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A COMPARISON OF TRADE SECRET LEGISLATION IN INDIA AND THE WORLD

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ABSTRACT

The world now a days has become more open and inclusive. The development of technology has led to the invention and creation of new ideas in an easier and faster way. This relates in the field of business and trade also. Parallely there was a significant increase in cases related to stealing of trade secrets across the globe because there was no legislation related to such fields . As a result, it becomes imperative for all the countries across the globe to come up with legislation related to the same. In India , the development of trade secret laws comes at a very later stage in comparison to developed nations. The trade secret laws are imperative in the sense that it provides protection to safeguard sensitive and commercially valuable information. The researcher tries to trace down the evolution ,history and development of trade secret law in India and also discusses the national innovation policy which for the first time discusses trade secrets in India. Recently India also has passed National intellectual property rights policy ,2016 which discusses about the trade secrets in detail This paper also throws light on various legislations related to trade secrets across the world. The paper also sheds light on the comparison between trade secret laws of India and USA. The international agreement was formed by the name of TRIPS which was the first multi-lateral agreement signed by various members of the WTO(World Trade Organization) which was based on the principles of standards enforcement and dispute settlement. This agreement provides special transition rules to the

developing nation which lacks trade secret legislation. This research paper also discusses the important of trade secrets in industry sectors and also highlight the centrality in domestic and international law-making policy . the researcher also highlights the significant points which can be taken from the developed nation while framing the trade secret laws in india.

KEYWORDS: Intellectual Property Rights Policy, Trade Secret, National Innovation Act,2008

INTRODUCTION

Intellectual property refers to the creation of human intelligence that is Shielded by the law from illegal use. Intellectual property is generally Non-physical property that is the result of original thought¹. The four main kinds of Intellectual property are copyright, patent, trademarks, and trade secrets. Typically, rights do not cover the control of an abstract, non-physical entity; rather, they cover the presentation of ideas through physical manifestations. By enforcing and granting legal rights to create and manage physical instantiations, Intellectual property law safeguards a content creator's interest in their ideas². IP is essential to the modern economy. Additionally, it has been unequivocally proven that the intellectual labor related to innovation deserves to be given the respect it deserves in order for it to serve the greater good³. The term intellectual property was born when the ideas of copyrights and patents were evolving. The concept of intellectual property has remained an evolving and dynamic concept , especially with the development of technology. The narrative surrounding intellectual property rights (IPR) in India is quite complex . While innovation and the promotion of art and culture are heavily emphasized, the "protection" of these inventions, particularly in the creative business, is rather lacking. India's IP score has increased by 13%, but according to the International IP Index, 2022, India still ranks 43rd out of 55 nations. The US-India Business Council conducted research that found that, in recent years, piracy alone has resulted in an 11% employment

¹Intellectual property, LEGAL INFORMATION INSTITUTE, https://www.law.cornell.edu/wex/intellectual_property (last visited Apr 21, 2023).

²Adam Moore, INTELLECTUAL PROPERTY STANFORD ENCYCLOPEDIA OF PHILOSOPHY (2011), <https://plato.stanford.edu/Archives/Fall2012/entries/intellectual-property/> (last visited Apr 21, 2023).

³ Chandra Nath Saha & Sanjib Bhattacharya, INTELLECTUAL PROPERTY RIGHTS: AN OVERVIEW AND IMPLICATIONS IN PHARMACEUTICAL INDUSTRY JOURNAL OF ADVANCED PHARMACEUTICAL TECHNOLOGY & RESEARCH (2011), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3217699/> (last visited Apr 21, 2023).

AN INTRODUCTION TO INTELLECTUAL PROPERTY RIGHTS

Intellectual property as defined by the WIPO is “creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce.” the industries uses their intellectual property rights for the enforcement of patents, trademarks and copyrights and customers use to enforce that they are purchasing safe and guaranteed products. Intellectual property rights is governed under Patents act 1999, Copyright act 1957, Design act 2001, Trademarks act,2001, . on several grounds, trademark infringement is punishable by imprisonment and a fine under the Trademark Act of 1999 as enumerated in Sections 103–108. Police officials are also given the right to search and seize property under Section 115. However, under S. 115(4), "Provided that the police officer shall get the opinion of the Registrar on facts implicated in the offence relating to trade mark and shall abide by the opinion so obtained," before undertaking any search or seizure. This clause has a catch for police officers before they do anything of the nature. Transgression of copyright are punishable by imprisonment under Sections 63 to 69 of the Copyrights Act of 1957.

