

**INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES**
[ISSN 2581-5369]

Volume 3 | Issue 3

2020

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The Disregarded Facet of IPR: A Study of Trade Secrets and the Indian Context

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ABSTRACT

The rapid pace of globalization and technological advancements have created an environment which offers a plethora of products and services. While this has resulted in the growth of economy along with acting as a driving force for competition and innovation in the market, it has also given impetus to a very significant branch of law known as the Intellectual Property Rights. Industries and organizations enormously rely on enforcement of patents, trademarks and copyrights to protect their business interests and services while it is equally important for the customers as it helps to identify original and quality products/services.

This paper focuses specially on the sub-category of Trade Secrets under Intellectual Property Rights and discusses the Indian legal system for protection of trade secrets while analyzing the existing trade secret laws. Protecting trade secrets is the basis for encouraging market innovation and to attract foreign investment and promote a healthy competition. Trade secrets make commercial activities positive and fair among competitors, so it is necessary to ensure that laws effectively protect their trade-related confidential information from competitors and the public.

Trade secrets are relatively a new branch of intellectual property which is gaining a lot of traction, because in the era of globalization, the failure or success of any company depends on its trade secrets. Hence it is of paramount importance that India strives towards implementing the highest standards for protection of trade secrets which shall also ensure a fair and competitive market economy.

Keyword(s): Trade Secret, Confidential Information, Intellectual Property Rights, Competition, Economy.

I. INTRODUCTION

A trade secret is a piece of information, the disclosure of which would cause real damage when at the hands of a competitor, to the real owner of the secret.² This kind of information is

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²Burlington Home Shopping Pvt. Ltd v. Rajnish Chibber, 1995(61) DLT 6.

related to industry and commercial activity and is used in trade or business. Trade secrets generally refer to data or company information that is not publicly known and is the property of the owner, who rationally tries to keep it a secret and confidential in nature. The trade secret can be a computer method program, practice, equipment, price information, etc. If any information has economic value and is kept secret, then it can be treated as a trade secret. This gives competitive advantage over their rivals due to their confidential nature. Trade secret law aims to protect, maintain and promote standards of business ethics and fair trading and also encourages innovation. Unauthorized use of such information by persons other than the holder is considered unfair practice and breach of trade secrets.

Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), which is an international agreement administered by the World Trade Organization regarding trade secrets under Article 39 states:

“A trade secret cannot be widely known or be easily accessible to people who normally deal with this kind of information. A trade secret must have commercial value as a secret.”

A lawful owner should take a reasonable step towards protecting the trade secret. In addition, the North America Free Trade Agreement (NAFTA), defined trade secret as "Information on commercial value that is not in the public domain and for which reasonable steps have been taken to maintain secrecy." Important part of a trade secret is information because it is not known to others, as the owner has tried keeping it a secret and is very valuable.³

The Uniform Trade Secret Act (USA) defines trade secret as information that includes a formula, pattern, compilation, program, device, method, program that:

1. It has an independent economic value because it is not widely known or not easily determinable by appropriate means by others who may obtain economic value from the disclosure.
2. Is subject to reasonable efforts in the circumstances to maintain the secrecy.

An important part of trade secret is secrecy, not novelty.⁴ In the *Re Providian Credit Card Case*⁵, it was considered that a trade secret protection would not be needed if the information was not secret. In addition, in the case of *State ex rel. Lucas County Board of Commissioner v/s. Ohio Environmental Protection Agency*⁶ it was held that when certain secret information is revealed, then it loses its claim as a trade secret.

³ABBA Rubber Co. v. Seaquist, 235 Cal.App.3d1, 18 (1991).

⁴Dionne v. Southeast Foam Converting & Packaging, Inc., 240 Va.297, 302 (1990).

⁵96 Cal.App.4th 292, 304 (2002).

⁶88 Ohio St.3d 166, 174 (2000).

Since the benefits in the information economy have grown rapidly, there has been a rise in the field of trade secrets under intellectual property. The trade secret law policy is based on: protect, maintain and promote standards of commercial ethics and fair trading, and to encourage innovation. The right to protection of trade secrets was developed on the basis of common law of unfair competition developed in the nineteenth century by the English courts.

