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# **A STUDY OF ENFORCEMENT OF TRADE SECRETS IN INDIA**

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## **ABSTRACT**

Trade secrets are a vital component of intellectual property and play a significant role in fostering innovation. They are crucial for safeguarding both the creation of novel concepts and the preservation of valuable information that gains its worth from remaining confidential. Often, trade secrets are the result of extensive research and development efforts, involving substantial financial investments ranging from thousands to millions of dollars.

Economic espionage involving trade secrets encompasses the illicit acquisition, theft, or misappropriation of confidential information with commercial value. This confidential data, known as trade secrets, can range from formulas and processes to customer lists and business plans. Perpetrators of economic espionage targeting trade secrets may include competitors, corporate insiders, or foreign entities seeking to gain a competitive advantage or economic benefit.

In India, the legal framework for trade secret protection primarily relies on common law principles and contractual agreements, as there is no specific legislation exclusively addressing trade secrets. However, Section 27 of the Indian Contract Act provides limited protection against the disclosure of information obtained through contracts. Despite the absence of dedicated trade secret laws, courts in India have recognized the importance of safeguarding confidential information and have upheld protection through various legal avenues.

To counter the threats posed by economic espionage, businesses must implement robust cybersecurity measures, safeguard physical access to sensitive information, and provide employee training on data security best practices. Legal frameworks and enforcement mechanisms also exist to prosecute individuals and entities engaged in the unlawful acquisition or misuse of trade secrets, helping to protect businesses and preserve innovation.

Key words: Intellectual Property Rights, Trade Secrets, economic espionage

## INTRODUCTION

According to WIPO, trade secrets represent intellectual property rights concerning confidential information that holds potential for sale or licensing. Put simply, a trade secret refers to confidential knowledge specific to a particular trade or business, known only to a select group of individuals and possessing commercial worth.<sup>1</sup>

Economic espionage involving trade secrets refers to the unlawful acquisition, theft, or misappropriation of confidential information that holds commercial value for a business or organization. Trade secrets encompass a wide range of proprietary data, including formulas, processes, techniques, designs, customer lists, and other confidential information that provide a competitive advantage in the marketplace.

Perpetrators of economic espionage targeting trade secrets may include competitors, corporate insiders, foreign governments, hackers, or other entities seeking to gain access to valuable information for economic benefit or competitive advantage. This illicit activity can take various forms, such as hacking into computer systems, infiltrating company networks, bribing employees, or conducting covert surveillance to obtain sensitive data.

Economic espionage involving trade secrets poses significant risks to businesses, as it can result in financial losses, loss of market share, diminished innovation, and damage to reputation. Additionally, the theft of trade secrets can undermine a company's competitive position and erode its intellectual property rights.

The study on economic espionage involving trade secrets in India aims to examine the landscape of trade secret protection, the prevalence of economic espionage activities, and the legal framework governing trade secrets in the country.<sup>2</sup>

India, as a growing economy and a hub for innovation and technological development, faces challenges related to the protection of confidential business information. Trade secrets play a

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1 Vijay Pal Dalmia, India: Protection Of Trade Secret In India, Mondaq (2023)

2 Bagada Ram, Legal Regime For Trade Secret Protection In India, IJLLJS (2016)

crucial role in maintaining a competitive edge for businesses, yet they are vulnerable to theft, misappropriation, and illicit acquisition.

The study involves understanding the significance of trade secrets in India's business landscape, the risks posed by economic espionage activities, and the existing legal mechanisms for protecting trade secrets. Additionally, it explores the impact of economic espionage on innovation, economic growth, and foreign investment in India.

By delving into these aspects, the study aims to provide insights into the effectiveness of current trade secret protection measures, identify gaps in the legal framework, and propose recommendations for strengthening trade secret laws and combating economic espionage in India. Ultimately, the study seeks to contribute to the enhancement of trade secret protection, fostering a conducive environment for innovation, and promoting economic development in the country.<sup>3</sup>

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## **NECESSITY OF TRADE SECRETS IN IPR**

Just like other forms of IPRs, trade secrets hold immense economic value for companies or individuals. However, in India's current legal landscape, the absence of specific laws for trade secret protection creates apprehension among international companies looking to invest or expand their operations in the country. A robust intellectual property regime that provides strong protection for IPRs could attract significant foreign investment to India.

