, and has been safeguarded through reasonable measures. Such measures might include restricted access, confidentiality agreements with employees and contractors, secure storage of sensitive materials, and routine audits to identify and address vulnerabilities. After proving the existence of a valid trade secret, the plaintiff must then show that the defendant acquired the information through improper means. This could include theft, bribery, industrial espionage, or a violation of a confidentiality agreement. For example, if a former employee takes proprietary information upon leaving a company, the plaintiff must establish a direct connection between the employee's access to the trade secret and the defendant's use of it.[51]

The plaintiff must also demonstrate significant similarities between the defendant's use of the information and the protected trade secret. This involves proving that the defendant's product, process, or service incorporates the misappropriated information in a way that benefits them. Expert testimony is often critical to compare and analyze the plaintiff's trade secret with the defendant's activities. Calculating damages in a trade secret case is another complex aspect. Plaintiffs may seek compensation for lost profits resulting from the defendant's unauthorized use or attempt to determine the monetary value of the trade secret itself. This valuation process can be subjective and frequently relies on expert witnesses, such as economists or valuation specialists, to provide credible assessments.[52]

Securing effective remedies is another hurdle in trade secret cases. Injunctive relief, which aims to stop the defendant from further using or disclosing the misappropriated information, is a common remedy. However, obtaining an injunction can be difficult, particularly if the defendant has already integrated the trade secret into their operations. Given these complexities, it is essential for businesses to adopt proactive measures to protect their trade secrets. This includes implementing strong security protocols, conducting regular internal audits, and training employees on confidentiality obligations. Additionally, seeking guidance from experienced intellectual property attorneys can help businesses navigate the legal intricacies of trade secret protection and develop effective strategies for enforcement.

In conclusion, trade secret protection is vital for businesses seeking to maintain a competitive edge in their industries. However, proving misappropriation in legal disputes can be a complex and resource-intensive process. Successfully navigating these challenges requires a proactive approach to safeguarding trade secrets, including implementing robust security measures, training employees, and fostering a culture of confidentiality. During litigation, strategic legal planning, supported by expert testimony and thorough documentation, is essential to overcoming evidentiary and procedural obstacles. While the legal landscape for trade secretspresents inherent difficulties, these can be mitigated by employing best practices in both prevention and enforcement. By prioritizing proactive protection and strategic planning, businesses can effectively defend their trade secrets and minimize the risks associated with misappropriation, ensuring sustained innovation and competitive advantage.

Functional Scope of the Proposed Legislation – Trade Secret (Protection) Bill, 2024

The Law Commission of India, in its 289th Report[53], undertakes a nuanced study of trade secrets and economic espionage, ultimately recommending a sui generis statute titled the Protection of Trade Secrets Bill, 2024. This draft bill aims to fill a longstanding legislative vacuum in India by proposing a standalone legal mechanism to address misappropriation of confidential business information. It emphasizes the evolving commercial significance of trade secrets in a digital economy and seeks to align Indian law with obligations under Article 39 of the TRIPS Agreement.

[51] Cases and Materials on Intellectual Property, Sweet and Maxwell, London, 2006.

[52] Cornish, Graham P., Copyright Interpreting The Law For Libraries, Archives and Information Services, Facet Publishing, U.K, 2009.

[53] Law Commission of the India, Report No. 289 on Trade Secrets and Economic Espionage (2024)

The draft bill's structure mirrors global approaches, with notable inspiration from the U.S. Defend Trade Secrets Act, 2016, the Uniform Trade Secrets Act (UTSA), and the EU Directive 2016/943. It defines "trade secret" broadly, covering any confidential commercial or technical information that derives independent economic value from its secrecy. The Bill proposes civil remedies and outlines exceptions for whistleblowers, compulsory licensing, and state usage in the public interest.

ISSUES HIGHLIGHTED AND IDENTIFIED

Despite the Commission's thorough comparative review and consultation with stakeholders, the draft bill is not without its shortcomings:

(i) Conceptual Ambiguity Around "Property"

One core issue is the Bill's avoidance of explicitly classifying trade secrets as "property." This reluctance stems from the jurisprudential tension between traditional IP rights, which are inherently public and require disclosure, and trade secrets, which thrive on perpetual confidentiality. Courts in jurisdictions like the U.S. have recognized proprietary interests in trade secrets, but Indian jurisprudence remains cautious.

(ii) Enforceability and Procedural Hurdles

The Bill does not address how claimants can meet the high burden of proving secrecy, misappropriation, and damage. Indian courts already struggle with the evidentiary burdens under equitable doctrines. Codifying these principles without strengthening procedural mechanisms such as confidentiality clubs, discovery protocols, or protective orders may not yield practical enforcement.