Intellectual property theft refers to the idea of stealing someone's intangible property such as trademarks, copyrights, ideas, inventions or any innovations they create. The term theft used in the intellectual property is mis correctly used as it is incorporeal and intangible in nature..A corporation may suffer significant financial loss as a result of IP theft. In the long-term, it may lead to slower corporate growth and a loss of competitive edge. Most intellectual property theft cases involve the federal government. Companies or people who can identify the thieves of their intellectual property may bring them to court, and in certain situations, the culprits can be punished severely. These include penalties, jail time, civil charges, license suspension, etc.

⁴ priyanka khimani, INDIA NEEDS STRONGER COPYRIGHT AND IP LAWS HINDUSTAN TIMES (2022), <https://www.hindustantimes.com/ht-insight/economy/india-needs-stronger-copyright-and-ip-laws-101660202940185.html> (last visited Apr 21, 2023).

BRIEF ON TRADE SECRETS

In this technology dominated world, it is very difficult to hide and maintain confidential information about trade information. In this market dominance world, trade secrets are considered to be the most important kind of intellectual property as it is more individualistic as compared to other kinds of IPR. The restatement definition of trade secrets is as follows:

It includes any formula pattern device or collection of information which gives a person opportunity to obtain gain over his competitor. For example, the pattern of a machine or a discovery of chemical formula. In more laconic terms, trade secret is almost everything and anything useful to a business which is not generally or easily or immediately available to the members to trade⁵. A trade secret is described as a legal claim that arises in favor of the party asserting it by preventing others from using it and also by preventing the disclosure of confidential information.

As a result, it forces the owner of the intellectual property to disclose the idea in advance with other employees and secures the knowledge that the other side is not free to take without compensating the owner of the property. Employers are granted the authority to sue an employee only for breach of the terms of the negotiated employment agreement in such a situation of disclosure of confidential information. The concept of trade secret law is peculiar because it can fit easily into the framework of competition, innovation and intellectual property rights⁶. In India there is no primary legislation based on trade secret laws and it is primarily based on law of contracts.

There are two theories which defined trade secret as property:

- **Exclusivity Theory** - The main characteristics of a property is that one who owns the property has the right to use the same to the exclusion of others. As mentioned by supreme court of California, that owner of a trade secret is only protected when they use trade as an improper means. There are many ways by a trade secret can be used exclusively as a property.

⁵ John C. Steadman, "Trade Secrets," 23 4-34 (1962).

⁶ Zafar Mahfooz Nomani & Faizanur Rahman, *Intellection of trade secret and innovation laws in India*, 16 JOURNAL OF INTELLECTUAL PROPERTY RIGHTS (2011).

- **Integrated Theory** - This theory reflects and focuses on the acquire , use and dispose of the property .this theory states that trade secret are property because they are obtained as a result of the actions of the trade secret as the discoverer can make their own use of their information .but this theory fails miserably as the two people cannot use and acquire the same trade secret.

A company or an organization must follow trade secret management so as to protect their sensitive information from being stolen . the trade secret management may include

1. To develop a system which can recognise trade secrets.
2. To initiate an information security policy which includes a trade protection society.
3. To discuss with the employees related to trade secrets .
4. By mentioning the clause of trade secrets in the contracts
5. Management and regulation of the office and keeping confidential information.
6. Maintaining high and tight security passwords.⁷

The stealing of trade secrets can mainly performed in three ways namely,

1. If somebody is giving access to business information to which he has no authorization.
2. By disclosing information to third parties.
3. By misuse of information by the employees who are either leaving or joining the company or organisation.⁸

⁷ APPROACHES TO THE PROTECTION OF TRADE SECRETS, *in* ENQUIRIES INTO INTELLECTUAL PROPERTY'S ECONOMIC IMPACT © OECD 2015 127–172.