The essence of the business world is the necessity of integrity, honesty and fair competition, therefore the protection of trade practices acquires vital importance. Intellectual property rights include copyrights, trademarks, patents and trade secrets and all these intellectual property rights have their legal provisions, except for trade secrets. There is no appropriate and effective law to protect Indian trade secrets. Trade secrets are different from other forms of intellectual property. Patent requires invention to be novel, useful and non obvious. Trademarks only protect printed text or images representing product or service. Copyright only protects the mode of expression, not the content, ideas, information, etc.

Disclosure of trade secrets harms the owner of the secret. Trade secret usually refers to the data or information related to the business that is generally and reasonably tried to be kept as a secret with the owner, and the public is oblivious to it. Once the trade secrets are disclosed to the public, even if the use of the product itself causes a disclosure⁷, the protection cannot be evoked.⁸

In the case of *American Express Bank Ltd. v. Priya Puri*⁹, the court ruled: Customer details are not trade secrets or property. It is observed that any ordinarily intelligent person will familiarize himself with customers who he may be serving in the laundry route within five months. Therefore, the court ruled that the freedom of employees cannot be restricted or reduced on the grounds that he has the employer's/confidential customer information. Therefore, the application for the injunction was rejected. The whole object of confidentiality is its utility, so trade secrets must be utilitarian in nature.

II. SIGNIFICANCE OF TRADE SECRET PROTECTION

The company's trade secrets are the most important asset that keeps the company's reputation and its position in the market. There is no need for the company to be a large company to avail trade secret protection.¹⁰

⁷Vacco Industries, Inc v. Van Den Berg, 5 Cal.App. 34, (1992).

⁸Religious Technology Center v. Netcom On-Line Communication Services, Inc., 1254 (N.D.Cal.1995).

⁹[2006] (110) FLR 1061.

¹⁰Abhinav Kumar, Mohanty, Legal Protection of Trade Secrets: Towards a Codified Regime 397-408 (Journal of Intellectual Property Rights, Vol 11, 2006).

(A) NEW TECHNOLOGIES:

As we all know, computers and other systems are developed to maintain information confidential, but it was stored in physical form earlier. To get information from physical form, a thief must go through various stages before he can use that unfairly obtained information. But now, using new technology, he can easily access confidential information. Files stored on the computer network may be encrypted, protected by a password, and only for employee on need to know protocols. If an employee wants to access this information from a computer network, he could easily download, email, publish on the Internet, or simply save on a USB stick and exit unnoticed by the front door with thousands of information in hand.¹¹ The digital world is not a friend to trade secrets.¹² Nowadays, hackers break into the network and obtain confidential business information, including trade secrets in a way that is not expected by anyone.¹³ For example, the F.B.I handled nearly 1,500 hacking cases in 2002 and later on in 2010, nearly 2,500.¹⁴ One of the recent cases is that of Philip Gabriel, who was referred to in five cases relating to the misappropriation of a trade secret.¹⁵ In this case, he allegedly broke into seemingly secure computer systems at Cisco and NASA, including NASA Advanced Supercomputer division. Along with him, a 16-year-old Swede, were accused of hacking these systems from nearly 5000 miles away.

(B) INCREASING VALUE OF TRADE SECRETS INFORMATION:

Trade secrets are becoming as important as other intellectual properties and are playing a very expanding role in the economy of a country. The Congressional Research Service stated: "As the United States continues the transition to information and service economy, strength and the competitiveness of domestic companies is increasingly dependent on their know-how and intangible assets. Trade secret is a form of intellectual property that protects this kind of confidential information."¹⁶ Previously, the economy relied on physical resources, such as natural resources and capital goods, but now with the changing times, modern industries rely heavily on intellectual property because of its value.

(C) THE RISE OF INTERNATIONAL THREATS:

¹¹ Elizabeth A. Rowe, *Saving Trade Secret Disclosures on the Internet through Sequential Preservation* 42 (Wake Forest L. Review, 2007).

