



**INTERNATIONAL JOURNAL OF NOVEL RESEARCH
AND DEVELOPMENT (IJNRD) | IJNRD.ORG**
An International Open Access, Peer-reviewed, Refereed Journal

ARTICLE ON TRADE SECRETS AND UNDISCOVERED RIGHT UNDER IPR: WITH RESPECT TO INDIAN LAW

Niharika Pilonia

Shobhit University, Meerut



IJNRD
Research Through Innovation

Introduction

Recipes for cuisine that seem to employ regular things are not unusual to come across. Regardless, the Chef would insist on calling the meal a secret recipe. When the parts are so easily accessible, why is it being kept under wraps? What makes that particular cuisine unique and different from others is the proportions of the ingredients and the method of preparation. Whenever this formula is used for the purpose of making a profit, it transforms into a secret recipe that provides the company with an advantage over its rivals. If it is possible to maintain the confidentiality of the trade secret, the owner has the right to reap the advantages of having exclusive control over the knowledge that is considered confidential. Trade secrets and sensitive information are essential to a company's success, and they are protected by intellectual property law. This research delves at the repercussions of trade secrets and private information in several countries, including India. If this paper is to be believed, intellectual property protection ought to be a constitutional mandate in India.

TRADE SECRET AND CONFIDENTIAL INFORMATION

Confidential information

Business "confidential information" is strictly prohibited from being disclosed. The rule of confidence and equitable principle underpin secret information. Without permission, the knowledge recipient cannot use it to gain an unfair advantage over the provider. The idea is simple.

Trade Secret?

The term "trade secret" refers to the confidential information on a firm or trade that is only known to a select few individuals and has a value that may be used for commercial purposes. Trade Secrets are defined as intellectual property rights that are based on secret knowledge and may be sold or leased, as stated by the World Intellectual Property Organization (WIPO). In contrast to other types of intellectual property rights, trade secrets do not be subject to registration requirements.

A trade secret's fundamental components

- Since it is a secret, it ought to have some value in the marketplace.
- In addition to a select few individuals that are connected to the company, it should not be generally known to the general public.
- To ensure that the information remains confidential, the owner has taken the necessary precautions.
- This includes all relevant information, such as formulae, recipes, processes, software codes, client lists, supply networks, and financial data. Nestle's Maggi Masala, KFC's chicken, Listerine MouthWash, Hershey's milk chocolate, Google's Algorithm, Coca-Cola, and others are trade secrets

- Trade secrets are sensitive information. Maybe not all private information is a trade secret. You must keep what others tell you concealed and use it as intended. This "confidential information" contains vital secrets. Consider the company's income, profitability, customers, lists, personnel, etc.
- The term "trade secret" refers to knowledge that is kept private and has a business value linked to it. It is also information that has been kept hidden for as long as feasible by taking appropriate precautions. Any and every technological knowledge, software, data, formulae, recipes, and so on are examples of such things.

India: trade secrets and private information protection

India joined the WTO in 1991 following liberalization. India signed TRIPS, an IP/trade agreement, in 1994. Both occurred after India's liberalization. Article 39 of the TRIPS Agreement required member governments to preserve trade secrets and non-disclosed information. The TRIPS Agreement required this.

A legislation protecting sensitive information and trade secrets has not been passed in India. Equity and common law underpin it.

Following these developments, the Indian government created the National Innovation Act and protected trade secrets in 2008. The Bill specified trade secret protection measures, however it was never approved, hence implementation was never begun.

Legislation governing trade secrets

The following rules regulate the protection of trade secrets and sensitive information:

Common law

- Contract Act Section 27 requires non-disclosure agreements to be kept confidential. Everyone was bound by this law.
- Additionally, the Copyright Law safeguards firm data trade secrets. The 2019 Personal Data Protection Bill also provided a statutory framework for safeguarding and privacying personal and non-personal data in any format. The approach was devised to safeguard data.
- Section 72 of the Information Technology Act of 2000 penalizes privacy and confidentiality violations.
- Certain offenses under Section 405-409 of the Indian Penal Code, 1860 pertain to criminal breaches of trust.

