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# **MEASURES AND SOLUTIONS FOR SAFEGUARDING TRADE SECRETS**

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## **INTRODUCTION**

With globalization and the rise of international trade, the importance of having consistent standards for intellectual property protection has grown. The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), an international treaty under the World Trade Organization (WTO), is key to setting baseline protections for intellectual property among its member nations. This chapter examines the TRIPS Agreement and its impact on worldwide intellectual property rights protection, with a special emphasis on trade secrets. It also looks into the legal safeguards for trade secrets in India, focusing on Section 27 of the Indian Contract Act of 1872 and the historical background of this provision.

## **THE HISTORY OF TRADE SECRETS IN COMMON LAW**

The idea of protecting confidential information dates back to the early days of common law. Historically, English courts did not have specific statutes dedicated to trade secrets, but they developed legal protections based on equity and tort law. The earliest forms of protection for confidential information arose from cases involving the misuse of proprietary knowledge, where courts issued injunctions to prevent the wrongful disclosure or use of that information. One of the key cases that shaped the protection of trade secrets under common law was the *Saltman Engineering Co. v. Campbell Engineering Ltd.* (1963) case. In this case, the court held that trade secrets could be protected through the equitable doctrine of "breach of confidence." The case established that where there was an obligation of confidentiality, the misuse of information could lead to legal consequences. This case marked a significant development in recognizing trade secrets as a form of proprietary knowledge deserving protection.

Over time, the concept of trade secrets under common law evolved further, with courts

acknowledging the value of confidential business information and the need for legal remedies to address the misappropriation of such information. While trade secrets were not protected through a specific legal framework, the doctrine of confidence served as the foundation for legal protection.

## **DEFINITION OF TRADE SECRETS UNDER COMMON LAW**

Under common law, trade secrets are generally defined as any confidential business information that provides a competitive advantage. This includes formulas, practices, processes, designs, instruments, or any information that is not generally known to the public and that the business seeks to protect. The protection is granted because the information has value and contributes to the success of the business.

To qualify as a trade secret under common law, the information must meet the following essential criteria:

1. **Secrecy:** The information must be confidential, not known or readily accessible to others.
2. **Economic Value:** The information must have economic value, providing a competitive advantage to the owner.
3. **Efforts to Maintain Secrecy:** The owner must take reasonable steps to keep the information secret, such as limiting access to it, using non-disclosure agreements, and instituting other protective measures.

Common law has traditionally granted protection to these secrets through the law of confidence, which prevents individuals or entities from disclosing or using proprietary information in an unauthorized manner.

## **THE ROLE OF THE TRIPS AGREEMENT IN ENFORCING INTELLECTUAL PROPERTY RIGHTS**

The TRIPS Agreement, established in 1995 under the WTO framework, sets forth a detailed framework for the protection and enforcement of intellectual property rights (IPR). Its goal is to harmonize and enhance intellectual property safeguards among member nations, thereby encouraging fair competition, innovation, and economic growth. The agreement outlines minimum requirements for protecting various forms of intellectual property, including patents, copyrights, trademarks, industrial designs, and trade secrets. The main aim of TRIPS is to ensure uniformity in IPR protection that supports technological progress and creativity while

also maintaining public access to knowledge and culture. It stresses the importance of enforcing intellectual property rights and obligates WTO members to provide effective legal remedies for IP violations. Specifically, Article 39 of the TRIPS Agreement addresses trade secrets, focusing on the protection of undisclosed information and test data. This provision recognizes the significance of safeguarding confidential business information that holds commercial value. Member countries are required to legally protect trade secrets from unauthorized acquisition, use, or disclosure, provided that the information remains confidential and offers a competitive advantage to its owner.

## **THE ROLE OF THE TRIPS AGREEMENT IN ENFORCING TRADE SECRETS**

According to Article 39 of the TRIPS Agreement, member nations are required to safeguard undisclosed information, or trade secrets, provided certain criteria are fulfilled:

- **Confidentiality:** The information must not be widely known or easily accessible to the public.
- **Economic Value:** The information must possess commercial value due to its secrecy.
- **Protective Measures:** The information owner must take appropriate actions to maintain confidentiality, such as implementing non-disclosure agreements and other security protocols.

This TRIPS provision guarantees that trade secrets receive protection comparable to other intellectual property rights like patents and trademarks. Its purpose is to promote innovation and allow companies to secure their confidential data that offers a competitive edge. However, TRIPS permits exceptions to this protection, especially in cases involving public health or safety concerns. Section

## **27 OF THE INDIAN CONTRACT ACT, 1872: A HISTORICAL OVERVIEW**

In India, the safeguarding of trade secrets is mainly regulated by Section 27 of the Indian Contract Act, 1872, which addresses agreements that restrain trade. This section is rooted in the English common law tradition, aiming to prevent unfair limitations on an individual's right to work or conduct business. Its purpose is to ensure people have the freedom to pursue their profession, trade, or business without unreasonable constraints. Section 27 declares that "Every agreement by which anyone is restrained from exercising a lawful profession, trade, or business

of any kind, is to that extent void.” Essentially, this means contracts cannot impose unfair restrictions on trade. Nevertheless, exceptions exist where restrictions are allowed if they are reasonable, necessary to protect legitimate interests, and sometimes to safeguard trade secrets. Section 27’s relevance in trade secret protection appears in cases involving confidentiality clauses and non-compete agreements. Indian law permits certain trade limitations, but Section 27 prevents these restrictions from being excessively broad. For example, companies may use non-disclosure agreements (NDAs) and confidentiality provisions to protect their trade secrets, as long as these do not indefinitely bar individuals from practicing their profession or trade. Therefore, Section 27 balances the need to maintain confidentiality with protecting an individual’s right to work and trade freely.