¹² Victoria A. Cundiff, *Reasonable Measures to Protect Secrets in a Digital Environment* 49 (IDEA, 2009).

¹³ Office of the National Counter-Intelligence Exec, *Foreign spies stealing US Economic secrets in cyberspace* 6-7 (Cisco Systems, 2011).

¹⁴ Devlin Barrett, *U.S Outgunned in Hacker War* (Wall Street Journal, 2012).

¹⁵ U.S Dep't of Justice, *Kingdom of Sweden Accepts Requests for Transfer of Prosecution in Case Involving Swedish National Charged With Hacking and Trade Secret Theft* (Press Release, 8 Feb, 2010).

¹⁶ John R. Thomas, *The Role of Trade Secrets in Innovation Policy* (Congress Research Service, 2010).

Not only domestic threats, but foreign individuals, companies and governments have also increased attention to trade secrets to a certain extent. Reasons for increasing threats at the international level are mainly due to the internationalization of business. When companies operate internationally, they face threats of misappropriation. Another reason for increasing international threats is the ever growing technology. Hackers can access any information from anywhere in the world. They just need a computer with internet connection. One of the recent examples involving trade secret theft is Ford Motor Company's Project Engineer Yu Xiangdong, who smuggled Ford's trade secrets to China during job search, which led to a position with one of Ford's competitor.¹⁷

(D) US TRADE ASSOCIATION:

The development of USTA is one of the reasons for the increase in trade secrets and trade Secret litigation. The widespread adoption of USTA raised awareness of trade secrets laws between lawyers, companies, judges and others, and in the scope of application of trade secret laws. Before USTA, the states resorted to remedies where the gap between various trade secret issues was huge and uncertain. The USTA is not perfect, but it provides a starting point for establishing legal remedies for trade secrets misappropriation.¹⁸

(E) CAUSE FOR LITIGATION:

The current vague economic environment, especially the highly fluid and highly competitive knowledge-based environment industry, facilitates it. For example, if the survival of a company is threatened, its members will be motivated to defect. For a company that is threatened, this will be another threat, which was in prior times, an insignificant one. Therefore, the company will invest its resources to protect its rights more than before.

III. THE SUBJECT MATTER OF TRADE SECRET PROTECTION

The scope of subjects granted protection of trade secrets is very broad. Almost any information or method used for business can be a trade secret if appropriate precautions have been taken to maintain confidentiality. The protection is granted to information regarding those including chemical processes¹⁹, welding processes²⁰, pressure shaving cream formula²¹, precision recorder manufacturer²², strategic storage system materials²³, bricks used in cement

¹⁷ Erin Marie Daly, *Trade Secrets Theft* (Law360, 2011).

¹⁸ Michael Risch, *A failure of Uniform Law 159* (Penn Law Review, 2010).

¹⁹ *Kewanee Oil Co. v. Bicron Corp.*, 416 U.S. 470 (1974).

²⁰ *A.O. Smith Corp. v. Petroleum Iron Works Co.*, 73 F.2d 531 (6th Cir. 1934).

²¹ *Colgate-Palmolive Co. v. Carter Prods., Inc.*, 108 U.S.P.Q. (BNA) 383 (4th Cir. 1956).

²² *Winton Research Corp. v. Minnesota Mining Mfg. Co.* 146 U.S.P.Q. (BNA) 422 (9th Cir. 1965).

²³ *Underwater Storage, Inc. v. United States Rubber Co.*, 371 F.2d 950 (U.C. Cir. 1966).

kiln lining²⁴, the process of manufacturing compressed cotton bath sponges²⁵, portable freight container and scrap metal recycling process.²⁶ Similarly, trade secret protection is given only if the idea is not generally known, and this will usually be true only when the idea is novel.²⁷ If the information is in fact secret, then it is sufficiently novel, for this secrecy implies at least minimal novelty. Another characteristic of a protectable trade secret is its commercial value. Information that can have no commercial value cannot be the subject of trade secret protection.²⁸ It was originally thought that information must have some impending use in the operation of a business to be a trade secret.

