

# TRADE SECRETS AND CONFIDENTIAL INFORMATION: NEED FOR STATUTORY PROTECTION IN INDIA

Anuttama Ghose

Research Scholar, School of Law and Justice, Adamas University, Kolkata

Dr. Ishita Chatterjee

Associate Professor, School of Law and Justice, Adamas University, Kolkata

## ABSTRACT

Trade secrets represent intellectual property (IP) rights on private knowledge which may be sold or leased. Any sensitive business knowledge which offers an organization a competitive advantage may be termed a trade secret. Trade secrets cover technical or industrial insights and commercial secrets. Firstly in this article, the researchers will present a thorough introduction on Trade Secret & what defines the Trade Secrets, achieved through the development of Trade Secrets as well as its requirement in the current world. In addition to that, we also shall shed light on several ideas surrounding the validity of Trade Secret as a form of Property. The researchers would also examine what may be and cannot be sheltered under Trade Secrets along with misappropriation of Trade Secrets. Protection of Trade Secrets discussed as per the TRIPs Agreement is also a significant subject to be explored. The Trade Secrets will be contrasted with other Intellectual Property Rights by the researchers and the case laws relating to Trade secrets will also be addressed and ultimately, the issue pops forth that if is the need for special law for Trade Secrets in India or not?

**Key words:** Trade Secret, Confidential Information, TRIPS Agreement, Intellectual Property Rights, Data and Security.

## INTRODUCTION

The formula for Coca-Cola. The secret sauce of McDonald's. Google's algorithm for searching the web. Dating app Bumble. These firms' existence depends on this exclusive knowledge, and it is one of their most significant corporate assets.

This information must be kept confidential. Patents, copyrights, and other forms of conventional intellectual property protection don't apply to trade secrets, which are assets owned by a firm but not revealed to the public. Prior to the invention of the phrase "trade secrets," this idea of secrecy was already in use in the real world. To provide two examples, Coca-Cola has maintained its formula a closely guarded secret for almost a century, while the secret recipe for KFC has been kept under wraps for more over 70 years and is now protected by a digital safe. For the last several years, the New York Times have refused to explain how they come up with their coveted bestseller list.<sup>1</sup>

Intellectual property (IP) rights on secret knowledge that may be sold or leased are known as Trade Secrets by the World Intellectual Property Organization (WIPO). Confidential business knowledge that gives a company a competitive advantage may be a trade secret.<sup>2</sup>The trade secrets are those secrets that bring value to the company. In contrast towards other intellectual property (IP) rights,

---

<sup>1</sup>Czapracka, K.A., "Antitrust and Trade Secrets: The U.S. and the EU Approach," 24 Santa Clara Computer & High Tech Law Journal, Pp207. (2007)

<sup>2</sup>World Intellectual Property Organization, "Trade Secrets", WIPO (December 10, 2021, 2:42 AM), <https://www.wipo.int/tradesecrets/en>

such secrets are not comprehensive. Confidential knowledge about the business's formula and patterns. Marketing, production, and technology-related data utilized in a company. These trade secrets, which should be kept private and confidential, are secured by the law.

Trade secrets are currently not protected by any specific statute in India, and the Indian courts deal with breaches of their confidentiality using the common law concept of equity. However, the concept of trade secrets has been around for a long time. Trade secrets are an important component of IP rights that have not yet been accorded the same respect as other forms of IP. Trade secrets protections are on the rise in today's competitive and market-driven world, which shows the necessity for a distinct legislation.

## **DEVELOPMENT OF THE CONCEPT OF TRADE SECRETS**

As new ideas and ambitions swept throughout Europe between the 14th and 16th centuries, Trade Secrets were born. It was during the Industrial Revolution when Statutes to preserve Industrial Secrets were created by the Trade Secrets Laws. Trade secrets had then established a firm foothold and had spread throughout the globe.

