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THE SECRET BEHIND TRADE SECRETS

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“The secret of the business is to know something that nobody knows.” - Aristotle Onassis

Introduction/ To understand trade secrets from the IP perspective-

Intellectual property is all about the creativity of humans. These rights are observed as a reward for creative and skillful work in executing ideas. The IPR impact has spread to every aspect of life. In modern times, there is a need to protect these intellectual properties. Human rights are considered as positive rights, but in the case of IPRs, it doesn't allow one to use every right but allows the owner to stop others from using the Intellectual property. In such a case IP is considered a negative right.

Concept of Trade Secrets

Famous English jurist, John Lock propounded 'Labor theory' stating: "Human labour deserves a reward in the form of proprietary rights".¹ In free-market economies, the intangibility of property rights is becoming increasingly valuable in the retention of market shares.

A trade secret is considered a unique feature that fits into the broader framework of contract, competition, innovation as well as intellectual property rights.² IP laws are generally territorial in character while trade secret protection differs according to the jurisdiction of different countries and their specific laws available. A trade secret is often 'any formula, pattern, device or compilation of information which is used in one's business, and which gives human opportunity to obtain an advantage over competitors'.³ The extent of recognition of trade secrets across the world can be gauged by the fact that a majority of working technologies worldwide are protected as trade secrets rather than by patents. Trade secrets as intellectual property have the potential to

¹ Peter S. Menell, '[Intellectual Property: General Theories](#)', *Encyclopedia of Law & Economics: Volume II*, ed. by Boudewijn Bouckaert and Gerrit de Geest (Cheltenham: Edward Elgar, 2000), pp. 129-88.

² Robert G Bone, 'A New Look at Trade Secret Law: Doctrine in Search of Justification', *Trade Secret Law, California Law Review*, Vol. 86:24

³ Lin, Thomas C.W. (8 October 2013), '[Executive Trade Secrets](#)', *Notre Dame Law Review*, **87**(3): 911. [SSRN 2047462](#) [Retrieved 20 February 2020].

translate intangible value into economic growth.

There are mainly three factors that are common to all types of trade secrets:⁴

1. Public has no availability of the information
2. By maintaining secrecy and confidentiality it confers economic benefits.
3. Subjected to reasonable efforts to maintain its secrecy.

The main policy behind trade secret protection is to give value to the owner and restrict others from misappropriating and using his trade secrets. The TRIPS agreement actually categorized trade secrets under undisclosed information, but nothing is indicated on mechanism and modalities. The policy behind trade secret protection is to encourage research and development by providing protection to the originator of business information and maintaining proper standards of business ethics.⁵

Recognition of Trade Secrets

At the international level, the North American Free Trade Agreement (NAFTA) and the Agreement on Trade-Related Aspects of Intellectual Property (TRIPS) ratified provisions related to trade secrets during the Uruguay Round of the General Agreement on Tariffs and Trade (GATT).⁶ India is a signatory to the Paris convention.⁷ Article 1(2) of the agreement on TRIPS states that IP shall include protection of undisclosed information.⁸ Article 39 of TRIPS states that member nations should assure that natural and legal persons can stop the leakage of such information from their control which would be used by other persons without their consent in a manner contrary to honest commercial practice.⁹ The TRIPS agreement originally entered into 1995, which established an international standard for WTO member nations to protect undisclosed

⁴ Bombay Dyeing and Manufacturing Co. Ltd. v. Mehar Karan Singh, 2010 SCC OnLine Bom 1243

⁵ Donal O'Connell, Intellectual Property Risk Management, 1st ed

⁶ Chapter 2: America's Trade Agreements, Trade policy in Crisis, <https://www.wilsoncenter.org/chapter-2-americas-trade-agreements>

⁷ "India Accedes to the Paris Convention and the Patent Cooperation Treaty (PCT)." India Accedes to the Paris Convention and the Patent Cooperation Treaty (PCT), [www.wipo.int/pressroom/en/prdocs/1998/wipo_upd_1998_32.html#:~:text=On%20Monday%2C%20September%2007%2C%201998,Patent%20Cooperation%20Treaty%20\(PCT\).](http://www.wipo.int/pressroom/en/prdocs/1998/wipo_upd_1998_32.html#:~:text=On%20Monday%2C%20September%2007%2C%201998,Patent%20Cooperation%20Treaty%20(PCT).)

