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A CRITICAL ANALYSIS ON THE LEGAL PROTECTION FOR TRADE SECRETS IN INDIA

Authored by - Priyanka Jeyakumar

Abstract

Intellectual Property has become a matter of utmost significance for every single person who is involved with the Intellectual Property and the demand of the Intellectual Property is gradually intensifying day by day. Intellectual property is a property which is created from human intellect or mind. The most well-known forms of intellectual property include patents, copyrights and trademarks but one among the forms of intellectual property which has become increasingly significant during the past few decades is the 'Trade Secrets'. The prime object of this Paper is to manifest a brief outline about Trade Secrets, elucidating the different definitions of it granted by various sources in the world and analyzing the 'Trade Secrets Protection Laws' which are recognized in major economically developed countries in the world. It reveals the significance of Trade Secrets in the current technologically developing world and the exigency of having a comprehensive law for the efficacious and feasible protection of 'trade secrets' in India taking into consideration the precedents of various Indian courts which have upheld the trade secret protection on the basis of principles of equity and common law, by way of various Indian laws where there is an indirect and implicit mention of the protection of Trade Secrets and with the aid of the international experiences.

Key words: Trade Secret, Intellectual, Precedents, Access, Protection

INTRODUCTION:

“Intellectual Property is a key aspect for Economic Development.”

- Craig Venter

Every time a person makes or owns a piece of property, there is a reasonable expectation that they will take pleasure in it and enjoys the property. The enjoyment may be either by any personal use or any monetary benefit or profit out of that property. As far as self-created property is taken into consideration, the property requires sufficient skill, labour, capital and application of mind. A property which is created by an intellectual or mind is called as Intellectual Property. The creator or the owner protects such property by the Intellectual Property Rights. In current times, knowledge and ideas are at the core of trade. Since these concepts give business concerns an advantage, help them maintain a competitive advantage in the market, and advance their economic interests, the necessity to preserve them has become of the utmost importance as a result of globalization and the rapid industrialization of the world. To prohibit others from utilising their innovations, designs, or other works, corporations, especially those with multi-national operations, must use this right to demand payment in exchange for others using them. The term “Intellectual Property Rights” is used to describe them. Intellectual property rights are regarded as pay-off for the innovative and inventive work in the implementation of ideas. The significance of intellectual property rights has recently become widely realized and acknowledged.

Countries have laws to protect intellectual property in the economic, scientific, literary, and artistic domains for two basic reasons. One is to give formal and statutory expression to the public's right to access these works of art as well as the moral and financial rights of authors to their works. The second is to actively foster creativity, as well as the dissemination and application of its findings, as well as fair dealing, which would support both economic and social progress.

Intellectual Property Protection is the key element for the economic expansion and development of high technology sector. In order to maintain the value of their investment in what is peculiarly theirs, those who conduct scientific and technological research, those who create and interpret works of learning, culture, entertainment, and information, and those who design the marketing of products and services all look to legal protection against unfair competition. It is difficult to clearly define the right to prevent others from unfairly exploiting ideas or information for their own commercial gain. Because of the need for a sophisticated

legal mechanism, intellectual property has become a somewhat obscure field.

The protection of patents, trademarks, and copyrights are the first things that come to mind when people think of Intellectual Property Rights (IPRs). A few individuals add "trade secrets" to the lists after a brief pause; however, in general, other IPRs are unaware of the vast potential of "trade secrets".

Meaning and Nature of ‘Intellectual Property’:

First, one must comprehend the concept of property in order to comprehend the nature of the intellectual property. Because intellectual property is a type of property, it possesses all of the characteristics of property with the exception of the fact that it was created through the use of the human brain, or intellectual. Everything that is either, corporeal or incorporeal, tangible or intangible, visible or invisible, real or personal, chooses in action, and everything that has exchangeable value or is going to make up one's wealth or estate is included in the concept of "property." According to the Encyclopedia Americana: "Anything whether tangible or intangible, which can be reduced to possession or made the subject of ownership comes within the legal definition of property"¹

Intellectual property is in the nature and kind of 'intangible incorporate property'. Because it falls under the definition of property, it can be dealt with in the same way as other properties, and it can be mortgaged and licensed. Legally speaking, intellectual property is a property; it is something that can be fixed and owned. Even statutory forms have been recognized as producing a form of property right, despite the fact that statutory intellectual property forms are declared to be property rights.