⁸ MoloLamken LLP, WHAT ARE COMMON SCENARIOS IN WHICH THEFT OF TRADE SECRETS OCCURS? - TRADE SECRETS - UNITED STATES WHAT ARE COMMON SCENARIOS IN WHICH THEFT OF TRADE SECRETS OCCURS? - TRADE SECRETS - UNITED STATES (2022), <https://www.mondaq.com/unitedstates/trade-secrets/1196344/what-are-common-scenarios-in-which-theft-of-trade-secrets-occurs>

EVOLUTION AND DEVELOPMENT OF TRADE SECRET LAWS

Similarly, to many other kinds of intellectual property protection, the protection of trade secrets has a long history. Some contend that the origins of trade secret preservation date back to Roman times, when there were prohibitions against corrupting another's slaves. Presumably, the corruption was designed to expose the slave owner's secrets held by the slaves. As a kind of protection for the guilds, there is evidence that trade secret laws existed throughout the Renaissance. During the industrial revolution, the later statutes constituted the basis for the growth of trade secret law, and therefore the forerunner to present trade secret law.

Later, generally between the early and mid-19th century, Anglo-American jurisprudence followed suit. There is empirical evidence that, in contrast to patent law, trade secret doctrine has shown to be particularly valuable to small enterprises. This is likely owing to the cost of alternative forms of intellectual property protection and the economic consequences of a small business's secrets being disclosed. Modern trade secret law in the 20th century has its origins in the Restatement of Torts (1939).

The concept of intellectual property goes back to the 1700s when patents and copyrights came into existence and the phrase intellectual property was created. Especially with the advent of new technology, the idea of IP theft has evolved substantially over time. From manufacturing methods and ideas during the industrial revolution to cyberattacks and threats in the twenty-first century, IP theft has seen several transformations throughout time. The emergence of trade secret came in India in late 1970s when the government of India ordered the Coca-Cola company to share their secret formula.⁹ With coming the era of liberalization and privatization, India became a member of WTO and as a result, it signed the TRIPS agreement in 1994. The TRIPS agreement makes it obligatory for all the participating countries to protect trade secrets under article 39 of the TRIPS agreement. India, by virtue of article 253, enacted laws related to the TRIPS agreement but fails to enact any law related to trade

⁹ nirmala bhide & udita kanwar, CONFIDENTIAL INFORMATION AND TRADE SECRETS RKD (2017), <https://www.rkdewan.com/articles/confidential-information-and-trade-secrets-an-overview>

secret. With increase in the number of trade secrecy cases, Indian government came up with national innovation bill,2008 which contained some provisions of trade secrecy. With the advancement of technology , it becomes very difficult for Indian judiciary to handle cases related to trade secrets especially when there is dearth of a specific legislation. However, after remaining silent for almost 8 years , there was the formulation of National Intellectual Property Policy,2016 which in brief talks about trade secrets.

TRADE SECRET LEGISLATION IN INDIA

In this technology dominated world, it has become very essential for business organization to maintain confidential so as to prevent leakage of information .Since there is no effective legal framework in employee contracts that safeguards the company's trade secrets both during the duration of their employment and after it has finished, trade secrets is one of the most underused sectors in India. One of the concepts expressed in the case of *Attwood v. Lamont*¹⁰, is that a master is not allowed to prevent his servant from engaging in competition after the decision or termination of employment, although he is entitled to reasonable protection against the exploitation of Trade Secrets to safeguard them. In India, trade secrets are primarily safeguarded through contract law or the equitable doctrine of violation of confidence.¹¹

- **The Indian Contract Act, 1872.**

The law relating to trade secrets is governed under **Section 27** of the **Indian Contract Act, 1872**. The agreement in restriction of commerce is specifically covered in this section. According to the clause, any agreement that prevents a person from engaging in a legal profession, trade, or business of any sort is, to the degree specified, void. This provision was applied in the case of *Brahmaputra Tea Co v. E. Scarth*¹² where the servant was restrained from competing for a period of five years after the period of 5 years. In *Saltman Engineering Co. Ltd. v. Campbell Engineering Co. Ltd,1948*¹³, it was held that on the principle of equity and trust that have been disclosed on the breach

¹⁰ *Attwood v Lamont* [1920] 3 K.B. 571

¹¹ juhi saxena, *Study of Trade Secret Laws in India in Comparison to United States*, 3 INTERNATIONAL JOURNAL OF LEGAL SCIENCE AND INNOVATION (2021).

