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A STUDY ON EVOLVING PROTECTION OF TRADE SECRETS IN INDIA

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ABSTRACT

Defining a trade secret may appear simple at first glance, yet significant complexity emerges when attempting to codify this form of intellectual property right (IPR). Unlike other categories of intellectual property that are governed by well-established legal frameworks and generally lead to civil proceedings upon infringement, trade secrets occupy a more elusive domain due to their confidential nature. The challenge lies in identifying a breach when the subject matter itself is meant to remain undisclosed. A trade secret refers to information that possesses independent economic or commercial value precisely because it is not publicly known and is safeguarded through deliberate efforts by its owner. For information to qualify as a trade secret, it must be demonstrably valuable, confidential, and subject to reasonable measures to maintain secrecy. Historically, the doctrine of trade secrets was confined to employees in technical or industrial roles; however, judicial interpretations have broadened its scope to encompass diverse areas, including financial, manufacturing, production, and marketing data. This paper examines the evolution of trade secret protection within the framework of modern intellectual property law and highlights the growing significance of confidential information in fostering innovation and sustaining competitive advantage in business.

KEYWORDS: *Trade secret, Non-Disclosure Agreement, Property, Confidentiality, Marketing information.*

1. INTRODUCTION

Across the globe, a significant portion of technological innovation is protected not through formal patents or contractual obligations but under the doctrine of trade secrets. This growing reliance reflects the worldwide acknowledgment of trade secrets as vital instruments for maintaining business competitiveness and sustaining industrial progress. The essence of a trade secret lies in its confidentiality — an aspect that ensures continuous advancement within the commercial landscape. Intellectual property rights, in general, act as a driving force behind scientific and technological growth, granting creators legal exclusivity and protection against misappropriation, provided that secrecy is diligently preserved. In modern market economies, intangible assets increasingly define business strength, as ownership and control over information directly influence market presence. Trade secrets, as a unique branch of intellectual property, serve to convert intangible knowledge into tangible economic benefits, bridging the gap between creativity and commercial success. Nevertheless, their position within the broader framework of intellectual property law has often been complex. This complexity arises from the inherent contradiction between the transparency that intellectual property systems promote and the confidentiality upon which trade secret protection depends. Despite these challenges, trade secret law offers robust legal recourse. The maintenance of confidentiality allows proprietors to seek injunctions and compensation for unauthorized use or disclosure of proprietary information. This study examines the global evolution of trade secret legislation, tracing its origins and development while emphasizing how such legal mechanisms contribute to curbing anti-competitive conduct and preventing monopolistic dominance in markets.

2. CONCEPTS AND DEFINITIONS:

The concept of trade secrets has evolved across jurisdictions in a way that balances the protection of confidential business information with the preservation of healthy market competition. In the Indian context, there is presently no specific legislation that provides statutory protection for trade secrets, nor a precise definition identifying which types of information qualify for such protection. Nevertheless, guidance can be drawn from comparative legal interpretations and judicial pronouncements from other jurisdictions.

A landmark reference often cited is *Saltman Engineering Co. Ltd. v. Campbell Engineering Co. Ltd.*, where Lord Greene observed that an individual could possess a confidential document—whether a formula, plan, or other proprietary material—whose secrecy lies in its originality and the creator's efforts to maintain its confidentiality. This judicial understanding distinguishes confidential information from trade secrets by emphasizing that trade secrets inherently carry commercial or intellectual property value derived from their secrecy.

From the perspective of small and medium enterprises (SMEs), the range of information that may constitute a trade secret is extensive. It can encompass business strategies, market assessments, pricing models, procurement data, employee-related details, operational methods, and databases. It may also include client or supplier lists, financial records, R&D outcomes, proprietary processes and technologies, computer software, recipes, production techniques, and marketing plans. The unifying characteristic among all these categories is their economic and strategic value, which depends on their confidentiality being preserved. Trade secrets thus function as critical business assets, often offering value equivalent to

that of patents or other intellectual property rights. They strengthen competitiveness, encourage innovation, and form the foundation for research-driven growth. Consequently, unauthorized acquisition or disclosure of trade secrets can inflict substantial economic harm, underscoring the necessity of maintaining effective mechanisms for confidentiality and legal recourse.