WHAT IS A ‘TRADE SECRET’?

Trade secrets are another important category of intellectual property. Although they do not belong to the traditional category of intellectual property, they have gained worldwide recognition in recent years. In this age of globalization, it is critical to protect traders' interests. Despite the fact that anti-competition laws are in place to prevent excessive market control, trade secret law safeguards the trader's interests by safeguarding business secrets in an era when

¹ XXII The Encyclopedia Americana (The Americana Corporation, New York, 1960).

businesses are conducted worldwide.

A business can gain an economic advantage over competitors by using a "trade secret," which is a formula, practice, process, design, instrument, pattern, or compilation of information that is not generally known or reasonably ascertainable. Trade Secrets are kept secret from the general public. Instead, owners of trade secrets keep it a secret to protect their "trade secrets"-related information from competitors through technological and legal safeguards, as well as special handling procedures. The owner either keeps the "trade secrets" to himself or only lets a small number of people who really need to know them in order for the business to run smoothly have access to them. Because they involve an owner's financial interest, "trade secrets" must be protected. A company's internal processes may be regarded as a trade secret because they give the company an advantage over its rivals. For instance, safeguarding "trade secrets" can give a company an advantage in low-cost production, leading to an increase in revenue and customers. Businesses benefit from innovative ideas, products, and business practices because they help them maintain market dominance and advance their economic interests. Because of this, it is necessary to prevent others from profiting from innovative ideas and knowledge also known as confidential information or "trade secrets" in common parlance.

Nature and Definition of 'Trade Secrets':

In general, a "trade secret" is any secret business information that gives a trader a competitive advantage over others. Both commercial secrets and manufacturing or industrial secrets are referred to as "trade secrets". It is considered an unfair practice and a violation of the trade secret for individuals other than the holder to use such information in an unauthorized manner. The protection of "trade secrets" may or may not be based on specific provisions or case law that establishes precedents for the protection of confidential information, depending on the legal system in question. The terms "sales methods," "distribution methods," "consumer profiles," "advertising strategies," "lists of suppliers and clients," and "manufacturing processes" are typically used to describe the subject matter of trade secrets. Industrial or commercial espionage, breach of contract, and breach of confidence are clearly unfair practices in relation to secret information, although the final definition of what information constitutes a trade secret will depend on the specifics of each case. It could be a formula², computer

² An illustration of a trade secret that is a recipe or formula is the secret Coca-Cola formula that is kept in a vault. It has never been made public because it has not been patented.

program³, process⁴, method⁵, device⁶, technique⁷, pricing data⁸, customer lists⁹, or any other secret information.

Here are few important definitions of 'Trade Secrets' by various renowned sources:

North American Free Trade Agreement (NAFTA) defines a Trade Secret as "information having commercial value, which is not in the public domain, and for which reasonable steps have been taken to maintain secrecy."

The Trade Related Aspects of Intellectual Property Rights (TRIPS) establishes three essential conditions for any information to be considered undisclosed information (trade secret), they are:

- i. Such information must be secret, i.e., not generally known or readily accessible to persons within the circles that normally deal with the kinds of information in question.
- ii. The information must have commercial value because it is secret.
- iii. The information must be the subject of reasonable steps by its owners to keep it secret.

The Uniform Trades Secrets Act, 1970 also lays out the definition of trade secrets, which is as follows:- "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

³ To prevent unauthorized use and access to their software, businesses should make reasonable efforts. The value of the trade secret and the measures that others in the industry take to safeguard their source code will influence these measures.

⁴ Process of manufacturing specific products which is not known by others and has monetary worth. For instance, the rubber industry of Thailand has utilized trade secret protection to protect know-how of the rubber recuperation process.

⁵ Method of preparing 'barbecue chicken' under KFC food-chain is not unveiled to anyone, despite the fact that the ingredients are revealed.