¹² *The Brahmaputra Tea Co. Ld. vs E. Scarth*, (1885) ILR 11 Cal 545

¹³ *Saltman Engineering Co v Campbell Engineering Co* [1963] 3 All E.R. 413

of contract and this will apply to only those information which require the element of confidentiality.

- **SEBI (Securities and Exchange Board of India)**

SEBI (Prohibition of Insider Trading) regulations were released in the year 1992. Under the Regulations of that act, insiders are now protected if they disclose or use the confidential information. This act also formalizes the duty of confidentiality which results from an insider's relationship with the business and at times it may protect knowledge that qualifies as a "**Trade Secret.**"

According to a case study, the SEBI Act of 1992 and the other regulations are sharply concerned with issues like insider trading, fraudulent business practices, and professional misconduct since they are really harmful to the interests of regular investors. There is no such punishment for those who indulge in such activities.

- **IT Act, 2000**

The Information Technology Act of 2000 (IT Act), which defines the scope of access that a party may have to data stored on a computer, computer system, or computer network, has provisions relating to cyber and related IT laws in India.¹⁴ However, the provisions of the IT Act do not address the need for a strict data protection law to be in place.

In order to address the issue of Cyber Crime, this act has recently been amended by the parliament. After the amendment, two provisions have been added in the act which are related to the legal framework for Data Protection. The provisions added to the act were Section **43A**¹⁵ and **72A**.¹⁶

The amendment of this act did not define the meaning of "**Sensitive personal data or information**", rather it just says that it refers to the personal information that the Union government prescribes after consulting with the professional associations or groups if it deems appropriate.

In **Burlington Home Shopping Pvt. Ltd. v. Rajnish Chibber**¹⁷, the Delhi High Court ruled that a computer database of customers constituted of literary work was to be protected by Copyright law. Over three years, the Plaintiff, a mail order corporation, spent time and money compiling a client and

¹⁴ *The Information Technology Act, 2000 (Act 21 of 2000).*

¹⁵ *Ibid*

¹⁶ *Ibid*

¹⁷ *Burlington Home Shopping Pvt. Ltd. v. Rajnish Chibber & Anr (1995) PTC (15) 278*

customer list. The ex-employee Defendant used the database to contact plaintiffs' customers. Despite its lack of competence, the High Court ruled that the database constituted a literary work. Thus, the Court upheld the "sweat of the brow" doctrine for copyright database protection. The High Court determined defendant stole the plaintiff's trade secrets.

Lord Green's views in the **Saltman case** influenced Indian case **Emergent Genetics v. Shailendra Shivam and Ors, 2004**. Lord Green stated: Apart from the contract, the secret information must have the required character of confidence, namely, it must not be public property and public knowledge. On the other hand, it is possible to have a confidential document, such as a formula, plan, sketch, or something else, that is the result of work done by the maker on materials that may be available to anyone, but it is confidential because the maker used his brain and produced a result that can only be produced by someone who goes through the same process.

In **Emergent Genetics v. Shailendra Shivam and Ors, 2004** before the High Court of Delhi in New Delhi, the defendants were a group of ex-employees who allegedly stole germ plasm from the Plaintiff and generated a new cotton hybrid variety with the same genotypic traits. Based on breach of confidentiality, the court barred the defendant from promoting and selling the cotton hybrid seeds. This case is still ongoing.

In **Tata Motors Limited vs State of Bengal, 2008**,¹⁸ the High Court of Kolkata defined a "trade secret" as a formula, gadget, procedure or other commercial knowledge that is kept hidden to gain an advantage over rivals. The information contains a formula, pattern, technique or process:

- that is not easily ascertainable by those who may benefit economically from its use.
- that is the subject of reasonable attempts, given the circumstances, to preserve its confidentiality.