⁸ "WTO | Intellectual Property (TRIPS) - Agreement Text - General Provisions." WTO | Intellectual Property (TRIPS) - Agreement Text - General Provisions, www.wto.org/english/docs_e/legal_e/27-trips_03_e.htm.

⁹ TRIPS: Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Art. 39

information.¹⁰ Although trade secrets are not directly pointed out here, but this undisclosed or confidential info includes trade secrets. Section 7 speaks of the protection of undisclosed information. many countries have specific legislations to protect trade secrets. In order to boost research and innovation.¹¹ Article 10(b) of the Paris Convention & Article 39(2) and 39(3) of the TRIPS Agreement, 1995 give the global standard for trade secret laws. however, in India, there is no such unique legislation.¹²

Trade secrets are seen as a property right under property theory, which includes subjective as well as objective approaches subjects to protect rights in its uses and disclosures. Under the common law, liability for trade secrets misappropriation needs acquisition by another, by improper conduct or unfair means and the use or disclosure by such person to the detriment of the trade owner.¹³

Growing Significance of Trade Secrets

A trade secret is an aspect that has to be kept in confidence with other people. It is impossible to run a business or trade without sharing the secret with associated people, and such sharing is done in confidence. A trade secret has monopoly value as well as use-value.¹⁴ It was held that trade secrets disclosure in the form of breach of confidence is not allowed.¹⁵ It is deemed that there exists an implied contract in the case of employment. Breach of confidence in such kind of cases may amount to the disclosure of confidential information or trade secrets and will be considered a tort of breach of confidence.¹⁶ The law of breach of confidence is focused mainly on use or disclosure, not on acquiring information.¹⁷ Lord Green has shown that the primary test for imposing an obligation for confidence breach.¹⁸ Suppose it proved that defended used the

¹⁰ Overview: the TRIPS Agreement, World Trade Organization, https://www.wto.org/english/tratop_e/trips_e/intel2_e.htm#:~:text=The%20TRIPS%20Agreement%2C%20which%20came,multilateral%20agreement%20on%20intellectual%20property.

¹¹ Approaches to the Protection of Trade Secrets, *Enquiries into Intellectual Property's Economic Impact OECD 2015*, pg 131

¹² Paris Convention for the Protection Of Industrial Property (As Amended On September 28, 1979), Art 10(b), "WIPO Lex." WIPO Lex, wipolex.wipo.int/en/text/288514.

¹³ Module 4, Trade Secrets, WIPO Int., *Point 3 Misappropriation of Trade Secrets*, pg 15

¹⁴ *Oxford v. Moss*, (1979) 68 Cri 482. See also Hammond, R.G.: "Theft of Information", 100 LQR 252 (1984)

¹⁵ *Kewanee Oil Co. v. Bicron Corpn.*, 416 US 470, 490-91 : 40 L Ed 2d 315 (1974)

¹⁶ Cornish, W.R.: *Intellectual Property* (3rd Edn., 1996) at paras 8.49-8.53. See also *Breach of Confidence*, Law Commission of England and Wales, Consultation Paper No. 110 (Her Majesty's Stationary Office, 1981), para 2.10.

¹⁷ *Attorney General v. Guardian Newspapers*, (1988) 3 All ER 545; Protection of Confidential Information without a Contract, Argus Partners, *Protection of Confidential Information under Common Law – Rule of Equity*, <https://www.legal500.com/developments/thought-leadership/protection-of-confidential-information-without-a-contract/>

¹⁸ *Saltman Engineering Co Ltd v Campbell Engineering Co Ltd*, [1963] 3 All ER 413, 65 RPC 203.

confidential information directly or indirectly obtained from the plaintiff without the plaintiff's consent, express or implied. In that case, he will be considered to have caused an infringement of the plaintiff's rights.