⁶ For instance, a Device made for removing petroleum from unrefined petroleum (crude oil) so that the cost of creation will descend and the benefit will get improved.

⁷ For an instance method of getting in shape by doing a particular kind of activity with admission of certain unique kind of diet might be kept secret by a body slimming center.

⁸ Microsoft, for instance, negotiates pricing with its significant clients and requires those customers to keep their prices undisclosed.

⁹ Customer list of a specific trader can be kept secret by a dealer with the goal that other traders cannot move toward the client or the customer and as a resultant he would have a permanent customer.

- (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy”.

SIGNIFICANCE OF TRADE SECRETS:

For a variety of reasons, the number of trade secrets in the industrial economy has increased significantly in recent years. That is primarily due to two factors, one of which is the uncertainty of other forms of intellectual property, such as patents, trademarks, and copyright, in comparison to Trade Secret. Second, trade secrets have become more important because technology is changing so quickly in many areas that it has outpaced the laws in place to encourage and protect innovations.

The relative ease with which trade secret rights can be created and managed is another significant factor that has contributed to an increase in the value of trade secrets. There are no lengthy wait times for government grants like patents, nor are there any delays caused by bureaucracy. In contrast, trade secret rights can be established through explicit behavior or agreement among interested parties. A trade secret right begins when a concrete idea is created and continues as long as the idea is kept secret. Trade Secrets can be used to protect information that does not qualify as intellectual property under the law, such as ideas or information. These types of information can be protected under the country's intellectual property laws. Again, as long as secrecy is maintained, they have the advantage of lasting forever. Because it encourages foreign investment in numerous fields, intellectual property protection is one of the most important tasks in any developing nation. We continue to rely on the old-fashioned Common Law Principles for Protection of Trade Secrets because India does not have any appropriate laws to protect trade secrets; in the context of an expanding economy, these Common Law Principles have lost their significance. A proper policy framework is absolutely necessary to regulate trade secret protection. Trade Secrets are a preferred method of intellectual property protection for many businesses, particularly chemical firms. These businesses are reluctant to invest in India due to the country's inability to adequately safeguard their trade secrets. As a result, India is losing a lot of foreign direct investment.

INTERNATIONAL FRAMEWORK OF

PROTECTION OF TRADE SECRETS:

"Intellectual Property Rights" protection is one of the significant contemporary legal issues in the worldwide trade domain. As international trade and investment widens in the world, copyrights, trademarks, patents and "trade secrets" have become subjects-matters of more global frame of reference. The need for legal protection of products, which are the result of the human intellect in the global trade and venture setting from the perspective of developed nations, is obvious. With globalization, it has become vital to give effective protection of "trade secrets". All through the world laws are figured out in such a manner. A study of major financially flourishing nations overall is required to comprehend the idea of "trade secrets". The Intellectual Property law incites industrial progress; the law of "trade secrets" is progressively grabbing international attention.

Protection of "trade secrets" has been presented by several countries all through the world. Every one of the nations is a member country of "WTO" and thus follows "TRIPS agreement". India likewise being a signatory to "TRIPS agreement" it becomes essential to concentrate on the degree of security given to trade secrets in different signatory nations of "TRIPS agreement".

Trade Secrets have been provided protection by many "agreements" and "countries" throughout the world. Few of them are:

North-American Free Trade Agreement (NAFTA):

Member nations should safeguard trade secrets from unapproved accession, divulgence, or use. Cures should incorporate injunctive relief and damages. Because of NAFTA, Mexico has altered its 1991 trade secrets law to allow private litigants to get injunctive relief.

General Agreement on Tariffs and Trade (GATT):

On April 15, 1994, the major industrialized countries of the world, including the United States, finished up the Final Act coming about because of the Uruguay Round of GATT (General Settlement on Levies and Exchange). GATT laid out the World Trade Organization (WTO) and proclaimed different trade-related agreements including TRIPS or the Trade-Related Aspects of Intellectual Property Rights.

Under GATT, "undisclosed information" should be safeguarded against use by others

without the assent of the owner assuming the utilization is in opposition to legit business rehearses. Likewise, there is third-party obligation for misappropriation if third parties were negligent in not knowing that such information had been received dishonestly.

Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS):

Article 39 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) of the World Trade Organization addresses the issue of the protection of undisclosed information. On January 1, 1995, this agreement went into effect and established a global standard that requires WTO members to safeguard undisclosed information, such as test results from pharmaceutical and agricultural products. Under Article 39 of the Agreement, the TRIPS obligates member states to ensure the protection of undisclosed information. In addition, member nations are obligated under the TRIPS Agreement to provide efficient remedies for the misappropriation of trade secrets, such as (a) injunctive relief, (b) damages, and (c) provisional relief to prevent infringement and preserve evidence.

The three requirements of Article 39 of TRIPS are well matched by the country-specific definitions of trade secrets. In point of fact, in this regard, TRIPS reflected the practice that was in place at the time in many nations and has influenced subsequent legislation. The following is how the TRIPS requirements for trade secrets are now typically implemented in practice:

- i. **Secrecy:** It is necessary for secret information to be protected. There is no need for total secrecy. Employees and business partners may receive the information from the owner of the trade secret. Instead, secrecy requires that the information is not readily available to the public and that it be disclosed to others only under circumstances that maintain secrecy with regard to the general public.
- ii. **Commercial Value:** Because it is secret, the information must have economic value. The majority of the time, trade secret law safeguards commercial data; that information must be useful from being kept secret.
- iii. **Reasonable Efforts to Maintain Secrecy:** The owner of the rights must make reasonable efforts to keep the information confidential. A trade secret claim typically arises when measures to safeguard the information have failed. Therefore, claiming a trade secret does not necessitate full success in protecting it, as stipulated by the law. However, the owner is obligated by the law to protect the secret. In accordance with Article 39 of TRIPS, the necessary effort is

frequently referred to as "reasonable" in broad terms in national laws. However, some nations impose additional obligations that are more specific and could be described as a particular application of the broad reasonableness requirement. A contractual or implied obligation to keep the information secret is one example of a common law requirement in some nations. In addition, confidentiality notices and written agreements with recipients are required in other nations.

Different kinds of intellectual property rights are recognized by the "TRIPS Agreement." The goal of the agreement is to recognize and safeguard intellectual property rights worldwide. The agreement established global uniformity in intellectual property laws. Intellectual property rights and regulation are laid out in detail in the agreement. The terms of the "TRIPS" agreement have been incorporated into the laws of every state that is a member, either through additions to existing laws or new laws.

COMPARATIVE ANALYSIS OF 'TRADE PROTECTION LAWS' IN A GLOBAL PERSPECTIVE:

"I am a strong believer that the Intellectual Property Rights need to be protected."

- Jim Oberweis

Brazil:

Brazil updated its intellectual property laws in 1996. The protection of trade secrets comes under the purview of "unfair competition". A variation of Section 757 (6-factor) test, which is borrowed from U.S. law, is used to determine whether a particular piece of information is protected as a trade secret. Common knowledge, information that is in the public domain or information that is obvious to an expert in the field cannot be protected as trade secrets. The owner of the trade secret must take effective measures to keep the information secret.

Compensatory damages, punitive damages, and injunctions are all options for relief. Anyone who releases, exploits, or uses a trade secret that they had access to through a contractual or employment relationship without permission is also subject to criminal penalties.

Japan:

Japan enacted a National Trade Secrets Law on June 15, 1991. Any "technical or

business" information that has commercial value, is not publicly available and has been "administered" as a trade secret is considered a trade secret. Trade secret theft, fraud, or extortion, as well as the unauthorized use or disclosure of a legally acquired trade secret for unfair competition, all constitute infringement. Injured parties may seek damages and injunctive relief. Additionally, the owner of the trade secret has the right to demand that any products produced using the secret that was obtained illegally be destroyed. The Uniform Trade Secrets Act is comparable to the statute. For example, the trade secret violation must be reported within three years of its discovery. The statute does not contain any criminal penalties.