It wasn't until 1991 that India's economy was liberalized, privatized, and globalized (LPG) with the implementation of economic reforms. Indians got acquainted with trade secrets regulations just after economic reform when multinational corporations (MNCs) began to pour into the country. India does not have a specific statute protecting trade secrets, but the common law protects them, making them exempt from patent protection.

The Common Law and the Principle of Equity are the epicentres of trade secret law. Since then, a large number of countries have enacted national legislation regulating the safeguarding of trade secrets. When it comes to passing Trade Secrets laws, the United States (US) had also long been the leader. In Section 757 of the Restatement of Torts, trade secrets were given legal protection for the first time in 1939.<sup>3</sup>As the very first exclusive Trade Secrets Act in the World, the Uniform Trade Secrets Act (UTSA) was enacted in the United States and adopted by the majority of States in 1979. Trade secrets are well-protected by UTSA. The States have revised and reworked this law to meet their current demands.

European Union Directives (EU) 2016/943 on the safety of confidential commercial and technological information (trade secrets) were adopted in 2016 to harmonize national trade secret legislation across the European Union.

In 1934, Japan passed the Unfair Competition Prevention Law (UCPL), but there were no mention of trade secrets in the legislation. UCPL was amended in 1990 to provide measures for securing trade secrets. Since then, it has undergone several revisions based on the perceived necessity for each iteration. In response to an uptick in Trade Secret thefts, criminal penalties were reinstated in 2005. The most recent revision to Japan's trade secret rules took place in 2016, and it strengthened and broadened its application.

## **SIGNIFICANCE AND NEED FOR TRADE SECRETS**

Due to the lack of trade secrets legislation, a company's vital knowledge was stolen and profited from throughout the world. As new factories were just being formed, the number of thefts rose. Intellectual property includes both trade secrets and other proprietary data. The development of a corporation is greatly aided by the use of Trade Secrets. Trade secrets have a direct impact on the company's growth, or at least have a significant impact. The more hidden trades a firm has, the more likely it is to flourish to its full potential. To put it another way, intellectual property is all about intellectual property rights. It's a win-win scenario for both the economy and the discoverer, who is protected by Trade Secrets.

Trade secrets are the sole source of the company's economic worth. They are incredibly adaptable and have a far broader scope than other categories of intellectual properties. Unlike patents, copyrights, or trademarks in which a corporation must divulge the innovation's secret in order to file an application, trade secrets do not need this disclosure.

Trade Secrets laws are urgently needed in today's global marketplace. Trade secrets are sheltered by a number of levels, beginning with the recognition of their existence, followed by categorization, and finally a valuation. Additional legislation is needed to safeguard sensitive information. Despite the fact that India does not even have a distinct trade secret legislation, the judgments of the courts are based on equity and the common law. In light of the recent proliferation of trade secrets both locally and globally it is necessary to pass legislation to further tighten the protection of secret knowledge.

## **ANALYZING TRADE SECRETS WITHIN THE AMBIT OF A PROPERTY**

Trade secrets have long been the subject of a heated argument over whether they should be considered property. Trade secrets have long been considered property by academics. Some theories that regard trade secrets as property include exclusivity, integration, and bundle theory, according to Michal Risch.<sup>4</sup>

### **Exclusivity theory**

---

<sup>3</sup> Christopher Rebel J. Pace, "The Case For a Federal Trade Secrets Act", HARVARD JOURNAL OF LAW & TECHNOLOGY (December 11, 2021, 10:36 AM), <http://jolt.law.harvard.edu/articles/pdf/v08/08HarvJLTech427.pdf>

<sup>4</sup>Michael Risch, "Why Do We have Trade Secrets?", 11 MARQUETTE INTELLECTUALPROPERTY LAWREVIEW 16 (2007).