Trade secrets are considered to be a subset of confidential information.¹⁹ While some of the courts in India have used both terms i.e., trade secrets and confidential information as synonyms, other courts have clearly distinguished the two and held that the knowledge of the employer which is known to others cannot be called as trade secrets.²⁰ Indian courts and tribunals have made it clear that in the absence of legislation, they protect trade secrets through the common law. The main remedies in the case of infringement can be injunction or damages. IPR laws in India are territorial in nature and the protection given may vary from one region to other.²¹ The most essential part of the trade secrets is that their secrecy as opposed to the novelty.²²

Legal Position in India

There is no particular definition of trade secrets under Indian law, it's hard to define, classify and ascertain. But the Court defined trade secrets as '... formulae, technical know-how or a peculiar mode or method of business adopted by an employer which is unknown to others.'²³ The court held that consumer data is neither trade secrets nor properties or any other information that has been kept as a secret. There is a demand for a more codified and comprehensive mechanism of protection for trade secrets. Ideas that have to be protected under trade law, if not protected, will become detrimental to the traders. Also, if there is no law, there are less chances of conviction for trade secrets misappropriation, as for an inventor there is no protection is under the trade secret, another option is patent protection which may not help in the appropriate long time run.

The Delhi High Court ruled that the concept developed and evolved by the plaintiff is the result of the work done by the plaintiff upon material which may be available for the use of anybody,

¹⁹ **Trade Secrets (Enforcement, etc) Regulations, 2018, SI 2018/597; What are trade secrets, know-how and confidential information?, Queensland Government, <https://www.business.qld.gov.au/running-business/risk/ip/ip-kit/browse-ip-topics/trade-secrets/definitions>**

²⁰ Legal Protection of Trade Secrets and Confidential Information, S.K. Verma, Journal of the Indian Law Institute, [Vol. 44, No. 3 \(July-September 2002\)](#), pp. 336-353

²¹ The Role of National and International Intellectual Property Law and Policy in Reconceptualising the Definition of Investment, IIC - International Review of Intellectual Property and Competition Law, <https://link.springer.com/article/10.1007/s40319-020-010097->

²² Dionne v. Southeast Foam Converting & Packaging, Inc., 240 Va. 297, 397 S.E.2d 110, 1990 Va. LEXIS 121, 17 U.S.P.Q.2D (BNA) 1565 (Va. September 21, 1990)

²³ American Express Bank, Ltd. v. Priya Puri, 2006 SCC OnLine Del 638

but what makes it confidential is the fact that the plaintiff has used his brain and thus produced a result in the shape of a concept.²⁴ These principles have been approved by the Supreme Court again in *Niranjan Shanker Golikari v Century Spinning & Manufacturing Co Ltd.*²⁵ It was recognized by the courts that trade secret is considered as some protected and confidential information that the employees have acquired in the course of their employment and couldn't reach others in the interest of the employer. But day to day affairs of the employer, which are commonly known to others, cannot be called trade secrets.²⁶

The Indian Government took a step forward by releasing a draft National Innovation (NI) Act, 2008 to boost research and innovation.²⁷ The draft Act proposed by the Department of Science and Technology, Government of India has a three-pronged approach.²⁸

Firstly, it undertakes to encourage innovation through an innovation support system facilitated by public, private or public-private partnerships.

Secondly, to evolve a National Integrated Science and Technology Plan.

Thirdly, codifying and consolidating a law of confidentiality in aid of protecting confidential information, trade secret and innovation.²⁹

In India a person is bound by the contract to not disclose the information or secret that is revealed to others in secret. Section 27 of the Indian contract act points out, all agreements that restraint in trade is void.³⁰ The Law Commission of India in 1958 recommended the addition of the following in the main section: '*... except in so far as the restraint is reasonable having regard to the interest of the parties to the agreements and of the public.*' By implication, this recommendation allows a space for reasonable restraint on the right to carry on trade and promotion of trade secret law in India. It is pertinent to note that the Law Commission was beyond time in its recommendation in regard to trade secret protection.³¹

²⁴ Anil Gupta v. Kunal Dasgupta, 2002 SCC OnLine Del 250.

²⁵ *Niranjan Shankar Golikari v. Century Spg. and Mfg. Co. Ltd.*, (1967) 2 SCR 378.

²⁶ *Ambiance India Pvt. Ltd. v. Naveen Jain*, 2005 SCC OnLine Del 367.

²⁷ Trade Secrets law and Innovation Policy in India, Faizanur Rahman, http://docs.manupatra.in/newline/articles/Upload/E8134C85-E745-414C-91AA-3E05D6B95581.1-H_civil.pdf

²⁸ Draft 5th National Science, Technology, and Innovation Policy for public consultation, Government of India, Department of Science & Technology, <https://dst.gov.in/draft-5th-national-science-technology-and-innovation-policy-public-consultation>

²⁹ Srivastava Kamakhya, 'Indian Innovation Act: Trade secrets and confidentiality'.