China:

The Law of the People's Republic of China (PRC) against the Unfair Competition (Unfair Competition Law) was passed in September 1993, and it went into effect on December 1 of that same year. This is the first Trade Secret Law of China. The definition of "trade secrets" is information about management and technical matters that is hidden from the general public, has practical value, and has the rightful owner taking steps to keep it secret. Article 10 of the Unfair Competition Law says that businesses cannot do certain things, and the law also says what to do if trade secrets are violated.

Korea:

Korea's laws were also changed in 1991 to make trade secrets legally protected. During a US litigation between GE and a Korean company that had acquired GE trade secrets from a former GE employee, this law, which went into effect on December 15, 1992, was enacted.

Israel:

Employee disclosure of trade secrets is criminally prohibited in Israel (Penal Law 1977 Section 496). Trade secrets and industrial know-how are prohibited by employee contracts. Employers and employees are obligated to maintain confidentiality. Numerous additional nations, including the United Kingdom, Canada, Mexico, France, Germany, the Czech Republic, Hong Kong, and others, are included in this list through their various old and new laws, provide protection for trade secrets and confidential or undisclosed information.

POSITION OF TRADE SECRETS IN INDIA:

“Intellectual Property has the shelf life of a banana”

- Bill Gates

The field of trade secrets appears to be neglected in India since there is neither a law nor a policy framework in place to protect trade secrets, This form of Intellectual Property is another entrant in India, yet is by the by, a vital field of Intellectual Property. In order to conduct business with our nation, foreign investors need assurance that their trade secrets will be safeguarded. Our own industry's security will be further enhanced by a proper trade secret protection policy. As a signatory to TRIPS, India is also obligated to amend or create a new law to safeguard the trade secrets of various businesses. Almost every nation in the world has a policy for the protection of trade secrets. In order to provide a sense of security to both local businesses and foreign investors regarding their trade secrets, which will further boost the Indian economy, India needs to implement a proper policy for the protection of trade secrets.

If kept secret, "trade secrets" remain secure for all time. It ceases to be secret if the information's confidentiality is violated. Because India is a world economic power, it is critical to safeguard the interests of traders, businesspeople, and other individuals. India, as a WTO member and a signatory of the TRIPS Agreement, is required to abide by the provisions of the TRIPS Agreement when it comes to intellectual property protection of "trade secrets."

As referenced above, in India, no considerable definitive text or case regulations are accessible to decide the nature or ambit of trade secrets. Be that as it may, the Indian courts have taken a stab at putting the trade secrets of different business under the domain of different legislations to safeguard them and furthermore they have attempted to characterize what a trade secret is in different cases, some of them are as per the following:

In the case, *American Express Bank Ltd. v. Ms. Priya Puri*¹⁰, 'trade secret' is defined as "...formulae, technical know-how or a peculiar mode or method of business adopted by an employer which is unknown to others." In the cases *Micheal Heath Nathan Johnson v. Subhash Chandra*¹¹ and *John Richard Brady and Ors. v. Chemical Process Equipments Pvt. Ltd. And Anr.*¹², the Hon'ble Court observed the disputes of the counsels who alluded to English

¹⁰ (2006) III LLJ 540(Del)

¹¹ 60 (1995) DLT 757

¹² AIR 1987 Delhi 372

decisions to characterize 'trade secrets'. In the case of *Mr. Anil Gupta v. Mr. Kunal Dasgupta and Ors*¹³, the Delhi High Court ruled that the plaintiff's concept is the result of his work with material that could have been used by anybody. However, the fact that the plaintiff used his brain to produce a result in the form of a concept is what makes it confidential.

Protection of 'Trade Secrets' under the 'Indian Contract Act, 1972':

The Indian Contract Act, 1872, gives a structure of rules and guidelines overseeing the development and execution of contract in India. In India, the essential legal arrangement for protection of "trade secrets" is represented by Section 27 of the India Contract Act, 1872¹⁴, and other than that, common law likewise provides protection. However the expression "trade secrets" is no place referenced in the provision of the section however courts have interpreted Section 27 of the Contract Act to incorporate understanding which can safeguard trade secrets as non-disclosure furthermore, non-compete agreements.