Exclusive rights are granted to the property, regardless of whether it is material or immaterial. Scholars have been split on the issue of whether trade secrets should be considered property or not. Research articles or books by academics and judges have discussed this topic. For example, Judge Frank Easterbrook<sup>5</sup> explains that intellectual property encompasses the same rights as physical property, including the power to exclude. It has also been ruled that trade secrets are property, and the owner has the ability to extend protection to the public domain from a potential infringer.<sup>6</sup>

### **Integrated Theory**

A property is defined by how an item is acquired and utilized, and exclusivity would not be a significant feature in this definition, according to integration theorists. The use, enjoyment, ownership, transfer, and exclusion of property are all considered basic rights by Pamela Samuelson. Another group of researchers believes that the property's discoverer has the option to hold the secret knowledge private or not. As a result, trade secrets might be considered property deserving of protection.

### **Bundle Theory**

The term "trade secret" refers to a collection of legal rights. Both the exclusivity theory and the integrated theory disagree on what constitutes "property." As with any other tangible or intangible asset, trade secrets are included in the bundle theory.

Trade secrets have not been universally accepted as property by academics. When it comes to making information property, some experts believe that it must be clearly defined which information should remain private. Clearly defined boundaries must be established.<sup>7</sup> To put it another way, Mark A. Lemley asserts that the developer only has access to information that has societal value if it is treated as private property and not shared.<sup>8</sup> Trade secrets and information have been viewed in a variety of ways. The ideas on trade secrets have changed throughout time as a result of the changing times and needs. Recognition of the importance of Trade Secrets has finally arrived.

## **UNDERSTANDING TRADE SECRETS IN THE LIGHT OF AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS (TRIPS)**

Under the Trade-Related Aspects of Intellectual Property Rights agreement, "Undisclosed Information" or Trade Secrets were granted exclusive protection. An international agreement for the first time has taken intellectual property rights (IPRs) within its jurisdiction. Under Article 1(2) of the 1967 Paris Convention, "Unfair Competition" is protected by Article 10bis.<sup>9</sup> Under Article 39 of the TRIPS agreement, the protection of concealed information is linked to the protection of unfair competition under Article 10bis of the Paris Convention (1967) in order to offer the utmost protection for both parties.<sup>10</sup>

The three conditions of Article 39 of TRIPS are well-aligned with the commonalities across nations in defining trade secrets. Because TRIPS was a reflection of actual practice in many nations, its provisions have influenced later legislation. TRIPS provisions for trade secrets is currently typically implemented as follows in the law as follows in practice:

1. Confidentiality- The protected information must be kept private at all times. There is no need for total secrecy. Employees and business associates of the trade secret holder may have access to the information. In order to preserve secrecy, the knowledge must be kept from the general public, and it must only be shared with others in a manner that ensures that the public is kept in the dark.
2. Financial Value - As a consequence of its secrecy, the information should have an economic value. It is common for trade secret legislation to safeguard business information, but only if such knowledge has some value in being kept secret.
3. Reasonable Attempts to maintain Confidentiality- The rights holder shall make reasonable measures to keep the material confidential. A trade secret lawsuit is triggered by a failure to preserve the secret, which is the essence of the claim. In other words, the law does not need a trade secret holder to be completely effective in securing its protection. Owners are required by law to make certain attempts to safeguard privacy. Effort is commonly referred to as "reasonable" under national legislation, in line with Article 39 of the TRIPS Agreement. Some nations, however, impose additional, more specific duties, which may be described as a specialized execution of the general reasonableness criterion. Although this isn't required in all common law nations, it is a prevalent practice in certain jurisdictions. Other nations need formal agreements and notifications of secrecy with receivers before receiving any goods.<sup>11</sup>

It was during the Uruguay Round negotiations that the global agreement on IPRs was born.<sup>12</sup> In 1995, the World Trade Organization (WTO) was created. At this time, multilateral trade discussions were being debated. It was in Punta del Este in 1986 that the first global

---

<sup>5</sup> Frank H. Easterbrook, "Intellectual Property Is Still Property", 13 HARV. J.L. & PUB. POL'Y 108, 112 (1990).

<sup>6</sup> Ruckelshaus v. Monsanto Co., 467 U.S. 986, 1002 (1984).

<sup>7</sup> Pamela Samuelson, "Information as Property: Do Ruckelshaus and Carpenter Signal a Changing Direction in Intellectual Property Law?" ,38, CATHOLIC UNIVERSITY LAW REVIEW 399 (1989).