³⁰ Pollock and Mulla, *Indian Contract and Specific Relief Acts*, Vol 1, 12th edn, edited Nilima Bhadbade (Butterworths, New Delhi), 2004, pp. 818-822.

³¹ The Law Commission of India, 13th Report, Ministry of Law and Justice (1958), para 55.

The courts, in various cases, held that in order to get the protection of the law, the owner must prove that he tried to maintain the secrecy, reasonably; it is called a "reasonable security measure" under common law. In the case of *Junkunc v SJ advanced technology & Mfg. Corp* the process involved was considered a trade secret.³² The plaintiff, in this case, claimed that their process of manufacturing the fuel nozzle seal which is used in the jet engine was known to only 5 people. The plaintiff has spent a huge amount during the past years on it.³³ The court on this case held that if there are sufficient measures that have been taken to protect the secrecy thus it will amount to trade secrets and is protected, injunction was granted in this case.³⁴

Besides, disclosure of trade secrets is not actionable in all cases i.e., trade secrets owners have recourse only against misappropriation and there are a number of defences to the disclosure of trade secrets as follows:³⁵

General knowledge: In the case of *Mason v Provident Clothing and Supply Co. Ltd*, it was held that the common law as a matter of public policy allows a person to utilize general skill and knowledge in his next employment.³⁶ Suppose the defendant proves that the information possessed by him is of general knowledge, and such information is not derived from his previous employer or not derived by unfair means. In that case, the defendant cannot be restrained from using such information.

Parallel development: If the defendant can prove that he develops the information, i.e., he has made a parallel development of the process, then, he can absolve from liability. The court held that the trade secrets owner does not hold monopoly over the data that comprises the trade secrets.³⁷ If other companies want to know they have the right to discover the element through their own research and hard work.³⁸

Reverse engineering: In reverse engineering, the "trade secrets" are discovered by analysis of the

³² *SJ Advanced Technology & Mfg. Corp. v. Junkunc*, 627 F. Supp. 572, 1986 U.S. Dist. LEXIS 29905, 1986-1 Trade Cas. (CCH) P66,970 (N.D. Ill. January 29, 1986)

³³ *Id*)

³⁴ *Id*)

³⁵ Seetharaman R, Legal protection of Trade Secret, 1 Supreme Court Cases (2004) 22.

³⁶ *Mason v Provident Clothing and Supply Co Ltd*, [1913] AC 724, [1911-13] All ER Rep 400, 109 LT 449.

³⁷ K Stanghton, L.J. in *Lansing Linde Ltd. v. Kerr* [1991] 1 All ER 418 at 425, Art. 39 of the TRIPS Agreement uses "undisclosed information" in this sense.

³⁸ *Kewanee V. Bicon*, 416 U.S. 470, 94 S. Ct. 1879, 40 L. Ed. 2d 315, 1974 U.S. LEXIS 134, 181 U.S.P.Q. (BNA) 673, 69 Ohio Op. 2d 235 (U.S. May 13, 1974).

product.³⁹ Law does not prohibit the examination of the product by honest means. But this exception is not absolute; the defendant has to prove that the process incurred in reverse engineering is fair. In the case of *Barr-Mullin, Inc v. Browning* the question was whether a software program can be considered as a subject of trade secrets.⁴⁰ The North Carolina court of appeals held that the software was a protectable trade secret.⁴¹ In this case, the source code of the software wasn't available in the public domain only the object code was available.⁴² The defendant argued that the object code is already available in the public domain and it has been reverse engineered by them.⁴³ The Court held that the proper focus of enquiry is not whether an alleged trade secret can be deduced by reverse engineering but rather, whether improper means are required to access it.⁴⁴ If the information has already become a part of public knowledge, no action may lie.⁴⁵

Innocent acquisition of information: If a person receives information without knowing it to be confidential, then such acquisition of knowledge is an innocent one and does not amount to unlawful act. The court has held that no liability for the confidential information should attach a bonafide purchase for the information value without noticing the confidentiality.⁴⁶

Suggestions

Trade secret protection effectually fills the gap between copyright and patent protection, which are two traditional pillars of intellectual property for the main purpose of appropriating the results of investments in innovation. It's also to be noted that if there is an effective law on trade secrets, it will lower the cost incurred in secrecy and business protection. It's also essential to protect the recruiters' interests from the employees so that the business information can be protected effectively under the trade secrets law. Trade secret protection in India is currently linked with the intellectual property regime not only for the existing knowledge protection but also for many other factors like boosting invention, innovation, developing and improving original ideas, that would remain incomplete without any effective, adequate or fair protection of the trade secrets.