An understanding in restraint of trade is characterized as an agreement on account of which, a party concurs with some other party to limit his liability in the present or in the future to carry on a trade or profession himself or with different people not parties to the contract without the express authorization of the latter party. These negative covenants stay operative during the time of agreement. In such cases, the question precedes the court is that whether the restraints put by the employer are reasonable or not. In the event that, the restriction is put for the protection of "trade secrets" or confidential information to thrive of the trade then it is considered as substantial and a valid restraint.

One of the principles of valid restrain is that a master is allowed to restrain his servant after the termination of employment for reasonable protection against abuse of "trade secrets"

¹³ 97 (2002) DLT 257;

¹⁴ The Indian Contract Act, 1872 (Act 9 of 1872) s.27: Agreement in restraint of trade void:

Every agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void.

Exception 1: Saving of agreement not to carry on business of which good-will is sold-
One who sells the goodwill of a business may agree with the buyer to refrain from carrying on a similar business, within specified local limits; so long as the buyer, or any person deriving title to the goodwill from him, carries on a like business therein, provided that such limits appear to the Court reasonable, regard being had to the nature of the business.

and support of business privacy. In a contract of employment, it is not simply the employee's right, which is the concern. The rights of the employees are coupled with the liabilities as well. With regard to the employee, he owes an obligation of loyalty to his employer. The employee should not reveal to others the confidential data, which he learns or acquires throughout the course of employment. An injunction may be allowed against the disclosure of such data by the employee. In any case, this does not stretch out to all data or information, which could now and again be required during employment. An employee is qualified to safeguard confidential information as it were which adds up to a trade secret.

Confidential information should be exceptionally confidential before it has been named as a trade secret. There are certain factors that must be considered previously naming information as "trade secrets". The nature of work, first and foremost, continued information should be reviewed. Thirdly, it should be seen whether the employer requested the employee to keep the information confidential. The judicial precedents show that contractual restraints prevail for the protection of trade secrets. Be that as it may, there is an absence of consistency and uniformity in the decisions.

In the case of *Star India Limited v. Laxmiraj Setharam Nayak*¹⁵, the court ordered that, the respondent will not unveil or reveal the plaintiff's business strategies and franchisee agreements which he has come to be aware of during his course of employment.

In the case, *Diljeet Titus v. Mr. Alfred A. Adebare and Others*¹⁶, the defendant, an advocate was in full-time working at the plaintiff's law firm. Upon the discontinuation of employment, the defendant took away essential business information, such as client records also, proprietary drafts, of the plaintiff. The plaintiff contended that such data is "trade secrets" of the firm and cannot be utilized by the defendant. The defendant argued that, since the express relationship between the parties was not that of an employee and employer, so they were the owners of the copyright of the work done by them during their employment. The court denied the relationship and decided that the plaintiff had an unmistakable direction in the material taken away by the defendant. Appropriately, the court restrained the defendant from carrying on a similar service by utilizing the concerned restricted secret information. The defendants

¹⁵ AIR 2003 Bom 563

¹⁶ 8 (2006) 32 PTC 609 Del

were just limited from utilizing the data they took, as this was important to safeguard the interest of the plaintiff.

An employee may not be limited from taking up employment in the event that it cannot be proved by the employer that the employee may, on joining a rival, unveil private data and secrets learned during the course of employment.

In *Gopal Paper Mills Limited v. Surendra K. Ganesh Das Malhotra*¹⁷, the plaintiff carried on a business and the respondent was selected as a colleague to serve for a time of twenty years. During the twenty years he was denied to offer guidance or administrations to some other individual or organization or then again offer any data to any individual, which he could get or acquire during the course of employment concerning the undertakings of the plaintiff. The defendant left the service following one year of joining. An injunction was sought by the plaintiff. It was demonstrated that no confidential data was provided to the defendant during this one year of service. The court refused to grant an injunction to the plaintiff on the ground that, as no "trade secret" or confidential information was granted to the defendant, and hence in this way the subject of safeguarding the employer's interests would not ever emerge. Such a view is taken by the courts to safeguard public policy. This might be perceived as in, there will be restrictions in competition assuming that an injunction is simply given in the cases based on an agreement where no confidential data or information is disclosed.