<sup>8</sup> Mark A. Lemley, *Property, Intellectual Property, and Free Riding*, 83, TEXAS LAW REVIEW 1037 (2005).

<sup>9</sup> Paris Convention 1967 art. 1, cl. 2, art. 10bis.

<sup>10</sup> TRIPS Agreement Art. 39.

<sup>11</sup> Correa, C., "Unfair Competition under the Trips Agreement: Protection of Data Submitted for the Registration of Pharmaceuticals," 3 Chi. J. Int'l L. 69 (2002)

<sup>12</sup> World Trade Organization, *Intellectual Property: Protection and Enforcement*, WORLD TRADE ORGANIZATION (December 11, 2021, 03:07 PM), [https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/agrm7\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm7_e.htm)

discussions on 'Trade-Related Aspects of Intellectual Property Rights' began. In 1994, the Uruguay Round came to a close, and the TRIPs agreement was signed as well.

TRIPs came into effect in order to close the gap between nations' intellectual property laws prior to the WTO's creation. Members of the World Trade Organization (WTO) have agreed to adhere by a minimal worldwide standard for Intellectual Property Rights (IPR) (WTO). The agreement included Trade Secrets as well as the more usual Intellectual Property (IP) protections. TRIPs also provide signatories with the ability to adopt and change laws into their domestic law according to their requirements. Many nations and unions, such as the United States, Japan, and Taiwan, have now established its own trade secret legislation. At this time, India does not have any specific rule or law governing the protection and security of trade secrets.

## COMPARATIVE ANALYSIS OF TRADE SECRETS WITH OTHER FORMS OF INTELLECTUAL PROPERTIES

This world is full with intellectual property, but trade secrets have a distinct position in the mix. Intellectual property, such as copyright and trademarks, has been in our society for a long time but has only just begun to get the attention it deserves. In many aspects, it is distinct from other intellectual property.

In contrast to copyright law, trade secrets aren't always produced from any kind of innovation. Trade secrets, on either hand, don't have to be new in order to be protected by patent law.

Both copyright and patent make the material accessible to everyone. That information may be used by anybody without permission. For trade secrets, however, only the owner is allowed to make use of the knowledge. It's always kept a secret from the public and out of the media. In contrast to copyright and patent, such material does not need to be new or unique in order to be protected as confidential.

A trade secret may give copyright-like protection if two parties accidentally come into the same knowledge and assert their unique ownership rights over it. Patents and trademarks, on the other hand, do not. Compared to other forms of intellectual property, such as patents or copyright, trade secrets have a lower overall cost. Patents are expensive to obtain and maintain. Patents can only be safeguarded for a period of 20 years, however trade secrets may be protected indefinitely. There is no limit to how long trade secrets may be kept under lock and key. When a patent is awarded to an invention, the information associated with that innovation becomes publicly available and may be utilized on a public platform; nevertheless, trade secrets remain private for an indefinite period of time. Trade secrets, unlike other forms of intellectual property, do not have the same right to exclude people as other forms of property have. Furthermore, the checklist for accepting a patent is lengthy, requiring the applicant to travel considerable distances, but no such processes are crucial in the context of trade secrets. A trade secret may only be licensed if it is utilized in a way that gives your firm an advantage over your competitors in the market.

The following table provides a quick comparative study of trade secrets with the other types of intellectual property:

Substance Matter	Trademark	Patent	Copyright	Trade Secret
1. Original/Creative Information?	Yes	Yes	Yes	No
2. Required to be registered?	Optional	Yes	Yes	No
3. Disclosure of Information and data post registration?	Yes	Yes	Yes	No
4. Right to exclude?	No	Yes	Yes	No
5. Derivation.	The company must use the mark/sign	Innovation	Creativity	The material must be valuable & secret.
6. Admittance of Information.	Yes	Yes	Yes	No
7. Security on same information?	Yes	No	Yes	Yes
8. Requirement of stipulated checklist for meeting registration requirement?	Yes	Yes	Yes	No

## PROTECTION UNDER TRADE SECRETS

For as long as the knowledge is kept secret, trade secrets are safeguarded by statutes and laws. Those pieces of information that can be shielded from prying eyes by national and international trade secret regulations are clearly specified. In order to ensure that the law is properly preserved and enforced, a common standard must be established for what may be protected as a trade secret.