³⁹ Trade Secrets, WIPO, Module 4, Pg 7, https://www.wipo.int/export/sites/www/sme/en/documents/pdf/ip_panorama_4_learning_points.pdf

⁴⁰ *Barr-Mullin, Inc. v. Browning* 424 S.E.2d 226 (1993).

⁴¹ *Barr-Mullin, Inc. v. Browning*, 108 N.C. App. 590

⁴² *Barr-Mullin, Inc. v. Browning*, 108 N.C. App. 590

⁴³ *Barr-Mullin, Inc. v. Browning* 424 S.E.2d 226 (1993).

⁴⁴ *Telerate Systems Inc v Caro*, 689 F Supp 221, 232 (SDNY 1988).

⁴⁵ *Thomas Marshall v Gunile* (1978) 3 All ER 193, 203.

⁴⁶ *Minerals Resources v. Newcastle Newspapers Pvt Ltd* (1997) 40 IPR 403, ¶ 405.

TRIPS agreement provides for provisions for the protection of trade secrets, but India did not have specific legislation or enactment for IPR protection. This means in India, trade secret hasn't got any recognition as the other IP protection measures. The current impacting laws, which are in common-law form as well as the statutory form, are very limited, non-comprehensive and non-positive in nature as well as scope. The common law itself lacks the foreseeability of the problems; it cannot solve unseen future problems. Therefore, trade secret protection under the system of common law suffers from an inherent limitation of the legal system has been existing as follows:

1. No standard for maintaining the degree of confidentiality
2. Although there is springboard doctrine, there is a limitation to the springboard principle as it is not permanent.
3. The common law system is considered ineffective against third-party misappropriation.
4. Adequate remedy is not available in all breach of confidential information cases.

Moreover, from the overall research, it is found that the existing positions for the protection of trade secrets, is mostly negative. To expand the horizon of the national economy, there needs to be comprehensive protection for trade secrets. Objective 3.8.4 of national IPR policy shows that the government is thinking about future policy but is reluctant in the codification of the trade secrets laws in India as the policy lacks any intention of framing any legislation. Certain loopholes have to be removed from the draft national innovation act 2008. Under section 11, the public interest is too broad, which needs to be defined. Trade secrets by paying loyalty under section 12(4) are also unjust. Section 13(3), which provides for a precondition for defending the suit, actually opposes the basic natural justice rules, which give for the right to a fair hearing. The act fails to give any penalty provisions in the case of confidential information misappropriation. No standard format is drafted w.r.t non-disclosure agreement which in turn creates ambiguity. Also, there should be some exclusion clause. In the 2016 national intellectual property rights policy, there is no specific recommendation and any guidelines for the enactment of the statute for trade secrets protection. The TRIPS Agreement has mandated its Member States to amend their laws or develop new legislations in order to fulfill obligations under the Agreement. It is high time that the Parliament introduces supplementary provisions in Competition Act incorporating a separate chapter on use, misappropriation and regulation of confidential information. The basic corporate enactment of Companies Act, 1956 should also include provisions on confidential information and trade secrets.

The Federation of Indian Chambers of Commerce and industry [FICCI] has suggested that, the provisions must accordingly be made to statutory protection, to trade secrets so there would be no lacuna relating to their protection under Indian law.

Scope of the STANDARD MINIMUM CRITERIA, which has been set up in the TRIPS with regard to the trade secrets, has been incorporated to the legal frameworks of the WTO-