The High Court of Bombay, in addition to the aforementioned, has also given down the following requirements in **Bombay Dyeing and Manufacturing Company Ltd vs Mehar Karan Singh, 2010**¹⁹ for any piece of knowledge to be regarded a trade secret:

¹⁸ *Tata Motors Limited & Another v/s State of West Bengal & Others (2010) G.A. No. 3876 of 2008, W.P. No. 1773 of 2008*

¹⁹ *Bombay Dyeing and Manufacturing Co.Ltd. v/s Mehar Karan Singh (2010) Suit No.3313 of 2008*

- the extent to which the information is known outside the business; the extent to which it is known to employees; the precautions taken by the trade secret holder to guard the secrecy; the savings affected and the value to the holder in having the information as compared to competitors; the amount of effort or money expended in obtaining and developing the information; and the amount of time and expense it would take others to obtain the information.
- Trade secrets are sensitive knowledge. Some Indian courts have used "trade secret" and "confidential information" interchangeably, while others have differentiated between the two and found that an employer's ordinary, day-to-day operations, which are known to many, cannot constitute trade secrets.

INTERNATIONAL PERSPECTIVE REGARDING TRADE SECRET

- **US laws**

Former US President Barack Obama passed the **Defend Trade Secrets Act, 2016** which is a legislation regarding Trade Secret Act. This legislation is an expansion of the **Economic Espionage Act of 1996** as the definition of trade secret is similar and misappropriation is the same in the latter act.²⁰

Chapter 40 of The Economic Espionage Act, 1996 defines theft of trade secrets and whoever commits the same shall be punished for the shall be fined not more than \$5,000,000.²¹

Section 2(4) of the **Uniform Trade Secret Act** defines Trade Secret as "Trade secret" means

²⁰ Eric Goldman, THE NEW 'DEFEND TRADE SECRETS ACT' IS THE BIGGEST IP DEVELOPMENT IN YEARS (FORBES CROSS-POST) TECHNOLOGY & MARKETING LAW BLOG (2016), <https://blog.ericgoldman.org/archives/2016/05/the-new-defend-trade-secrets-act-is-the-biggest-ip-development-in-years-forbes-cross-post.htm>

²¹ *The Economic Espionage Act, 1996*

information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

(i) derives independent economic value, actual or potential, from not 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.²²

In *Kewanee Oil Co. v. Bicron Corp.*,²³ it was held that the main aim of this act to ensure maintenance and balance of commercial ethics.

- **Doctrine of Inevitable Disclosure**

According to the concept of inevitable disclosure, it is presumed, based on circumstantial evidence, that a former employee will unavoidably use and expose the trade secrets of his former company when performing the same tasks and duties for his new employer.²⁴ However, this doctrine is constrained to a preliminary injunction to provide emergency relief against violation of trade secrets. In the case of *Pepsico, Inc. v. Williame Redmond*,²⁵ The court determined that Redmond's new position constituted an obvious risk of misappropriation of trade secrets and the sensitive information which would be prohibited under statutory and common law in Illinois.

- **Canada's Legislation**

There is no special legislation related to secret trades in Canada. The case related to trade secrets is done on the basis of the common law system including torts and contract. In Canada, there is no official registration procedure for the protection of trade secrets, in contrast to various other categories of intellectual property. There is no specified period that restricts the protection offered

²² Uniform Trade Secret Act, 1985

²³ *Kewanee Oil Co. v. Bicron Corp.* [1974] 416 U.S. 470

²⁴ R. Mark Halligan, TRADE SECRETS: THE INEVITABLE DISCLOSURE DOCTRINE REUTERS (2021), <https://www.reuters.com/legal/legalindustry/trade-secrets-inevitable-disclosure-doctrine-2021-11-09/>

²⁵ *PepsiCo, Inc. v. Redmond* [1995] 54 F.3d 1262 (7th Cir.)

to a trade secret in Canada, unlike copyright or patents.²⁶ The bill C-4 US -M- CA trade agreement was implemented and got assent in Canadian legislation to provide safety against trade secret thefts.