Under the Trade-Related Aspects of Intellectual Property Rights (TRIPs) Agreement, India is obligated to preserve the Undisclosed Information or trade secrets even though it has not passed its own trade secrets legislation. They use common law principles, Indian Contract Acts and laws relating to the protection of data from several statutes (SEC Act, Copyright Act etc) to issue decisions in India. For example, a breach of duty or illegitimate ways to obtain the trade secrets are examples of misappropriation. In terms of what information may be secured, there is no defined standard. For the same reason, international organizations, treaties, and governments all have their own unique characteristics. Despite of that fact that the requirements for information to be considered a trade secret are comparable. Article 39 of the Trade-Related Aspects of Intellectual Property Rights<sup>13</sup> states that the grounds for qualifying under the TRIPs agreement are divided into three categories: secret information, economic value, and attempts to protect the details secret through non-disclosure agreements, for example.

Trade secrets are the legal means by which the European Union safeguards information like as new inventions, industrial processes, and supplier and customer data.<sup>14</sup> Secrecy of formulas, patterns, compilations, programs, techniques, and processes is likewise a high priority for UTSA under Section 1. It's not only the United States and the United Kingdom that are involved here. In addition to the minimal level set by the TRIPs Agreement, Japan's Unfair Competition Prevention Act (UCPA) mandates the protection of trade secrets. In accordance with Article 2(6) of the UCPA, knowledge and business information useful for commercial activity is protected, including customer and supplier records, manufacturing process, sales records, and product design and development.<sup>15</sup>

Knowledge of economic worth or information relevant to company activities is protected by trade secrets. The scope of trade secrets that may be protected across the world is extensive. Trade secret topics may vary widely from nation to country and from company to company, with an almost limitless number of subcategories such as Compilation, Formulae, Pattern, Business Process, Software Algorithm, Product Design, Customer List, Devices, Sales Record, R & D Information, Strategic Plans, Advertising Programs, Ingredients, Pricing etc.

#### **WHEN TRADE SECRETS CANNOT BE PROTECTED?**

The threat to databases and trade secrets has grown exponentially as a result of increased networking and globalization. Information is only protected as a trade secret if it hasn't already been made public. A trade secret may be lost even if it is protected by a variety of methods, such as if someone independently develops the very same formula or chemical substance, if someone reverse-engineers the secret, or if the secret knowledge mistakenly reaches the public. As a result, Trade Secret misappropriation may be completely avoided.

#### **MISAPPROPRIATION OF TRADE SECRETS**

There has been a long history of trade-secret theft since the introduction of trade-secret legislation. It may be traced back as far as the Roman Empire to protect trade secrets from being stolen. Companies and brands were protected by Roman law against the unscrupulous tactics of their rivals. Under "actioservicorrupti," which means "activity for making slaves sick," Roman courts have allowed this kind of appropriation.<sup>16</sup>

Confidential knowledge that should not be shared is known as a trade secret. If any information is judged to be secure enough to be referred to as a trade secret, it will qualify. Trade secrets may be misappropriated, however, if the knowledge is obtained fraudulently or with malicious intent. Trade secret theft used to need a series of steps, such as getting private information by illegal methods, disclosing it to the public, and then making unlawful use of the knowledge in order to gain financial gain or some other benefit. Since the establishment of trade secret legislation, any of the above-mentioned forms of misappropriation may now be utilized against the proprietor or creator of the trade secret, and the person responsible for the infringement will be held guilty. In a few nations, even making an effort to get useful information is a crime.