Concerns about trade secret exposure deter multinational corporations from expanding their presence in India. To illustrate, consider the case of the Coca-Cola Company, which has

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<sup>3</sup> Searle, Nicola, The Economic and Innovation Impacts of Trade Secrets, SSRN (2021)

<sup>4</sup> Nomani and Rahman, Faizanur Intellection of Trade Secret and Innovation Laws in India. Journal of Intellectual Property Rights (2021)

effectively safeguarded its secret recipe for over a century. The company stores the formula in a highly secure bunker in Atlanta, limiting access to only two employees at a time. Moreover, as an additional precaution, the company ensures that these employees never travel together on the same flight. Despite numerous attempts by rival companies to replicate the formula since its creation by pharmacist John S. Pemberton in 1886, none have succeeded.

## **LEGAL PRESENCE OF TRADE SECRETS IN IPR**

The legal presence of trade secrets within the framework of intellectual property rights (IPR) in India is primarily governed by contract law and principles of equity and confidentiality. While India does not have specific legislation dedicated solely to trade secret protection, trade secrets are recognized and protected under common law and various statutory provisions.

Under Indian contract law, trade secrets are often safeguarded through NDAs and confidentiality clauses in employment contracts, partnership agreements, licensing agreements, and other commercial contracts. These agreements outline the obligations of parties to maintain the confidentiality of sensitive information and provide legal recourse in case of breach.

Additionally, Section 27 of the Indian Contract Act, 1872, prohibits individuals bound by a contract from disclosing any information acquired during the course of the contract. This provision indirectly supports the protection of trade secrets by imposing restrictions on the disclosure of confidential information obtained through contractual relationships.

Furthermore, the Indian judiciary has recognized the common law principles of breach of confidence and unjust enrichment to protect trade secrets. Courts may grant injunctions and award damages to remedy the unauthorized disclosure or misuse of confidential information.

Although trade secret protection in India primarily relies on contractual agreements and common law principles, there have been calls for the enactment of comprehensive legislation specifically addressing trade secret protection. The introduction of such legislation could enhance legal certainty and provide businesses with stronger mechanisms for enforcing their trade secret rights.<sup>5</sup>

## **TRADE SECRETS AND ECONOMIC ESPIONAGE**

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<sup>5</sup> Poorvi Bansal, TRADE SECRETS: INDIA'S DIMENSION, Pimpri Law Review (2022)

Economic espionage involves the illicit acquisition of confidential or proprietary information for economic or commercial advantage. This can include trade secrets, which are valuable assets for businesses and typically encompass confidential information such as formulas, processes, techniques, designs, or any other information that provides a competitive advantage.

Trade secrets are crucial for maintaining a competitive edge in the marketplace, and their unauthorized acquisition or disclosure can have severe consequences for the affected businesses. Economic espionage targeting trade secrets may involve various actor, including competitors, foreign governments, hackers, or disgruntled employees, seeking to gain access to valuable information for financial gain or other purposes.

Instances of economic espionage targeting trade secrets can lead to significant financial losses, damage to reputation, loss of market share, and compromised innovation and competitiveness for the victimized companies. Moreover, such activities can undermine trust and confidence in business relationships, disrupt industries, and pose threats to national security and economic interests.

To combat economic espionage and protect trade secrets, businesses often employ various measures, including implementing robust cybersecurity protocols, enforcing strict access controls, conducting employee training on confidentiality and security practices, and monitoring for suspicious activities. Additionally, collaboration with law enforcement agencies and regulatory authorities can help investigate and prosecute cases of economic espionage, deter future incidents, and safeguard critical economic assets.<sup>6</sup>

## **THE CONTRACT ACT, 1872 AND TRADE SECRETS**

The Indian Contract Act, 1872, while not specifically addressing trade secrets, contains provisions that indirectly relate to the protection of confidential information and trade secrets through contractual agreements.

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<sup>6</sup> Benjamin Glassman, Economic Espionage and Theft of Trade Secrets, Global Investigations, 2022

Section 27<sup>7</sup>, deals with agreements in restraint of trade. While this section primarily focuses on agreements that restrict a person's freedom to engage in a lawful profession, trade, or business, it also has implications for the protection of trade secrets.

Under Section 27, agreements that impose restrictions on individuals from disclosing confidential information acquired during the course of their employment or contractual relationship may be enforceable. Such agreements are typically included in employment contracts, non-disclosure agreements (NDAs), and other commercial contracts to safeguard trade secrets and proprietary information.