IV. SUSTAINING TRADE SECRET PROTECTION

Maintenance and protection of confidential information as trade secrets is often done by adoption of rules for hiring and firing employees to protect them. Careful consideration should be done of potential commitments before hiring of a future employee who is bound by a contract, other means or is restricted by former employers from divulging certain information. Review should be done with all parting employees of the scope of restrictions on their future use by the employer.

The employee's employment contract should include a non-disclosure provision that identifies the thematic areas that the employer considers confidential. In addition, a contractual provision providing for reasonable restriction on the competitive activities of the employee after his termination is recommended. Such a restriction will usually be enforced by the courts if justified in terms of duration, geographical extent and scope.²⁹

Employees should be provided with access to confidential information only on the basis of 'need to know'. Areas in which confidential information is stored should be separated and restricted access should only be provided to people who need to know the confidential information. Additional resources may be employed in restricting access to such areas, such as the use of electronic security, transitions keys or simply color-coded identification badges.

Employees should be constantly informed that some information is confidential or a secret. It can be done with signs and strategically placed warnings or declarations. Many ideas invented are trade secrets, even if they cannot be the subject of a patent.³⁰

²⁴ *Monolith Portland Midwest Co. v. Kaiser Aluminum & Chem. Corp.*, 4 07 F.2d 288 (9th Cir. 1969).

²⁵ *Frankev. Wiltschek*, 20 9 F.2d 493 (2d Cir. 1953).

²⁶ *Smith v. Dravo Corp.*, 2 03 F.2d 369 (7th Cir. 1953).

²⁷ *Atlantic Wool Combing Co. v. Norfolk Mills, Inc.*, 3 57 F.2d 866, 869 (1st Cir. 1966).

²⁸ This proviso is a limiting factor in the definition of a trade secret in the Uniform Trade Secrets Act.

²⁹ *Victoria A. Cundiff, Reasonable Measures to Protect Secrets in a Digital Environment* 49 (Idea, 2009).

³⁰ *John R. Thomas, Role of Trade Secrets in Innovation* (Congress Research Service, 2010).

V. CONFIDENTIALITY OF INFORMATION FOR TRADE SECRET

In order to advocate the protection of trade secrets, the information or subject matter of the trade secrets must be confidential or be kept secret. Obviously, trade secret might be disclosed to non-employees of the respective companies and it may threaten the ability to request such information as a trade secret unless it is strictly monitored through written agreements or confidentiality/non-disclosure agreements. As discussed in detail below, employers should take measures to control the scope and nature of the distribution of trade secret provided to its employees and define under what circumstances, and to what extent employees can obtain such information.

VI. ESTABLISHING VIOLATION OF TRADE SECRET

To establish the violation of trade secrets, the main contentions are:³¹

1. Is the information secret?
2. Have reasonable steps been taken to keep its secrecy?

To determine the infringement of trade secret rights, the owner of the trade secret must be able to prove the following:

1. Infringement or competitive advantage gained by individuals/companies by misappropriated trade secrets.
2. The owner has taken all reasonable steps to keep it confidential.
3. Misuse is done, because the information obtained has been used or disclosed, in violation of honest commercial practices.

VII. TRADE SECRETS PROTECTION – LEGAL POSITION IN INDIA

The spirit the commercial world tries to embody is one of honesty and fair play. This can only be done through protection of trade practice. There are rules in India regarding every form of intellectual property, except trade secrets. Indian legislation has not yet enacted any laws concerning trade secrets. Member countries of Trade-related aspects of Intellectual Property Rights (TRIPS) agreement, with the exception of India, already have enacted provisions regarding trade secret protection. In India, trade secrets are the most isolated field because there is no proper legislation for protection of trade secrets. Trade secrets are protected in India in accordance with the Indian Contract Act of 1872, Section 27, which provides for remedies, and also limits the disclosure to any person of information that he obtains at the time of employment or under a contract. But in this recourse, there are only

³¹Michael Risch, A Failure of Uniform Law 159 (Penn Review, 2010).

civil and no criminal measures. According to this section, all information must be highly confidential to be construed as a trade secret.³²

There is a certain standard to decide whether any information constitutes a trade secret, i.e.