(iii) Overlap and Conflict with Existing Laws

Section 27 of the Indian Contract Act, 1872, and common law torts already address restrictive covenants and misuse of confidential information. Without clarity on how the new law interfaces with these doctrines, the risk of legal fragmentation looms large.

(iv) Absence of Criminal Liability

While economic espionage often involves cross-border corporate or state actors, the proposed framework does not adequately cover punitive sanctions for willful espionage or industrial sabotage. In contrast, the U.S. criminalizes such acts, acknowledging their gravity in national economic security.

THEORETICAL CRITIQUE

The bill's foundations are philosophically challenged by the inability to squarely place trade secrets under conventional IP theories. Natural rights theory, which justifies property through labor and creation, struggles to accommodate the transient, intangible nature of trade secrets. Utilitarian frameworks criticize the indefinite monopoly granted by secrecy, arguing it hampers innovation and public access to knowledge.

The Personhood theory, emphasizing personal attachment to creation, is equally ill-fitting for trade secrets, which are typically owned by corporations and often unrelated to individual identity or creativity.

Suggestions and Reformative Recommendations

To fortify the legislative framework, the following measures are recommended:

(i) Incorporate a Trade Secret Registry (Voluntary)

Establish a confidential registry—akin to trademark databases but restricted—to enable proof of ownership and reduce litigation complexity. Access can be limited to courts under seal.

(ii) Introduce Criminal Sanctions for Espionage

Economic espionage involving theft by foreign entities or cyber-intrusion should attract criminal liability, potentially by integrating provisions under the IT Act or IPC amendments.

(iii) Mandate Confidentiality Protocols in Court Proceedings

Incorporate statutory guidelines for creating confidentiality clubs, in-camera hearings, and anonymized pleadings to protect sensitive information

during litigation. This mirrors provisions seen in Waymo LLC v. Uber Technologies Inc[54].

(iv) Explicit Interface with Existing IP & Contract Law

Clarify the Bill's supremacy or subordination to existing laws, particularly where trade secrets intersect with employment contracts, patents, and copyright claims.

(v) Enable Cross-border Enforcement

India must explore bilateral/multilateral cooperation models to enforce trade secret judgments across jurisdictions, given the digital and global nature of modern trade.

The Law Commission's draft Bill is a much-needed step toward coherent trade secret protection in India. However, the absence of procedural rigour, definitional clarity, and enforceability mechanisms could diminish its effectiveness. For the legislation to be successful, it must not only reflect India's TRIPS commitments but also embrace global best practices tailored to India's complex socio-economic and legal landscape.

CONCLUSION

The common law safeguards trade secrets within the framework of Indian commerce. The Indian government has implemented the National Innovation Act to provide a judicial interpretation of section 27 of the Indian Constitution, aiming to codify proprietary information and trade secrets. If adopted, the measure would enable India to meet its commitments under the TRIPS agreement regarding the protection of trade secrets from infringement. The notion of confidential information is defined by numerous intricacies and dimensions, requiring a distinct legal framework. The principal aim of the proposed national innovation act was to provide a foundational legislative framework designed to enhance commerce and innovation by protecting trade secrets. The most critical aspects of the bill are the provisions related to trade secrecy and breach of confidentiality. This proposed legislation also has a substantial number of model provisions. The provision contains various faults that necessitate rectification due to the existence of several unjust and conflicting clauses. Section 11 has a provision that empowers the courts to provide public information to promote the public interest. The draft defense omits reference to the public interest, rendering this part highly harmful to the trade secret owner. This leads to ambiguity concerning the concept of the public interest, which is likewise overly vague.

Moreover, Section 12(4) is deemed inequitable and harmful to the individual possessing the trade secrets. This section has suggested an exception to the infringement, akin to the compulsory licensing required for trade secrets. Moreover, one could contend that it would incentivize an individual to appropriate a manufacturer's trade secret to manufacture their product at a lower cost while incurring a ten percent royalty fee.

The misappropriator may be required to provide a deposit equal to ten percent of the damages claimed by the complainant as a prerequisite for defending the case during the interim injunction period, according to Section 13(3). This requirement contravenes the essential tenets of natural justice, which encompass the right to an unbiased hearing, and directly opposes those values. The defendant is barred from securing the remedy if they do not remit ten percent of the damages sought by the complainants.

No criminal sanctions exist for the unauthorized acquisition or misuse of confidential material. This would be more beneficial if a non-disclosure agreement were established in a standardized style. This would eliminate any uncertainty that may occur during the litigation process concerning the contract's validity, which underpins the assertion of trade secrets as stipulated in section 8(1).