- **China's Legislation**

A trade secret under Article 10 of the Anti-Unfair Competition Law (AUCL) is defined as “technical and operational information that is not generally known, that is capable of providing economic benefits to the owner of the rights, that is applicable in practice, and that the owner of the rights has taken measures to keep secret.” Similarly, Article 149 of company law in China restrains the managers and the directors of the company from disclosing trade secrets of the company. Article 150 of the same act provides penalty in case if there is violation of Article 149. According to Article 22 of the labor law of China provides for a contract between an employer and employee regarding trade secret agreement whereas violating the same provision is made under article 102 of the same law.²⁷ The criminal law of China provides penalty provisions under article 219 which states that if anyone violates trade secrets, he will be punished for criminal offense.

- **Japan's Legislation**

Till the era of 1990, the protection of trade law was regularized by the common law of torts. But after the promulgation of unfair competition protection act, the trade secret is further being protected by the act which is based on TRIPS agreement.²⁸

- **Australia's Legislation**

There is no legal provision related to secret trades in Australia. But impliedly the confidential

²⁶ Panagiota Dafniotis, TRADE SECRET PROTECTION AND REMEDIES IN CANADA DENTONS (2022), <https://www.dentons.com/en/insights/articles/2022/february/25/trade-secret-protection-and-remedies-in-canada>

²⁷ Labour law of People's Republic Of China, 1994

²⁸ Unfair Competition Protection Act, (Act 47 of 1993)

COMPARISON OF TRADE SECRET LAWS VIS A VIS USA

The Indian Judiciary struggles to determine whether there is a breach of confidential information when an employee develops his skill and talent during employment, resigns, and starts a new company, firm, or joins competitors, and whether the former employer restricts the new employee from expressing details he learned during employment. To answer the question, both are not the same. There is a significant difference between know-how and secret knowledge. In *Stevenson Jordan and Harrison Ltd. v MacDonald and Evans*, the court distinguished between employee-acquired and employer-confidential information. The court ruled that if the employee's ability and expertise created the knowledge, he might exploit it for his personal profit. If an employee develops a talent or concept on the job, he may share it with others without violating confidentiality. India sought to enact trade secret regulation in 2008 when the Indian Parliament passed the National Innovation Act. The Act's Chapter VI addresses confidential information. One of the best-written pieces of legislation ever is this one. The two most important sections of this law are Section 10 and 11. The lack of a legal framework for the protection of trade secrets in India was one of the greatest issues raised in 2016 in the Special 301 report, which the United States Trade Representative recently issued (The Special 301 report, Office of the United States Trade Representative, 2017). Foreign investors are hesitant to share their know-how with Indian subsidiary firms or any franchise since Indian law is presently based on the equity principle and contractual conditions and because the legislation controlling this field is permissive. After accounting for all of these challenges, the measure from 2008 was approved but never became law. The topic of "A policy for the preservation of Trade Secrets" was emphasised in the National IPR Policy that was later enacted in 2016, yet two years have elapsed since that meeting and no proactive actions have been made. However, the US Trade Secret Act was created because it had long

²⁹ Yuchen Yao, A BRIEF GUIDE TO NAVIGATING THE COMPLEXITIES OF TRADE SECRETS VS PATENT PROTECTION - TRADE SECRETS - AUSTRALIA A BRIEF GUIDE TO NAVIGATING THE COMPLEXITIES OF TRADE SECRETS VS PATENT PROTECTION - TRADE SECRETS - AUSTRALIA (2022), <https://www.mondaq.com/australia/trade-secrets/1173484/a-brief-guide-to-navigating-the-complexities-of-trade-secrets-vs-patent-protection>

been recognised by the legislators that trade secret law should exist to safeguard commerce from unlawful use. The goal of the policy behind trade secret protection under the US system is to maintain appropriate levels of business ethics while simultaneously encouraging the secret commercial operations of the company. Trade secret protection stimulates inventions and technology, promotes business ethics, and strengthens IP regime. Without trade secret laws, protecting trade secrets in India is challenging. The trade secret situation in India is still in its infancy, and the rules governing trade secrets are not extremely strict. The judiciary's interpretation of the common law approach is inconsistent in practise. Many methodologies are used, and same-fact scenarios generate various conclusions. Unfair competition can only be regulated by a legislative law. It is not appealing to the legislators to put in a new law, but to bring back the written bill so that foreign company investments and trade will be broadened and the field of Intellectual Property Law will grow. This is what India requires and what the National IPR Policy, 2016 aimed. After TRIPS, India updated its IPR rules, although Section 3(d) of the Indian Patents Act remains unique. It is also urged to bring back the 2008 Trade Secrets protection act.