Similarly in *Jet Airways Ltd. v. Mr. Jan Peter Ravi Karnik*¹⁸, the appellant company utilized the defendant as a pilot. The company had coordinated training to empower the defendant and different pilots to fly new-age airplanes. There was an agreement made between them that the defendant will serve the appealing party for a period of seven years and not to take up similar work with some other organization during that period. Nonetheless, the respondent resigned within six months of the fruition of training and joined another airline. An injunction was sought by the appellant airline company. The "Bombay High Court", denied restraining the defendant from taking up employment with an opponent airline in light of the fact that the negative covenant was one-sided and an unreasonable one. The court held that there was no trade secret of the employer that necessitates protection. The court recognized the

¹⁷ 9 AIR 1962 Cal 61.

¹⁸ (2000) 4 Bom C.R. 487.

current realities of the Jet Airways case from that of Golikari's case¹⁹ and held that the training got by the defendant in the current case was not a secret not at all like Golikar's situation. Indeed, even the workers of the contender airline got similar training which is given by the appellant airlines. The defendant had not got any exceptional information on any trade secret that had a place solely with his employer.

Provision under the Indian Contract Act – not adequate with regard to protection of ‘Trade Secrets’:

The Indian Contract Act, 1872 deals with the legal validity of non-compete covenants²⁰ under Section 27 and specify that, an agreement, which limits or restraints anybody from carrying on a lawful profession, trade, or business, is void to that extent. The Indian law has specific streams in the setting of the present time. The Indian law is rigid and inflexible in that it negates all restraints, whether general or partial, and neither the test of reasonableness nor the test of restraint being fractional applied to a case represented by Section 27 of the "Indian Contract Act, 1872", except if they fall inside the section of the part. This stems from the fundamental rights of each and every individual to rehearse any trade, business, or profession.

The intent of Section 27 of the "Indian Contract Act, 1872" was to safeguard traders from restrictions at a time when trade was still in its infancy. But as trade in India has grown over time, there is no reason why a more liberal attitude should not be taken by acknowledging reasonable restrictions. The report also stated that trade in India does not lag behind that in England or the United States, and it recommends that the words "is to that extent void" be substituted in section 27 of the "Indian Contract Act, 1872" for the words "is to that extent void except in so far as the restraint is reasonable having regard to the interest of the parties to the agreements and of the public." In light of these observations, the "Law Commission of India" recommended that this section be amended to permit reasonable restraint on the right to carry on trade.²¹

¹⁹ Niranjan Shankar Golikari v. Century Spinning and Manufacturing Company Limited, AIR 1967 SC 1098.

²⁰ ‘Non-compete clauses’ or covenants are standard in the agreements of employment. Through non-compete clauses, pioneers and key executives leaving the business are limited by specific limitations. As per non-compete clauses, an individual consents not to begin another business, take up employment or participate in any way with some other competing body. Such limitations are typically restricted by a period and by particular geography, and that implies that the individual will not be allowed to work in competing during a specific period, inside the recognized geography.

²¹ The Law Commission of India, 13th Report on the Contract Act 1872 (26 September 1958) Para 55 at 26-27.

When it comes to the protection of "trade secrets" in the form of confidential information, Indian courts have for some time protected the interests of traders by liberally interpreting the provision under Section 27 of the "Indian contract Act, 1872". However, there is a lack of uniformity in the rulings because there is no specific legislation in this area. Because Section 27 only covers one aspect of "trade secrets", non-compete clauses, it is high time for a separate law to protect "trade secrets." The section does not address other issues, such as stealing trade secrets, misappropriating "trade secrets" for use by third parties, or disclosing "trade secrets" to the public to cause loss. This section is used in the course of judicial activism to protect "trade secrets" from an ex-employee, but its actual purpose is to invalidate restrictions on trade, which is different from the kind of protection needed for "trade secrets".