While the Indian Contract Act does not provide specific remedies for the misappropriation of trade secrets, it offers a legal framework for parties to enforce contractual obligations related to confidentiality and non-disclosure. Parties can seek injunctions and damages for breach of contract in case of unauthorized disclosure or misuse of confidential information.<sup>8</sup>

Overall, while the Indian Contract Act does not directly address trade secrets, its provisions on contractual agreements and restraints of trade can serve as a basis for protecting confidential information and trade secrets through contractual arrangements.

## **THE COPYRIGHT ACT, 1957 AND TRADE SECRETS**

The Copyright Act, 1957, primarily deals with the protection of literary, artistic, and musical works, and it does not explicitly address trade secrets. However, there are certain provisions within the Copyright Act that indirectly relate to the protection of confidential information and trade secrets.

While trade secrets are not subject to copyright protection per se, the Copyright Act can offer some level of protection for works that contain proprietary information. For example, if a trade secret is incorporated into a literary, artistic, or musical work, such as a software code or a confidential business process described in a document, the expression of that trade secret may be protected under copyright law.

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<sup>7</sup> Section 27 of the Indian Contract Act, 1872

<sup>8</sup> Poorvi Bansal, TRADE SECRETS: INDIA'S DIMENSION, Pimpri Law Review (2022)

Section 2(o)<sup>9</sup> defines "literary work" to include computer programs, compilations, and computer databases, among other things. If a trade secret is embodied in a computer program or database, the copyright in that work may provide some level of protection against unauthorized copying or reproduction of the trade secret.

Additionally, Section 63 of the Copyright Act provides for civil remedies, including injunctions and damages, for copyright infringement. If a trade secret is misappropriated through the unauthorized copying or reproduction of a copyrighted work containing the trade secret, the owner of the trade secret may be able to seek legal recourse under the Copyright Act.

However, it's important to note that while copyright protection may offer some level of protection for trade secrets that are expressed in copyrighted works, it does not protect the underlying ideas, concepts, or information that constitute the trade secret itself. For comprehensive protection of trade secrets, businesses typically rely on other forms of intellectual property protection, such as contractual agreements, non-disclosure agreements, and trade secret laws.

### **Hi Tech Systems v. Suprabhat Ray<sup>10</sup>**

In this particular case, similar to others mentioned previously, the focus was on restrictive covenants imposed by employers on their employees, both during and after their employment. The defendants, who were software engineers, had been working for the plaintiff company (Hi-Tech Systems). As part of their employment agreement, they were required to maintain confidentiality regarding any trade secrets or sensitive information they acquired during their three-year tenure, even after leaving the company. This restriction aimed to prevent the misuse of proprietary information belonging to the plaintiff and was considered reasonable given its time-bound nature, aligning with the principles established in the Niranjana Golikari case. Notably, this case underscored the significance of human capital as a valuable asset within the context of employment agreements.

### **Navigators Logistics Ltd v. Kashif Qureshi<sup>11</sup>**

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<sup>9</sup> Section 2(o) of the Copyright Act

<sup>10</sup> (2016) 1 ICC 584

The plaintiff in this case has brought a lawsuit against the defendants, alleging that they unlawfully obtained and utilized confidential copyrighted material. This material includes customer databases, account details, airway drawings, financial records, administrative and organizational information, as well as trade secrets belonging to the plaintiff company. The plaintiff argues that this confidential data qualifies for copyright protection under Sections 2(c) and 2(o) of the Copyright Act, 1957.

The defendants, former employees of the plaintiff, had signed agreements upon joining the company, which prohibited them from disclosing or sharing trade secrets, research processes, financial, administrative, and organizational information. According to the Copyright Act, 1957, copyright protection requires the author to apply skill and judgment in creating a literary work. However, copyright cannot be claimed if there is no original effort involved in compiling the information.

Additionally, copyright protection is granted to natural persons, not artificial entities. Since there was no original effort in compiling the customer information, copyright cannot be established. Moreover, copyright protection for unpublished work is only granted if the author is an Indian citizen or resident at the time of creation. The court observed that the plaintiff's failure to disclose the original author's identity is the primary reason for the absence of copyright in the allegedly stolen data.

### **Dr. Sudipta Banerjee v. L.S. Davar & Company**<sup>12</sup>

In this case, the appellants, who were former employees of the respondent law firm, were accused of disclosing confidential information and trade secrets obtained during their employment upon joining a competing law firm. The respondent obtained an injunction restraining the appellants from disclosing or utilizing the confidential information in any manner. The appellants appealed against this injunction order.