Confidentiality law and the relationship of fiduciary interest

When one party in a trustee-beneficiary relationship communicates information to another, the recipient is obligated to preserve the concept of trust and confidence in the information that was communicated. The truth of this statement will be maintained even in the absence of a legally binding non-disclosure agreement.

Judicial Precedents

India has no trade secret or sensitive information legislation, therefore precedents protect them. Relevant judicial reasoning includes:

Injunction in Calcutta High Court vs. L.S. Davar & Company & Ors., Dr. Sudipta Banerjee, 735 of 2021. Injunction against former law company employee for exposing client private information.

The court advised balancing contract and trade freedoms under Section 27 of the Indian Contract Act. The employee's revelation would breach the service contract's confidentiality obligation, costing the law company revenue.

Vinay Katrela sued Lifecell International Private Limited in O.A. 599 and 600 of 2018. The Madras High Court declared after an employee's firing that no arrangement, including a franchise, is absolute. Decision of the judge. The Court ruled that firm-future trade secrets cannot be prohibited. No one will know your trade secrets.

The plaintiff hired the defendant in Burlington Home Shopping Pvt. Ltd. v. Rajnish Chibber 61 (1995) DLT 6. After leaving plaintiff's company, defendant started another. He mentioned plaintiff ties. The plaintiff contributed to the contact database, thus trade secret and privacy laws should protect it.

After profiting from Campbell's innovations, Saltman challenged the Act in the "Saltman Engineering Case," also known as Saltman Engineering Company Limited v. Campbell Engineering Company Limited (1948) 65 RPC 203. Campbell claims he is not required to keep the drawings private as there is no agreement. He said "it would not matter the least bit whether there was a contract or whether there was not a contract." The major issue was whether Campbell recognized Saltman's ownership of the designs notwithstanding the defendants' temporary possession. This criminal betrayed confidence.

Chemical Process Equipment P Ltd v. John Richard Brady (AIR 1987 Delhi 372) included the secrecy controversy. It declared "the law on this subject does not depend on any implied contract" . Trust abuse is wrong unless unfair.

Undiscovered Rights and Indian Intellectual Property Rights:

In intellectual property law, "undiscovered rights" are discoveries or inventions that have not yet been recognized. Some overlook this aspect of intellectual property rights. This category includes ideas or concepts that are too young, unusual, or unclear to patent, copyright, or trademark.

India's legal system does not safeguard unidentified rights. It preserves these rights indirectly via the Protection of Plant Varieties and Farmers' Rights Act, 2001. This statute protects novel plant kinds that are not yet established or recognizable.

The Obstacles and Prospects for the Future:

Secrets and unauthorized use or disclosure are key IP and trade secret concerns. Technology and the digital age have made data security harder, increasing theft and breach risk.

India may create a trade secret legislation to address these issues. Similar to the US Uniform Trade Secrets Act. A mechanism that protects unknown rights until maturity may help innovators.

Conclusion:

Indian law protects conventional IP, but trade secrets and untested rights are becoming increasingly important. Technological and inventive elements are increasingly requiring a complete legal framework. Public innovation, competitiveness, and economic growth would be promoted by this framework.

Legal standards, cyber security, and supporting policies must be balanced to protect trade secrets and unknown rights in India's intellectual property ecosystem. Because intellectual property is expanding.

References

<https://www.wipo.int/tradesecrets/en/>

<https://www.clydeco.com/en/insights/2022/03/confidential-information-and-trade-secrets-what-ar>

<https://www.everynda.com/blog/confidential-information-vs-trade-secrets/>

[https://www.rkdewan.com/articledetails.php?artid=176#:~:text=Trade% 20Secret% 20first% 20came% 20into,another% 20government% 20came% 20into% 20power.](https://www.rkdewan.com/articledetails.php?artid=176#:~:text=Trade%20Secret%20first%20came%20into,another%20government%20came%20into%20power.)

<http://14.139.185.167:8080/jspui/bitstream/123456789/431/1/LM0220002.pdf>

https://www.nishimura.com/sites/default/files/tractate_pdf/ja/71474.pdf

<https://www.mondaq.com/trade-secrets/1106532/protection-of-trade-secrets-in-the-uae>

Research Through Innovation