It is generally acknowledged that Section 27 protected employers' "trade secrets" from employees, but as science and technology advance, new protections are required, which Section 27 does not provide. The Indian "Indian Contract Act, 1872" provides some protection for "trade secrets," others are covered by common law, and some are covered by the "Indian Penal Code 1860": as well as the "Information Technology Act, 2000." In addition, in order to establish an appropriate system of "trade secrets" protections, a specific piece of legislation is required to safeguard all aspects of "trade secrets."

Other Indian Laws which deal with 'Trade Secrets':

Copyrights Law also safeguards Trade Secrets involved in the business data. In addition, a specialized regulatory approach for the protection and privacy of personal and non-personal data in any form (digital or non-digital) was established by the Personal Data Protection Bill of 2019.

Violations of privacy and confidentiality are punishable under Section 72 of the Information Technology Act of 2000.

Criminal breaches of trust are addressed in Sections 405–409 of the Indian Penal Code of 1860.

CONCLUSION:

"Intellectual property is an important legal and cultural issue. Society as a whole has complex issues to face here: private ownership vs. public source and so on"

- Tim Berners-Lee

From the "Paris Convention" to the "TRIPS Agreement", a number of international agreements have been enacted to safeguard various kinds of intellectual property. All member states' intellectual property rights laws are now governed by the "TRIPS Agreement". Because it has reconstructed intellectual property laws around the world, the agreement could be referred to as the "Magna Carta" of intellectual property rights. In order to acquire and safeguard intellectual property, business entities spend a significant amount of money on research and development. The legal framework for intellectual property rights (IPR) is undergoing active adjustments to meet the challenges and attempt to meet new challenges brought about by technology convergence. Article 10bis of the Paris Convention, which emphasizes the nature of protection against unfair competition, and Article 39 of the World Trade Organization's (WTO) "Agreement on Trade-Related Aspects of Intellectual Property Rights" (TRIPS) "Agreement on Trade-Related Aspects of Intellectual Property Rights" (TRIPS) address protection of 'undisclosed information'.

Copyrights, trademarks, patents, designs, and other forms of intellectual property are just a few of the assets that enjoy statutory protection, though there are some restrictions. Trade Secrets are also a form of intellectual property but are not statutorily protected. In order to safeguard the interests of traders and businesses and accelerate economic growth, a developing nation like India must provide adequate protection for "trade secrets". Adapting trade regulations to international standards becomes critical in the age of globalization. India, a fast-growing market for international trade and a member of numerous organizations, is required to adopt international standards. Despite being a member of the "United Nations" and a signatory to the "TRIPS Agreement," India does not have a specific law regarding confidential information and "trade secrets." In terms of intellectual property rights, this is the only area in which India is behind.

The Indian government released a "Draft National Innovation Act" in 2008 to boost research and innovation as a response to the "TRIPS" agreement. The government's passing of the "National Intellectual Property Rights Policy" is a significant indication of its interest in the recognition of "trade secrets" as distinct intellectual property.

The effective safeguarding of "Trade Secrets" is not a singular legal instance. It must be viewed not only from the standpoint of INTELLECTUAL PROPERTY RIGHTS but also

from the standpoint of India's economic governance. In India, the protection of "Trade Secrets" is linked to a viable and efficient "INTELLECTUAL PROPERTY REGIME" for both the protection of existing knowledge and the promotion of invention, innovation, and the development of original ideas. Without effective, adequate, comprehensive, and fair protection of "Trade Secrets," the protection of "Trade Secrets" is insufficient. By establishing and maintaining favorable trade and business conditions in various regions or by expanding into newer regions, this, in turn, has the potential to significantly contribute to the development of the national economy.

Along with other national obligations to its citizens, maintaining compatibility and commitment with the international market is one important condition for flourishing trade and business. This cannot be accomplished without developing and enacting international-standard laws that strongly safeguard national interests. Therefore, in both domestic and international economies, law is of the utmost importance as an efficient and attainable tool for bringing about economic change and ensuring that development reaches the expected level. In this era of globalization, traders and investors seeking to invest in India require assurances that national law will safeguard their secrets. Additionally, the government is currently encouraging trade. Trade and investment will boom in India if "trade secrets" are effectively protected.

Given that the existing legislative provisions are neither specific nor effective, it is high time for a specific law to be enacted to protect "Trade Secrets".