The High Court noted that although there is no specific legislation in India for protecting trade secrets and confidential information, the courts have consistently recognized and upheld trade

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<sup>11</sup> (2018) 254 DLT 307

<sup>12</sup> FMAT 735 of 2021

secret protection based on equitable principles and the common law action of breach of confidence, which essentially constitutes a breach of contractual obligation. The available remedies for trade secret misappropriation include obtaining an injunction to prevent disclosure, the return of confidential information, and compensation for any losses incurred due to the disclosure.

Regarding the specific circumstances of the case, the Court criticized the mechanical extension of the injunction but did not restrain the appellants from practicing their profession. However, it prohibited them from disclosing or sharing confidential information acquired during their employment until the injunction application was decided on its merits, based on attorney-client privilege.

Furthermore, the case highlighted the legislative gaps concerning trade secret law in India and clarified the limitations of Section 27 of the Indian Contract Act regarding the disclosure of confidential information after the termination of employment.

## **CONCLUSION**

In conclusion, the legal landscape surrounding economic espionage and trade secrets in India underscores the importance of protecting confidential information and intellectual property rights. Despite the absence of specific legislation exclusively addressing trade secrets, Indian courts have consistently recognized the need to safeguard trade secrets based on equitable principles and common law doctrines.

The cases discussed demonstrate the courts' willingness to grant injunctive relief to prevent the disclosure or misuse of trade secrets acquired during the course of employment. While there are limitations to the legal remedies available, such as the absence of statutory provisions and the challenges in enforcing contractual obligations post-employment, the judiciary has played a crucial role in upholding trade secret protection through principles of equity and fairness.

However, there remains a need for comprehensive legislation tailored specifically to trade secret protection to provide clearer legal frameworks and more robust remedies for trade secret misappropriation. Such legislation would not only enhance the protection of confidential information but also promote innovation, economic growth, and foreign investment by providing greater certainty and security for businesses operating in India.

In light of the evolving technological landscape and the increasing value of intellectual property rights, policymakers and stakeholders should work towards developing a comprehensive legal framework that effectively addresses the challenges posed by economic espionage and trade secret misappropriation. By fostering a conducive environment for innovation and protecting intellectual property rights, India can bolster its position as a global economic powerhouse while promoting fair competition and ethical business practices.

## **SUGGESTIONS**

- Introduce comprehensive legislation specifically focused on the protection of trade secrets. This legislation should define trade secrets clearly, establish criteria for what constitutes misappropriation, and outline legal remedies available to victims of trade secret theft.
- Conduct awareness campaigns and educational programs to inform businesses, entrepreneurs, and employees about the importance of trade secret protection. This could include seminars, workshops, and online resources to educate stakeholders about best practices for safeguarding confidential information.
- Strengthen enforcement mechanisms to deter trade secret misappropriation. This may involve increasing penalties for offenders, streamlining legal procedures for trade secret litigation, and providing specialized training for law enforcement agencies and judicial officials.
- Strengthen cooperation with international partners to address cross-border trade secret theft effectively. This may include sharing intelligence, harmonizing legal frameworks, and participating in international forums and agreements focused on intellectual property protection.
- Encourage businesses to implement robust internal policies and procedures for protecting trade secrets. This could involve developing confidentiality agreements, restricting access to sensitive information on a need-to-know basis, and implementing technological safeguards to prevent unauthorized access.
- Invest in research and development efforts to develop innovative technologies and methodologies for protecting trade secrets. This could include advancements in encryption, data security, and digital rights management systems tailored to the needs of businesses operating in India.

## REFERENCES

Bagada Ram, Legal Regime For Trade Secret Protection In India, IJLLJS (2016) Searle, Nicola, The Economic and Innovation Impacts of Trade Secrets, SSRN (2021)

Nomani and Rahman, Faizanur Intellection of Trade Secret and Innovation Laws in India. Journal of Intellectual Property Rights (2021)

Vijay Pal Dalmia, India: Protection Of Trade Secret In India, Mondaq (2023) Poorvi Bansal, Trade Secrets: India's Dimension, Pimpri Law Review (2022)

Benjamin Glassman, Economic Espionage and Theft of Trade Secrets, Global Investigations, 2022

<https://www.successmantra.in/blog/trade-secrets-as-an-intellectual-property-right--exploring-the-legal-landscape-in-india>

<https://www.oxyzo.in/blogs/protecting-trade-secrets-in-india-essential-strategies-for-business-innovation/109416>

