

An overview of the challenges and developments of trade secret protection in India under Article 39(2) TRIPS Agreement in IP Regime-As a Glance

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Abstract—According to the World Intellectual Property Organisation (WIPO), Trade Secret means rights over confidential information. such rights can be sold or licensed. It should be monetarily valuable because of it being a secret and only few people should know it. It is also necessary that the owner of such information has taken steps to keep the information a secret. Examples of confidential information (or trade secrets) include: data compilations, designs, blueprints, maps, algorithms, personnel records, ingredient lists, financial information etc. The jurists and judicial courts have often drawn intersectional circles of discussion between trade secrets and other legal regimes such as tort, contract law, property laws and other IPs such as copyright, patent etc . This article studies the general concept of trade secrets, how international conventions protect them and how India has approached the same. In India, especially, there is no sui generis legislation for trade secrets or confidential information as of yet. The judicial courts have protected trade secrets under various different laws till now. However, there was an attempt made in 2008 (via National Innovation Bill, 2008) to introduce a sui generis legislation for the trade secrets. This article also studies how the Indian judiciary has dealt with cases regarding trade secrets.

Index Terms—Trade Secret, National Innovation Bill, India, Intellectual Property Rights, Contractual Law, TRIPS

I. INTRODUCTION

Trade secrets are crucial to modern business strategy, particularly in sectors driven by innovation, technology, or unique practices. Unlike patents, which require formal registration and public disclosure, trade secrets are protected through confidentiality and non-disclosure agreements (NDAs). In India, the growing importance of trade

secret protection is driven by intensifying local and global competition. However, the legal framework for trade secret protection has been underdeveloped, requiring businesses to rely on a mix of contract law, common law, equity principles, and evolving statutory protections. This article examines the legal landscape, challenges, and developments in trade secret protection in India.

II. TRADE SECRET MEANING

A trade secret is defined as any information that is not generally known or easily accessible to others and provides a competitive edge to its holder. The critical characteristics of a trade secret are: Confidentiality: The information must be kept confidential and not publicly disclosed. Economic Value: The secret information must have economic value due to its secrecy. Reasonable Efforts to Maintain Secrecy: The owner of the trade secret must take reasonable measures to protect it from unauthorized access. Examples of trade secrets include manufacturing processes, customer lists, formulas, business strategies, marketing techniques, and algorithms¹.

Trade Secret Protection Under Indian Law

India does not have a specific, standalone statute dedicated solely to the protection of trade secrets. However, India is a signatory to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). According to Article 39(2), TRIPS provides

¹Tata Motors Limited & Anr v State of Bengal (GA No. 3876 of 2008 in WP No. 1773 of 2008), court relied on the definition of the term 'trade secret' in Black's Law Dictionary.

member countries with the flexibility to establish laws that prevent the unauthorized disclosure and use of specific information.

In India, trade secrets are protected under a combination of legal principles, including:

Common Law (Contractual Obligations): Trade secret protection in India relies primarily on contract law. Confidentiality and non-disclosure agreements (NDAs) are key tools for safeguarding sensitive information, imposing legal obligations on employees, contractors, and third parties to maintain confidentiality. Breaching these agreements may lead to civil claims for damages or injunctions. **Indian Penal Code (now Bharatiya Nyaya Sahita):** Unauthorized misappropriation or theft of property, including trade secrets, can result in criminal charges. However, these provisions are typically applied to theft cases, rather than broader infringements of business secrets. **Indian Contract Act, 1872:** The Indian Contract Act establishes a framework for enforcing non-disclosure agreements and confidentiality clauses, enabling businesses to protect trade secrets by imposing contractual restrictions on employees and stakeholders regarding the disclosure of sensitive information.

The Information Technology (IT) Act, 2000: While primarily focused on cybercrimes and electronic transactions, the IT Act includes provisions to protect trade secrets, particularly in cases of digital data misappropriation or unauthorized sharing. Section 66E penalizes violations related to the privacy of information, including digitally stored or transmitted trade secrets.

The Competition Act, 2002: The Competition Commission of India (CCI) regulates anti-competitive practices, and while it does not directly address trade secrets, it can be relevant in cases where unauthorized use of confidential business information leads to an unfair market advantage.

Intellectual Property Laws: Although India's intellectual property laws do not specifically address trade secrets, certain provisions indirectly offer protection. For instance, unfair competition laws under the Trademarks Act, 1999, can be invoked if a competitor unlawfully uses a trade secret for an unfair advantage.

III. CHALLENGES TO TRADE SECRET PROTECTION IN INDIA

In India there were lot of challenges facing while safeguarding trade secret. The disclosure of trade secret done by the whistleblowers also not strictly punished in India. There was no such stringent punishment mentioned in the laws in India. Since the liabilities of whistleblowers are questionable.