## **SECTION 27 OF THE INDIAN CONTRACT ACT IN THE CONTEXT OF TRIPS**

In India, the legal landscape for trade secret protection is shaped by the interplay between Section 27 of the Indian Contract Act, 1872, and the TRIPS Agreement. While TRIPS establishes international benchmarks for safeguarding trade secrets, Section 27 ensures that any contractual restrictions on trade or professional activities are fair and not excessively restrictive. Although the TRIPS Agreement emphasizes the need to protect trade secrets, it leaves the choice of legal mechanisms to individual WTO member countries. As a result, each country, including India, must implement its own legislation consistent with TRIPS principles. In the Indian context, Section 27 serves as the primary legal tool for protecting trade secrets by upholding reasonable confidentiality agreements, while also preserving an individual’s right to pursue their profession or trade.

## **CONTRASTING INDIA'S FRAMEWORK WITH INTERNATIONAL METHODOLOGIES**

India’s method of safeguarding trade secrets is primarily based on Section 27 of the Indian Contract Act and aligns broadly with international norms, including those outlined in the TRIPS Agreement. Both frameworks highlight the importance of maintaining confidentiality and recognize the commercial significance of proprietary information. Nevertheless, India’s approach differs significantly from that of countries like the United States and those within the European Union.

In the U.S., trade secrets enjoy protection under both federal and state-level laws, most notably the Defend Trade Secrets Act (DTSA) and the Uniform Trade Secrets Act (UTSA). These statutes offer a well-defined legal structure, granting remedies such as injunctions, monetary damages, and even criminal sanctions in cases of trade secret theft. Conversely, India lacks a dedicated trade secrets law, relying instead on general principles under Section 27 and confidentiality provisions, resulting in a more limited and indirect form of protection.

Similarly, the European Union ensures strong and harmonized trade secret protection through Directive 2016/943, which standardizes rules across member states. This unified legal approach provides more comprehensive coverage compared to India's fragmented system, which remains largely dependent on private contracts and the broader provisions of the Indian Contract Act.

## **TRADE SECRETS PROTECTION IN INDIA: CHALLENGES AND PROSPECTS**

Although the TRIPS Agreement and Section 27 of the Indian Contract Act have been implemented, protecting trade secrets in India remains challenging. The absence of a specialized legal statute for trade secret protection forces companies to depend largely on contractual agreements and non-disclosure clauses. This reliance makes enforcement difficult, particularly when legal remedies for misappropriation are not clearly defined.

Nonetheless, the Indian judiciary has progressively acknowledged the significance of safeguarding trade secrets, mainly through its interpretation of contractual obligations and the doctrine of breach of confidence. With the ongoing development of India's commercial landscape, there is growing anticipation for the establishment of a more robust and comprehensive legal framework dedicated to trade secret protection.

### **REMEDIES FOR BREACH OF CONFIDENCE**

When a trade secret is misappropriated or disclosed in breach of confidence, common law provides several remedies to the aggrieved party. The primary remedies include:

- 1. Injunctions:** Courts may issue an injunction to prevent the further use or disclosure of the trade secret. This is a critical remedy, as it helps protect the secrecy of the information and prevents further harm to the business.

2. **Damages:** In cases of misappropriation, the injured party may be awarded damages to compensate for the economic harm caused by the unauthorized use or disclosure of the trade secret. The amount of damages is typically based on the loss suffered by the owner of the trade secret, including lost profits and the unfair advantage gained by the wrongdoer.
3. **Account of Profits:** In some cases, the court may order the wrongdoer to account for the profits gained from the use of the trade secret. This remedy ensures that the wrongdoer does not unjustly profit from the misuse of the confidential information.
4. **Criminal Penalties:** In some jurisdictions, trade secret misappropriation may lead to criminal charges. This is particularly the case where the breach involves theft or other unlawful conduct.

## CONCLUSION

The TRIPS Agreement plays an essential role in ensuring global standards for the protection of trade secrets by establishing baseline requirements for member nations. Although India's reliance on Section 27 of the Indian Contract Act aligns with these international norms, the country still encounters difficulties due to the lack of dedicated legislation addressing trade secrets. In India, safeguarding such confidential information primarily relies on contractual obligations, which can limit the strength and scope of legal remedies in cases of unauthorized use or disclosure. As international commerce continues to grow, there is an increasing need for India to implement a more robust and clearly defined legal framework for trade secret protection that reflects global best practices.