In India, where the literacy rate is comparatively low, the legislation should clearly stipulate that trade secrets are protected in the absence of any formal agreement. An uncertainty was detected throughout the drafting process. The enacted regulation must incorporate an exclusion clause to ascertain if the objects in question are exempt from the trade secret classification, even if they meet the criteria for such

[54] Waymo LLC v. Uber Technologies Inc, No. 17-cv-00939-WHA (N.D. Cal. 2018)

classification. The exemption clause may include the following:

- The investigation of whether the product's contents present a real or potential risk to consumer health.
- If the content poses a health risk.
- Disclosure of information is imperative when it is essential to protect paramount public interests.
- if the protection is required for national interest.
- A newly developed skill acquired by an employee during the interim period is not considered a trade secret at the moment of acquisition. Any knowledge obtained through immoral means is not considered part of trade secrets.

The comprehensive range of intellectual property rights is affected by the absence and insufficiency of T.S. law, alongside the role of intellectual property rights, especially trade secrets, in the economy at both national and international levels.

FINDINGS

The legal basis for the protection of trade secrets in India is constituted by common law and the legal interpretations of Section 27 of the Indian Contract Act, 1872. India lacks specialized legislation or rules to protect intellectual property rights, notwithstanding the TRIPS Agreement's provisions for trade secret protection. This indicates that trade secrets are not acknowledged in India in the same way as other forms of intellectual property protection. The existing laws, encompassing both common law and statute law, are markedly restricted, inadequate, and non-affirmative in character and scope. Moreover, the overall poll findings clearly indicated that the predominant opinions are unfavorable, regardless of the existing positions on the safeguarding of trade secrets. It is essential to protect trade secrets to enhance the national economy. The National Intellectual Property Rights Policy of 2016 lacks any suggestions or directives about the enactment of a Trade Secret Protection Act. This is an additional significant point to contemplate. Nonetheless, a chance exists. The Government of India has taken trade secrets into account while formulating its policies. The IPR Policy 2016, sanctioned by the Union Cabinet, delineates a framework for the future of intellectual property rights in India. The primary objective is to advance research and studies to guide future policymaking, while safeguarding confidential information, including trade secrets. The Federation of Indian Chambers of Commerce and Industry (FICCI), a leading and historic business organization in India, has endorsed the legalization of trade secret rules to eliminate any gaps in their protection. Regarding Indian legislation. This clearly indicates that India urgently requires specialized regulation regarding trade secrets. The international community does not recognize India's trade secret system, hindering its ability to reap the advantages of innovation and a share of the investment that would typically arise from a globally unified trade secret law. A primer on intellectual property rights and trade secrets Trade secrets are regarded as one of the most crucial forms of intellectual property rights. In simple terms, it is essential to safeguard it. Robust legal protection for trade secrets is vital due to their confidential and commercial nature. To establish a trade secret, three critical criteria must be satisfied, irrespective of location: 1) the information must not be generally known or readily available; 2) the trade secret must possess commercial value; and 3) the owner must implement reasonable means to safeguard the secrecy. Each model law must incorporate an exclusion clause describing the elements to be omitted from the trade secret classification. This will ensure that the regulations are both clear and understandable. In circumstances where the safeguarding of investors, proprietors, corporations, entrepreneurs, and other entities is paramount, it is essential to incorporate such a provision to uphold the public or national interest. This arises from the need to restrict the safeguarding of trade secrets as intellectual property rights to ensure that trade secrets are examined fairly and appropriately. The phrase "common law trade secret" includes the historical context of trade secret protection under common law and the various definitions of the term. A breach of confidentiality law is legislation intended to prohibit the revelation of sensitive information.

The common law delineates the remedies available for such a breach of duty. Confidential information and trade secrets are protected from disclosure and misuse by an employee or former employee under common law, even without a contractual commitment. This protection applies irrespective of the employment status of the individual, whether current or past

employee of the organization. The concept of fiduciary duty is governed by common law. A lawsuit may be filed against an individual who improperly utilizes another's trade secret under common law. The common law retains its importance and is utilized in circumstances where alternative laws prove inadequate, notwithstanding the enactment of numerous civil and criminal statutes in various nations to protect trade secrets. Despite the efficacy of common law remedies, numerous questions remain unanswered. The subsequent text provides a description of them:

1. The protection of the Common Law is of the utmost importance for the resolution of immediate issues or those that arise as a consequence of the application of pre-existing principles and rules. Nonetheless, the Common Law does not require safeguarding against potential future concerns that may emerge from situations analogous to those presently under consideration. They impede the judicial system's capacity to meet unprecedented circumstances.
2. If the established principles and rules from the prior case cannot be resolved, it is essential to either modify some of the current principles and rules or formulate wholly new ones. This is because general law addresses all matters within a particular environment. However, it is also possible that general law may address each issue in the case of a completely different situation. This embodies the notion of absolute obligation and responsibility, which underpins the common law system. The law is ever adapting to align with contemporary conditions. This is the exclusive and definitive rationale for the necessity of a trade secret. Intellectual property rights are confined to the delineation of rules and regulations throughout all jurisdictions with a common legal framework, despite their inherent foreseeability or predictability. The common law system is unable to make forecasts and cannot resolve difficulties that have not yet arisen in the future. The safeguarding of trade secrets within the common law framework is constrained by an inherent limitation of the existing legal system.