Absence of Dedicated Trade Secret Law: India lacks a specific statute for trade secret protection, unlike jurisdictions such as the United States or the European Union, which have established legal frameworks. As a result, businesses in India rely on a fragmented set of legal tools, creating challenges in navigating trade secret protection effectively.

Enforcement Issues: Enforcing trade secret protection is complicated by the absence of clear legal guidelines. There is no dedicated mechanism to define the scope of protection or specify available remedies in case of a breach. Consequently, trade secret cases are often handled under breach of contract or tort law, which may not provide the most suitable or efficient remedies for businesses.

Evolving Jurisprudence: Indian courts have yet to establish a comprehensive body of case law on trade secrets. While there have been some rulings on misappropriation, the legal framework remains in development, leaving uncertainty regarding the scope of protection, available remedies, and damages.

Globalization and Cross-Border Enforcement: As businesses globalize and share trade secrets across borders, enforcing protection becomes increasingly complex. Different legal systems may have divergent standards for trade secret protection, raising challenges for international enforcement.

IV. ROLE OF JUDICIARY ON TRADE SECRET IN INDIA

Several cases in India have dealt with trade secret protection, although the concept remains somewhat underdeveloped compared to patent or trade mark disputes. Here are a few notable cases:

John Richard Brady & others. v. Chemical Process Equipment P. Ltd. & Another²

²MANU/DE/0586/1987.

In this case, Plaintiff sought a permanent injunction to prevent the Defendants from infringing upon the Plaintiff's copyright after obtaining confidential information regarding an idea for growing fresh green grass as a primary food source for livestock in a compact unit capable of producing grass regardless of external climatic conditions. The court deliberated on the legal aspects of protecting trade secrets and confidential information, ultimately holding that such information is protected under Indian law, particularly under the principles of equity and fairness in business dealings.

Dr. Sudipta Banerjee v. L.S. Davar & Company and others³

In this case, Court issued an injunction order against former employees of a law firm for disclosing trade secrets and confidential information obtained during their employment. In this case, the Appellants were restrained from disclosing, divulging, or sharing any such confidential information in any manner until the disposal of the injunction application on its merits. The Court further stated that while the Respondent, as a professional body, may not possess trade secrets in the traditional sense, employees of the Respondent would certainly have access to privileged information. Sharing such information would not only be unethical but also a violation of the confidentiality clause, potentially causing significant harm to the Respondent's clients and exposing the firm to both civil and criminal liabilities.

Current Developments in Trade Secret Protection

In recent years, there have been notable developments that could enhance the protection of trade secrets in India:

Draft National Intellectual Property Policy (2016): The policy does not explicitly address trade secrets, it encourages the improvement of IP laws, which may lead to better protection of trade secrets in the future.

Protection of Trade Secrets Bill, 2024: The Law Commission of India has proposed a Trade Secrets Bill, 2024, which defines a trade secret as information that is not publicly known, holds commercial value, is kept confidential, and whose disclosure would harm its holder. The bill grants the holder rights to use, disclose, license, and pursue

³MANU/WB/0653/2022.

legal action for misappropriation. Commercial Courts will handle trade secret misappropriation cases, with remedies such as injunctions, damages, and destruction of materials containing the secret.

India's TRIPS Accession: As a WTO member, India is signatory to the TRIPS Agreement. While TRIPS doesn't mandate trade secret protection, it encourages member countries to combat unfair competition, which can encompass trade secrets.

V. JUDICIAL AND LEGAL AWARENESS

Indian courts are increasingly recognizing the complexities of trade secret disputes, reflected in a growing number of cases on trade secret misappropriation, indicating improved protection.

Digitalization and Cybersecurity: With the rise of e-commerce and tech-driven industries, Indian businesses are becoming more aware of the need to safeguard trade secrets in the digital landscape. Recommendations for Businesses in India. Given the legal landscape in India, businesses should take the following steps to safeguard their trade secrets:

Implement NDAs: Ensure non-disclosure agreements (NDAs) are used with employees, contractors, and third parties, clearly defining trade secrets and each party's obligations. Establish Internal Policies for Information Protection: Develop clear policies for handling confidential information, including access restrictions, encryption, and regular audits.

Leverage Technology: Use digital solutions like encryption, access controls, and secure communications to protect trade secrets from unauthorized access. Train Employees: Regularly train employees on the importance of protecting trade secrets and the consequences of breaching confidentiality agreements.

Seek legal counsel: Ensure contracts, agreements, and enforcement mechanisms are robust and enforceable in India.

VI. CONCLUSION

Trade secret protection in India is an evolving legal challenge. Although there is no specific statute, businesses can rely on a mix of contractual obligations, common law, and other legal provisions to protect confidential information. As the global economy increasingly values trade secrets, and with

shifting judicial perspectives and advancing digital security, protection in India is expected to improve. In the meantime, businesses must proactively secure their trade secrets through strong contracts, policies, and technologies to maintain a competitive edge.