One of several reasons why trade secret laws need to be strengthened is because of unauthorized use. When the number of trade-secret theft cases skyrocketed, governments throughout the world took action to improve their laws. Japan, for example, didn't have a criminal justice system until 2005. Under Japan's Unfair Competition Prevention Act, a criminal remedy for misappropriation of trade secrets was included when incidents of inappropriate methods and theft of trade secrets were on the rise.

---

<sup>13</sup>TRIPs AGREEMENT art. 39.

<sup>14</sup>Your Europe, "Trade Secrets in the EU: What is protected?", EUROPEAN UNION ( October 13, 2020, 8:37 PM), [https://europa.eu/youreurope/business/running-business/intellectual-property/trade-secrets/indexamp\\_en.htm](https://europa.eu/youreurope/business/running-business/intellectual-property/trade-secrets/indexamp_en.htm)

<sup>15</sup>Unfair Competition Prevention Act art 2, cl. 6. (Unofficial English Translation).

<sup>16</sup> A. Arthur Schiller, "Trade Secrets and the Roman Law: The Actio ServiCorrupti", 30 COLUM. L. REV. 837 (1930).

As defined by Section 1(2) of the Uniform Trade Secrets Act in the United States, 'misappropriation' refers to the unauthorized acquisition and disclosure of trade secrets. The term "improper methods" is defined in Section 1(1), and there are a number of ways it might be used, such as via theft, bribery or a violation of responsibility to keep information confidential.<sup>17</sup>

Trespass, breach of contract, theft of physical property, and computer network abuse are all examples of actions or activities for which we might take action in the wider sense of "improper."<sup>18</sup>The term 'improper' encompasses a vast range of topics, and it's difficult to narrow it down. If an act is judged or acknowledged to be 'improper' by the rest of society, it is noted in the Restatement of Torts. For it to be a suitable one, reasonable behavior is required. Although the court has the authority to determine whether or not a given behavior is judged to be inappropriate.<sup>19</sup>

When a trade secret is misappropriated, there are a wide range of remedies available under specific trade secrets laws around the world. Damages, penalties, and court costs may be imposed on anybody who illegally steals trade secrets in civil cases. Based on how the confidential information was obtained, criminal charges may also be brought in a few nations. Liability for misappropriation applies to those who get secret information in an improper manner and then disseminate or publish it, or who intentionally utilize material they know to be secret in violation of the law.<sup>20</sup>

## FAMOUS CASE LAWS RELATED TO TRADE SECRETS

The concept of Trade Secrets and Confidential Information have developed over years through various significant judgments which were delivered by the court of law. In the case of *Ruckelshaus v. Monsanto Co.*<sup>21</sup> the question which was raised was whether the Fifth Amendment's Taking Clause preserves Trade Secret property rights or not. The decision was affirmative on this issue. The Taking Clause of the Fifth Amendment was used for the first time in this case, and the court ruled that trade secrets were considered as a property.

Subsequently in the case of *Saltman Engineering Co Ltd v. Campbell Engineering Co Ltd*<sup>22</sup> it was held that Common law action for breach of confidence or equity may be used to maintain confidentiality in this situation, according to Lord Green. In order to decode the data, one must go through the same procedure as encoding it, which takes time and mental work on the part of the person doing the decoding. Many Indian cases have been influenced by Saltman's case. In the landmark case of *Bombay Dyeing and Manufacturing Co. Ltd. v. Meher Karan Singh*<sup>23</sup> six factors were perceived for information to be classified as trade secrets. They are as follows:

1. The extent to which information is disclosed to the public domain.
2. The extent to which information is known by the employees.
3. Precaution is taken by the developer to safeguard the secret information.
4. Valued information is saved by the holder as against the competitors.
5. Time and money spent on acquiring and advancing the information.
6. Time and cost to be taken to duplicate or obtain the information by others.<sup>24</sup>

Further in this case of *Burlington Home Shopping Limited v. Rajnish Chibber*<sup>25</sup>, the Delhi High Court It has been noted that trade secrets are highly valuable and should not be divulged, since doing so may result in damage to the owner. Trade secret protection extends to a wide range of subject matter, including company data, customer lists, and other compilations of data, the court said.