ANALYSIS TO TRADE SECRET LAWS : WHAT INDIA CAN ADOPT FROM THE DEVELOPED NATION

The position of trade secret laws in India is at an embryonic stage. The application of the common law related to trade secrets is as mentioned above, India does not have any specific legislation related to trade secret laws, hence the decision on such cases shall remain in the hands of judges which at times become ambiguous and uncertain. The Indian Judiciary struggles to determine whether there is a breach of confidential information when an employee develops his skill and talent during employment, resigns, and starts a new company, firm, or joins competitors, and whether the former employer restricts the new employee from expressing details he learned during employment. To answer the question, both are not the same. There is a significant difference between know-how and secret knowledge. In *Stevenson Jordan and Harrison Ltd. V Macdonald and Evans*, the court distinguished between employee-acquired and employer-confidential information. The court ruled that if the employee's ability and expertise created the knowledge, he might exploit it for his personal profit. If an employee develops a talent or concept on the job, he may share it with others without violating

By doing so the definition of trade secret keeps fluctuating . In addition to that,there is no criminal liability as protection from trade secrets can only be given in the case of violation of contractual obligation . There are many principles and rules which are to be inculcated in the indian laws in order to improve trade secret laws as compared to the developed countries. The following below mentioned principles and legislation can be acquired from the developed nations(particularly usa) which are probably essential for formulating the better trade secret laws:

The word trade secret must be defined in comprehensive terms so that it becomes easier for the judiciary to interpret the term. The definition will also help in determining what are the necessary elements to constitute trade secrets. Secondly the doctrine of spoliation which denotes as a type of cheating that poses a risk to the fairness of the civil litigation process must be included as a tort of misappropriation. This doctrine is very common in California . With the rapid increase of cases related to trade secret and in order to put less onus on the courts of india , a specialized body should be established to be categorically deal with cases relating to trade secrets.we can also took up the doctrine of displacement from uniform Trade Secrets Acts, of usa which state that If the cause of action conflicts with the steal of trade secrets, it is preempted or displaced.India must implement the "Sui Generis" system as stipulated by Article 10 bis of the Paris Convention and Articles 39(2) and 39(3) of TRIPS.

Trade secret protection stimulates inventions and technology, promotes business ethics, and strengthens the IP regime. Without trade secret laws, protecting trade secrets in India is challenging.. Many methodologies are used, and same-fact scenarios generate various conclusions. Unfair competition can only be regulated by a legislative law. It is not appealing to the legislators to put in a new law, but to bring back the written bill so that foreign company investments and trade will be broadened and the field of Intellectual Property Law will grow. This is what India requires and what the National IPR Policy, 2016 aimed. After TRIPS, India updated its IPR rules, although Section 3(d) of the Indian Patents Act remains unique. It is also urged to bring back the 2008 Trade Secrets protection act.However the provisions which are mentioned above will help India in providing a better framework for making a better trade secret law legislation and it will help in achieving effective transparency in business transactions. By framing an efficient codified law on trade secret we can also safeguard right to privacy of the Indian citizens by the virtue of article 21 of the constitution.

Apart from making separate legislation, the Indian Penal Code and the Companies Act must also be amended in order to enlarge the provisions of trade secrets in India.

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However, the US Trade Secret Act was created because it had long been recognised by the legislators that trade secret law should exist to safeguard commerce from unlawful use. The goal of the policy behind trade secret protection under the US system is to maintain appropriate levels of business ethics while simultaneously encouraging the secret commercial operations of the company

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