2.1 UNDISCLOSED INFORMATION VS TRADE SECRETS:

Trade secrets form a subset of undisclosed information within the commercial and industrial sectors and are typically safeguarded through non-disclosure or confidentiality agreements. At the international level, the protection of undisclosed information is recognized under the framework of the World Trade Organization (WTO). Although WTO instruments do not specifically define or separately mention trade secrets, their essence is captured within the broader context of undisclosed information protection.

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), particularly Article 39, addresses this subject by requiring member states to ensure the protection of undisclosed information against unfair commercial practices. According to this provision, information qualifies for protection when it satisfies three essential conditions: it must not be generally known or easily accessible to individuals within the relevant industry; it must hold commercial value precisely because it remains secret; and reasonable steps must have been taken by the rightful holder to preserve its confidentiality. When these criteria are met, such information is treated as a trade secret and becomes eligible for legal protection.

The scope of undisclosed information is wide-ranging, encompassing both tangible and intangible forms. It may include compilations such as names, addresses, or contact lists, and can exist in physical, digital, graphical, photographic, or written formats. It also extends to data from various domains—financial, business, scientific, technical, economic, and engineering—and includes processes, formulas, patterns, plans, codes, prototypes, software, designs, or methodologies.

The linkage between undisclosed information and trade secrets is therefore intrinsic: while all trade secrets constitute undisclosed information, not all undisclosed information necessarily qualifies as a trade secret unless it carries independent economic value derived from its secrecy. The TRIPS Agreement, by mandating protection for such information, seeks to uphold fair competition and discourage the misappropriation of confidential business knowledge in the global marketplace.

Protection of Undisclosed Information:

Under the **TRIPS Agreement**, the responsibility to protect undisclosed information extends to both natural and legal persons who possess such information. These entities are entitled to prevent others from disclosing, acquiring, or using that information without authorization, provided such acts occur in a manner inconsistent with fair and honest commercial conduct. In essence, the right of protection is vested in those who lawfully control the information and have taken reasonable measures to maintain its confidentiality.

2.2 THE DEFINITION OF TRADE SECRETS

It can be best understood by examining comparative international frameworks,

particularly those of the United States. In the U.S., trade secret protection is primarily derived from state-level statutes based on the Uniform Trade Secrets Act (UTSA) of 1970. Under this Act, a trade secret refers to any formula, pattern, compilation, program, device, method, technique, or process that (i) holds independent commercial or economic value from not being publicly known or readily ascertainable, and (ii) is protected through reasonable measures to preserve its confidentiality.

According to the United States Patent and Trademark Office (USPTO), information qualifies as a trade secret when it possesses distinct commercial value arising from its secrecy, provides an advantage that others cannot legally obtain, and is actively maintained in confidence. The loss of any of these elements nullifies the secret's protected status.

The TRIPS Agreement (Article 39.2), often referred to in the Indian legislative context, similarly addresses the concept of "undisclosed information," which aligns with trade secrets. The provision requires that individuals lawfully controlling such information must be empowered to prevent others from disclosing, acquiring, or using it without consent in ways inconsistent with honest commercial conduct. This phrase encompasses acts such as breach of contract or confidence, inducement to breach, and unauthorized acquisition by third parties who knew—or should have known—that such breaches were involved.

Under Article 39(3) of TRIPS, data submitted to governmental authorities, particularly for regulatory purposes, are not covered by confidentiality obligations, leaving scope for potential misuse or unauthorized access. Likewise, the North American Free Trade Agreement (NAFTA) defines trade secrets as information with commercial value that is intentionally kept from public disclosure through appropriate secrecy measures.

In India, defining trade secrets within the framework of existing intellectual property legislation has presented notable challenges. Early attempts to interpret trade secrets under the Indian Copyright Act, 1957, often blurred the distinction between copyrightable material and confidential information. Courts typically resolved disputes based on copyrightability rather than recognizing trade secrets as an independent right under Article 39 of TRIPS. However, in more recent judgments such as Trivitron Healthcare Pvt. Ltd. v. The Registrar of Trademarks, Indian courts have adopted a broader interpretation consistent with global standards.

Similarly, the Indian Contract Act, 1872 has been invoked in disputes involving trade secrets, especially in the absence of express contractual terms. Judicial findings have often depended on the factual circumstances surrounding disclosure, use, or development of material, as courts assessed the existence of confidentiality on a case-by-case basis. The burden of proof generally rests on the employer or claimant to establish the proprietary and confidential nature of the information.