## NEED FOR SUI GENERIS SYSTEM FOR TRADE SECRETS PROTECTION IN INDIA

With respect to trade secrets, India depends on Section 27 of the Indian Contract Act and a few other statutes, such as the Copyright Act and Information Technology Act, to resolve such issues. Because of this, Indian trade secret laws do not follow the Sui Generis premise. As of present, a number of nations are engaged in the effort to include trade secret legislation into their own laws. While several Asian nations, such as Japan, have enacted trade secret laws dating back to the 1990s, India's approach is opposite to the worldwide trend. Unfair Competition Prevention Act of 2005 included a criminal penalty. Section 27 of the India Contract Act offers only a civil remedy but no criminal recourse for disputes involving trade secrets in India.

Trade secret regulations are essential in today's global economy to attract foreign investment and multinational corporations (MNCs) and to safeguard their intellectual knowledge. Convention signatories are obligated to establish a legislation to safeguard sensitive

---

<sup>17</sup>Uniform Trade Secrets Act §1,(1),(2).

<sup>18</sup> Physicians Interactive v. LathianSys., Inc., 69 U.S.P.Q.2d (BNA) 1981.

<sup>19</sup> DSC Commc'ns Corp. v. Pulse Commc'ns, Inc., 170 F.3d 1354, 1364 (Fed. Cir. 1999).

<sup>20</sup>Uniform Trade Secrets Act § 7.

<sup>21</sup> Ruckelshaus v. Monsanto Co.467 U.S. 986 (1984).

<sup>22</sup>Saltman Engineering Co Ltd v. Campbell Engineering Co Ltd, 203 RPC 65 (1948).

<sup>23</sup> Bombay Dyeing and Manufacturing Co. Ltd. v. Meher Karan Singh, 2010 (112) BOM LR 375Pp51.

<sup>24</sup> Id.

<sup>25</sup> Burlington Home Shopping v. Rajnish Chibber 1995 (61) DLT 6 Pp 9.

information under Section 10bis of the Paris Convention (1967). As a result of TRIPs, a worldwide standard for the protection of trade secrets has been established, which all member nations must adhere to. Indian legislators have yet to determine whether or not they will enact legislation to safeguard trade secrets under their current framework.

In contrast to conventional intellectual property, Trade Secrets have a far broader scope and are more adaptable (IPs). Unlike trade secrets, the areas of patent law, copyright law, etc., are clearly defined. In India, patent litigation is very burdensome, and the introduction of a trade secrets legislation might help alleviate some of that load (IPRs).

It's long past time for India to implement a trade-secrets legislation in order to maintain pace with the global marketplace. Small and medium-sized businesses (SMEs) benefit from a competitive advantage provided by an efficient trade secret system and competent application of trade secret legislation. As a result, the growth of both the economy and its many sectors is aided by the protection of trade secrets.

## CONCLUSION

Along with suitable legislation, various efforts can also be provided from the end of individual corporate houses in order to safeguard their secrets. In terms of protection, there are three main types: physical security, digital security, and legal security, such as non-disclosure and non-compete agreements (NDAs).

- One way to ensure physical security is to store confidential information in a safe location with limited access for those who have been granted permission to see it. Such physical protection is shown by the Coca-Cola vault. Others block access to select portions of the physical plant, use keycards to monitor entry to certain rooms, and limit access to just those who need it to secure their secrets.
- These safeguards include firewalls, secure passwords, and limitations on the access that employees have to particular networks or websites. Using portable flash drives inside a firm may also be encrypted, limited, or even completely prohibited since it is an easy method for a dissatisfied employee to steal information. A corporation may also choose to provide its staff with business-only mobile phones and laptop computers as a way to minimise the spread of sensitive information, such as customer contact information.
- Secret information may be protected by a variety of legal measures that include confidentiality agreements, non-compete agreements, and non-disparagement agreements, as well as the adoption of solid operational practises. Trade secrets should be labelled as "Confidential" by firms, for example.