   Variations in the implementation of trade secret protection are possible. Civil law, which governs civil legal matters, exemplifies the most common recourse for the misappropriation of a trade secret. Benefit accounts and injunctive action are among the most commonly utilized legal remedies globally.
3. The RTI Act of 2005, the Competition Act of 2002, the Indian Penal Code of 1860, and the Information Technology Act of 2000 are not exclusively designed to deter the misappropriation of trade secrets; hence, they are inadequate. The chapter on Trade Secrets and Indian Intellectual Property Rights illustrates that the World Intellectual Property Organization (WIPO) and the Trade Related Intellectual Property Rights (TRIPS) provide equivalent protection for sensitive information. These international instruments are standardized formats that are followed by most governments globally. Conversely, India exhibits insufficient safeguards for trade secrets, although its affiliation with the United Nations and its endorsement of the TRIPS Agreement. On January 1, 1995, the Trade-Related Intellectual Property Rights Agreement (TRIPS) was enacted, requiring various nations to amend their domestic legislation to comply with the Agreement. The LDC was originally allocated 11 years for 200 individuals, which was later extended to 2013 for the general public and to 2016 for drug patents and unpublished data. The LDC was allocated 11 years until 200, whereas developing nations and economies in transition were allotted five years. Developed nations were allocated one year. In contrast to patents, the Trade Secret Protection Act has not been allocated a schedule for its drafting and implementation. Consequently, a significant number of member nations have failed to enact national law that effectively safeguards trade secrets in compliance with the TRIPS Agreement.
4. The government is considering a prospective policy, as indicated by objective 3.8.4 of the National Intellectual Property Rights policy, although it is not designed to be a legislative instrument. Nonetheless, they are reluctant to establish the trade secret legislation in India. It is essential to eradicate particular vulnerabilities from the National Innovation Bill of 2008. The public interest, as articulated in Article 11, is excessively broad to be precisely defined. Paying allegiance in accordance with section 12(4) is also

considered an unfair trade secret. The essential tenets of natural law, which guarantee an unbiased trial, directly contradict Clause 3 of Section 13, which stipulates that a condition must be fulfilled to contest a claim. to examine the possible repercussions of the abuse of confidential information. The nondisclosure agreement is not prepared in a typical manner, so elevating the likelihood of confusion. Ambiguity may also emerge during the editing process. Moreover, it was proposed that a disclaimer of some kind be incorporated. The growth of the economy depends on the safeguarding of trade secrets, as demonstrated by research undertaken globally. The increase of foreign direct investment across many economic sectors is indicated by a country that efficiently protects intellectual property laws, including trade secrets.

SUGGESTIONS

Trade secrets are highly vulnerable to exposure. The personnel of the franchisor, comprising master franchisors, developers, subfranchisors, and the franchisors themselves, possess complete access to the franchisor's "trade secrets." As a result, each is well-positioned to contend for the franchisor's market share. Prospective franchisees are sometimes provided with an abundance of relevant information. If the individual departs from the franchisor's network, they may become the franchisor's most significant competitor, assuming the franchisor's "trade secrets" are adequately protected. — 18 Guriqbal Singh Jaiya is the Director of the Small and Medium Enterprise Division at the World Intellectual Property Organization. India need a legal framework that is comprehensive, efficient, resilient, and equitable to protect trade secrets as intellectual property, including both affirmative and negative measures. If this does not happen, it will be too late to leverage the growing high-value advantages necessary for developing India's strategic partnership economy and for promoting and protecting commerce in India. India requires broad and stringent legislation regarding trade secrets for various reasons. The common law protection of trade secrets, based on trust law, inadequately addresses numerous essential areas, including procedural regulations. Secondly, the Indian civil law system lacks particular provisions for the protection of trade secrets, indicating the absence of statutory safeguards. In the strictest sense, no legislation exists that protects trade secrets. Academics have recognized certain constraints and shortcomings in common law. "Common law" is an evolving notion rooted in the practicalities of certain factual situations and represents the distilled wisdom of many persons, including political leaders. John Borrows, former Queen's Counsel, Commissioner of the Law Commission of New Zealand, and Emeritus Professor at the University of Canterbury, recognized this.

The second issue is its ambiguity in various contexts; certain passages are perceived as overly simplistic and moralistic, while others lack clarity. The third argument posits that the common law is marked by hypocrisy and falsification, a matter that has been highlighted to the public. The specialist assessed the severely limited access judges possess in common law matters, along with the constraints on its application in future instances, in the fourth position. Another observation was that the ambiguity and inadequacy of legislation are more pronounced in certain locations than in others.