The National Innovation Bill (NIB), 2008 incorporated the TRIPS-based definition of trade secrets but left ambiguity regarding the interchangeability of terms and the treatment of misappropriation, particularly under Sections 2(7)(a) and 2(7)(b)(iii). Despite these gaps, the Bill signified progress toward a dedicated framework for trade secret protection in India.

Classic examples of trade secrets include the formula for Coca-Cola and the recipe for Kentucky Fried Chicken's spice blend. Over time, the scope of trade secrets has widened considerably, covering customer databases, manufacturing techniques, pricing strategies, pharmaceutical compositions, software source code, and

supply chain logistics. Courts have acknowledged the proprietary value of such confidential data, recognizing trade secrets as an essential component of modern commercial strategy.

Trade secrets often complement other intellectual property protections. For instance, customer lists may not qualify for copyright, while industrial methods may be patentable but difficult to enforce. In many cases, maintaining secrecy provides a more enduring competitive edge than the limited monopoly offered by patents. Hence, trade secret protection functions not only as an independent safeguard but also as a critical supplement to existing intellectual property regimes.

2.3 WHO USES TRADE SECRETS?

Extensive research from developed economies demonstrates that trade secrets play a pivotal role in the competitiveness and innovation strategies of both large corporations and small-to-medium enterprises across diverse industry sectors. In contrast, there is limited empirical evidence regarding the approaches adopted by firms in developing countries, particularly concerning the use—or underuse—of trade secrets within their intellectual property (IP) frameworks. The strategies employed by such firms are likely influenced by multiple factors, including organizational size, industry classification, engagement in product or process innovation, and participation in international activities such as trade, investment, or licensing.

Survey findings from the United States and other advanced economies consistently indicate that trade secrets are regarded as one of the most valuable forms of IP protection. This preference is often attributed to the cost-effectiveness of trade secret maintenance and their versatility across various types of proprietary information. These characteristics suggest that trade secrets could similarly provide strategic advantages for firms operating in developing countries, though systematic empirical data is scarce.

While individual case studies offer some insights into trade secret practices in developing economies, the absence of large-scale, comprehensive surveys limits the ability to draw generalizable conclusions. Establishing robust empirical evidence would therefore not only enhance understanding of IP utilization in these contexts but also inform policy development and regulatory frameworks aimed at promoting innovation while safeguarding commercial confidentiality.

2.4 TRADE SECRET DIFFERENT FROM CONFIDENTIAL INFORMATION:

Confidential information refers to data or knowledge that is intentionally withheld from public access or third parties, except when disclosure is explicitly authorized by the owner. Typically, such information is shared selectively between parties in the course of business transactions to facilitate commercial operations while safeguarding proprietary interests.

The legal foundation for protecting confidential information rests on two principal doctrines:

1. **Doctrine of Confidence** – emphasizing that information disclosed under trust should not be misused.

2. **Doctrine of Equitable Principles** – recognizing the equitable right of the owner to prevent unfair exploitation of confidential information.

In *Lansing Linde Ltd. v. Kerr (1991)*, Justice Staughton distinguished trade

secrets from confidential information, defining the latter as "information which, if revealed to a competitor, could result in substantial harm to the holder. Such information must be used in trade or business, and the owner must restrict its dissemination and avoid facilitating widespread publication." This definition underscores the significance of controlled access and the potential commercial impact of disclosure.

In India, **Section 2(3) of the Innovation Bill** mirrors the U.S. conceptualization of trade secrets by encompassing information such as formulas, patterns, compilations, programs, devices, methods, techniques, or processes, provided they meet three essential criteria:

a. The information is secret, meaning it is not generally known or readily accessible within the relevant industry or professional circles.

b. The information holds commercial value due to its secrecy.

c. The lawful custodian of the information has taken reasonable steps to preserve its confidentiality under the circumstances.

There is ongoing debate regarding whether confidential information should be treated as property. Under English common law, protection for trade-related confidential information is regarded as an **equitable right**, reflecting a hybrid between property rights and obligations of trust, rather than a conventional ownership right.

2.5 MECHANISMS AND MODALITIES OF TRADE SECRETS

While the **TRIPS Agreement** recognizes trade secrets as a form of "undisclosed information," it does not prescribe specific methods for their protection. In practice, states employ a variety of mechanisms, drawing from privacy laws, regulations against unfair competition, and contractual arrangements to safeguard proprietary information.