Trade secrets should also be taught to all staff on a regular basis. These discussions should take place both during new hire orientation and during employee leave interviews. Remind new hires not to bring any trade secrets from their previous companies into the workplace. As part of any job contract or complete offer letter, this obligation may and should be included. Both the new employee as well as the new employer may benefit from such precautions by reducing the risk of being held liable for allegedly misappropriating trade secrets.

When it comes to intellectual property, trade secrets have a longer history than patents, copyrights, and trademarks, which have been placed on equal standing. As business tactics and technological advancements change, trade secret rules are now being recognized more quickly around the world. Because of the potential size of the Indian market, India is under pressure to provide firms interested in setting up shop there with the highest level of protection and recourse possible. Trade secrets must be well-protected for small and medium-sized businesses (SMEs) to thrive and eventually lead to an increase in the economy as a whole. It is in India's best interest to implement a law protecting trade secrets.

## REFERENCES:

- A. Arthur Schiller, *Trade Secrets and the Roman law: The Actio Servi Corrupti*, Colum. L. Rev., Volume 30, Pp. 837 (1930).  
Carvalho, N.P.d., *The TRIPS regime of antitrust and undisclosed information*, Kluwer Law International, Frederick, MD. (2008)  
Christopher Rebel J. Pace, *The Case For a Federal Trade Secrets Act*, Harvard Journal Of Law & Technology, Volume 8, Issue 2 (1995)  
Claeys, E.R., *The Use Requirement at Common Law and Under the Uniform Trade Secrets Act*, 33 Hamline Law Review, Volume 33, Pp. 583 (2010).  
Correa, C., *Unfair Competition under the Trips Agreement: Protection of Data Submitted for the Registration of Pharmaceuticals*, Chi. J. Int'l L. Volume 3, Pp. 69 (2002).  
Cugno, F. & E. Ottoz, "Trade Secret vs. Broad Patent: The Role Of Licensing," Review Of Law And Economics, Volume 2.2, Pp. 209-221. (2006)  
Czapracka, K.A., *Antitrust and Trade Secrets: The U.S. and the EU Approach*, Santa Clara Computer & High Tech Law Journal, Volume 24, Pp. 207. (2007)  
Frank H. Easterbrook, *Intellectual Property Is Still Property*, HARV. J.L. & PUB. POL'Y Volume 13, Pp. 108, 112 (1990).  
Mark A. Lemley, *Property, Intellectual Property, and Free Riding*, Texas Law Review, Volume 83, Pp. 1037 (2005).  
Michael Risch, *Why Do We have Trade Secrets?* Marquette Intellectual Property Law Review, Volume 11, Pp. 16 (2007).  
Pamela Samuelson, *Information as Property: Do Ruckelshaus and Carpenter Signal a Changing Direction in Intellectual Property Law?*, Catholic University Law Review, Volume 38, Pp. 399 (1989).  
Ronde, T., *Trade Secrets and Information Sharing*, Journal of Economics & Management Strategy, Volume 10, Pp. 391-417 (2001)

Alsaia, Asam Saud S. "The Legal Frameworks That Govern Electronic Arbitration Processes And Its Role In Resolving International Trading Contracts Disputes." *International Journal of Political Science, Law and International Relations (IJPSLIR)* 8 (2018): 1-8.

Manna, Moumita. "The Dutch Trade in Bengal, 1632–1757." *International Journal of History and Research (IJHR)* 9.2, Dec 2019, 9–14

Hossain, M. M. "Intellectual properties: Bangladesh approach." *International Journal of Humanities and Social Science* 1.02 (2012): 11-20.

Hossain, M. M. "Intellectual properties: Bangladesh approach." *International Journal of Humanities and Social Science* 1.02 (2012): 11-20.

Manshani, Sapna, and Anjna Dubey. "Startup women in startup India: A study of women entrepreneurs in India." *International Journal of Business Management (IJBGM)* 6 (2017): 91-100.