1. *Non-disclosure agreement* (making a legislative provision for the non-disclosure agreement)- An NDA is considered as a contract between two persons, that one knows the information and another to whom the information is going to pass on. Confidentiality is protected through the non-disclosure agreement.⁴⁷ If the receiver of the information has unlawfully disclosed it to another person, the opposite party has certain available rights which include right to sue for damages and compensation, etc. enforcing the rights can also involve filing a lawsuit to obtain injunctive relief.
2. *Defining trade secrets of each employer*- While protecting the interest of the trade secret's owner, it's also pertinent to know what concludes to the trade secrets. The clause which enumerates the trade secrets by the employer should not be compulsory but optional.
3. *Making the provision for the registration of the trade secrets*- There should also be a provision for the trade secrets' registration by the businesses under the proposed legislation. The drafted one be in accordance with the process, that's followed in the trademark. It will put the traders in a bigger and stronger position as they've got the registered trade secrets. If any misappropriation has occurred, it will become very easier for the traders to get protection. The registration should contain the general description but not the information itself, unlike in the patent registration.
4. *Making the provision of the criminal penalty for the misuse of trade secrets*: It also observed that countries which are protecting the criminal law are more effective. If there are criminal sanctions, there will be more fear of misappropriation. Although Section 405-409, section 418 under IPC 1860⁴⁸ and Section 43 & 66 of the IT act 2000⁴⁹ provide some remedy, these provisions aren't exclusively made for trade secrets protection, and such provisions can't be effectively used in the case of misappropriation. The Indian law dealing the trade secrets should include penal provisions in the form of civil injunction, damages for misappropriation, imprisonment, and administrative provisions.

⁴⁷ Tractors and Farm Equipment Ltd. v. Green Field Farm Equipments Pvt. Ltd., 2006 SCC OnLine Mad 1236.

⁴⁸ Indian Penal Code, 1860, § 405-409, § 418.

⁴⁹ Information Technology Act, 2000, § 43 & § 66.

5. *Validating reasonable non-competition agreement*: Requirement of a non-competition agreement with the non-disclosure agreement may be able to control those persons' right who sign it to compete with him. A company may restrain an employee from carrying out similar work in another establishment during employment. Although an employer is not entitled to restrain his servant after the termination of employment from offering competition, he is entitled to reasonable protection against the exploitation of trade secrets.⁵⁰
6. *Insertion of the exclusion clause in the provision of the trade secrets protection*: There should be some insertion of the exclusion clause in the enacted provision, which then enumerates the things that have to be exempted from the category of trade secrets even if it's qualified to be trade secrets. Such a provision is needed for the protection of the interest of the general public as a whole. Also, there is no compromise on health standards and national interest only for the sake of the investor's protection. The following things can be added to the exemption clause-
 - a. If the disclosure of the information is needed for the protection of a larger public.
 - b. If the disclosure of the information is beneficial for the public interest. Except when the owner of the information can prove that personal interest outweighs public interest, then the information is protectable as confidential information.⁵¹
 - c. If the disclosure of the information is for the protection of the national interest or for the prevention, investigation or prosecution of crime is permissible.
 - d. If the employee acquires any new skill during the course of the employment, then such skills can't be considered as the employer's trade secrets.
 - e. If the information is used or disclosed in accordance with a statutory obligation or power. Information disclosed pursuant to a court order for the purpose of legal proceedings. However, the disclosure must be to someone who has a 'proper interest' in receiving the information in question.⁵²
 - f. If the content of the product has any health hazard (actual or potential)
 - g. If the level has any health hazard (actual or potential)
 - h. If any of the information has been developed by way of any unfair or illegal means by the employer, but the employee concerned has legalized the method of acquiring

⁵⁰ *Attwood v Lamont*, (1920) 3 KB 571; (1920) All ER Rep 55.

⁵¹ *DVD Copy Control Ass'n, Inc. v. Bunner* - 116 CAL. APP. 4TH 241, 10 CAL. RPTR. 3D 185 (2004).

⁵² *Initial Services v Putterill*, (1968) 1 QB 396, 405; (1967) 3 All ER 145.

and then started a separate business by commercially exploiting that knowledge, then such information cannot be considered as the employer's trade secrets.

7. *Changing draft of Section 12(4) of the proposed National Innovation Act:* This section is also disputed, which says that an injunction restricting the uses of confidential information may then stipulate the conditions for the payment upon the future use of a royalty which is reasonable for not longer than the period of the time which could have been prohibited.
8. *Changing the draft Section 13(3) of the proposed National Innovation Act:* This provision has to be changed because this clause is unjustified in cases having original jurisdiction. The condition here contradicts the natural justice rule, which provides the right to a fair hearing.

Conclusion

Effective IPRs of a country accelerate its economic growth better, including trade secrets within it. It also stimulates the FDI. Adequate IPR protection, including trade secrets, is one 'sine qua non' of the open markets in a liberalized economy when compared to a constricted and conservative economy. It increases competitiveness in the economy. Effective trade secret protection is an important instrument in the promotion of international trade in the WTO regime.