Key strategies for protecting trade secrets include:

1. **Employment Agreements**: Organizations often incorporate confidentiality clauses, non-disclosure agreements (NDAs), and non-compete covenants (NCCs) within employee contracts. These agreements are tailored to the sensitivity and strategic value of the information involved.

2. **Trade Secret Policies**: Companies develop internal policies that identify business-critical information, assess its importance, and outline procedures for maintaining its confidentiality.

3. **Non-Disclosure Agreements with Third Parties**: NDAs are commonly used during negotiations or collaborations with external parties. These agreements ensure that confidential information disclosed during discussions cannot be shared without authorization. Judicial precedents, such as *Fraser v. Thames Television*, have established liability for third parties who misuse information that is both undisclosed to the public and recognized as confidential by the defendants.

4. **Comprehensive Documentation**: Firms maintain detailed records of trade secrets, including their creation, modification, and use. Regular audits and updates enhance the evidentiary value of these documents in case of disputes.

5. **Security Measures**: Access to trade secrets is restricted to authorized personnel through physical, digital, or procedural controls. These measures help prevent unauthorized disclosure or misuse.

By combining contractual, procedural, and technological safeguards, businesses can effectively protect their trade secrets, ensuring that sensitive information remains confidential and continues to provide a competitive advantage.

3.SUGGESTIONS

To strengthen the protection and effective use of trade secrets in India and similar developing economies, several measures are recommended. First, there is a need for dedicated legislation clearly defining trade secrets, their ownership, and the types of information eligible for protection, reducing reliance on copyright or contract law and aligning with Article 39 of TRIPS. Such legislation should explicitly address misappropriation, including unauthorized acquisition, disclosure, or use, and provide remedies such as injunctions, damages, and penalties. Businesses should adopt standardized contractual mechanisms, including non-disclosure agreements, non-compete clauses, and confidentiality agreements, tailored to the sensitivity of the information. Comprehensive internal governance is essential, encompassing proper documentation, secure access protocols, audits, and employee training. Awareness programs should emphasize the economic value of trade secrets and best practices for protection, particularly for SMEs and startups. Judicial and administrative guidance should develop consistent interpretative standards, drawing from Indian and international precedents to enhance predictability. Integration with other intellectual property rights, such as patents and copyrights, can ensure broader protection of non-patentable processes or proprietary data. Finally, promoting international best practices and digital security measures will support innovation, preserve competitiveness, and facilitate cross-border business and technology transfer, creating a robust framework for safeguarding trade secrets.

4.CONCLUSION

After comparing patents and trade secrets, it's evident that opting for a trade secret is often preferable, especially for organizations with long-term interests. Take the example of Coca-Cola: if the company had patented its recipe when it first introduced classic Coke, it would have been public knowledge long ago, allowing competitors to create identical versions. Moreover, trade secrets have minimal regulatory oversight or compliance procedures; as long as the secret remains undisclosed to the public, the organization can continue to benefit without reporting requirements.

5.REFERENCES

5.1 BIBLIOGRAPHY

1. R.G. Chaturvedi & P. Narayan, *Intellectual Property Rights: Law and Practice* (Eastern Book Company, 2021).
2. Lionel Bently & Brad Sherman, *Intellectual Property Law* (5th ed., Oxford Univ. Press, 2018).
3. P. Narayanan, *Law of Trade Marks and Passing Off* (6th ed., Eastern Law House, 2017).
4. Shamnad Basheer, *Indian Patent Law and Practice* (Oxford Univ. Press, 2019).
5. Shubham Raj, *Trade Secrets under TRIPS Agreement and Indian IP Law*, International Journal of Law,

Literature and Research, Vol. 7, Issue 4 (2020).
6. A.K. Kaushik, *Protection of Trade Secrets in India – Legal and Judicial Perspective*, Journal of Intellectual Property Rights, Vol. 24, 2019.
7. R. Ghosh, *Trade Secrets: The Missing Piece in India's IP Framework*, NUJS Law Review, Vol. 12, 2020.

5.2 WEBLIOGRAPHY

1. World Trade Organization, *Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)*, available at https://www.wto.org/english/docs_e/legal_e/27-trips_04b_e.html
2. U.S. Patent and Trademark Office, *Trade Secret Policy*, available at https://www.uspto.gov/ip-policy/trade-secret-policy.
3. WIPO, *Protection of Undisclosed Information (Trade Secrets)*, available at https://www.wipo.int/sme/en/ip_business/trade_secrets/protection.html