- The employee's status and the nature of his job
- The nature of the information itself
- Whether it is easy to isolate the information from other information which the employees can freely use.

Regarding the protection of trade secrets in India, an attempt was made in 2008 by bringing in The National Innovation (Draft) Act. It is basically based on the America Competes Act. One of the objectives was to codify and consolidate the right to confidentiality in assistance to protect confidential information, trade secrets and innovations. Chapter-VI of the National Innovation Bill, 2008 gives provisions regarding "Confidentiality and confidential information as well as remedies and offenses." This provision allows the parties to determine their rights and obligations by contract related to confidential information and protects it against misappropriation. But the actions regarding combination of innovation, trade secret and confidential information will only be best solved through a detailed legislation which in particular relates to the protection of trade secrets. In the Delhi High Court case, *American Express Bank Ltd. V. Priya Puri*³³ the Court defined trade secrets as the formula, technical know-how or business method employed by the employer, unknown to others where such information has a reasonable impact on organizational expansion and its economic interests. In the case of *Bhrahmaputra Tea Co v. E Scarth*³⁴, where after the end of the service period, the employee was prohibited from competing for five years, Kolkata High Court said:

"Contracts by which persons are restrained from competing, after the term of their agreement is over, with their former employers within reasonable limits, are well known in English Law, and the omission to make any such contract an exception to the general prohibition contained in Section 27 indicates that it was not intended to give them legal effect in this country".

In addition, in the case of *Niranjan Shankar Golikari v. Century Spg&Mfg Co. Ltd.*³⁵, question regarding the validity of the agreement under Article 27 of the Indian Contract Act was raised. The facts of this case were that a foreign producer collaborated with a company

³²Sonia Baldia, Offshoring to India: Are Your Trade Secrets and Confidential Information Adequately Protected? (Mayer Brown, 2008).

³³ (2006) HI LLJ 540 (Del).

³⁴ (1885) 11 Cal 545.

³⁵ (1885) 11 Cal 545.

manufacturing tyre cord yarn by an agreement which stated that the company would maintain secrecy of all technical information. The respondents company signed a non-disclosure agreement with the appellant, at the time of its employment. Clause 9 of the agreement stated that during the continuance of his employment as well as thereafter, the employee shall keep information confidential and prevent revealing of any information. The Court held that there is an implied term in a contract of employment that a former employee may not make use of his former employer's trade secrets.

Therefore, we observe that in order to protect trade secrets according to India's commitment to TRIPS Agreement, while removing all grey areas and the lack of depth in the present regulations, there should be a legislation brought about bringing in intricate and definite laws.

VIII. OBLIGATION OF INDIA TOWARDS CERTAIN STANDARDS

Intellectual property protection has mainly gained impetus and traction under the North Atlantic Free Trade Agreement (NAFTA)³⁶, Trade-related Aspects of Intellectual Property (TRIPS) Agreement, and the provisions of the Paris Convention.

(A) TRIPS

The main purpose of the TRIPS agreement is to protect intellectual property rights. TRIPS provisions use the word "unpublished" to protect trade secrets information. According to Article 39(2), of the Agreement on Trade-Related Aspects of Intellectual Property Rights, all members will protect undisclosed information from commercial exploitation and according to Article 39(3), the government must protect must protect data received by it in lieu of regulatory or other approval commitments from third party leakage or theft. India is a party to the agreement, but in 1989, along with Brazil, it refused to incorporate trade secret provisions because they didn't think of it as a form of intellectual property and thought that the protection measures against unfair competition under Article 10(b) of the Paris Convention are enough.³⁷ This is the first multilateral agreement that recognizes the role of trade secrets in

³⁶Article 1711 of NAFTA defines trade secret as "information having commercial value, which is not in the public domain, and for which reasonable steps have been taken to maintain its secrecy".

³⁷(i) The Countries of the Union are bound to assure to nationals of such countries effective protection against unfair competition.

(ii) Any act of competition contrary to honest practices in industrial or commercial matters constitutes an act of unfair competition.

(iii) The Following particular shall be prohibited:

- a) all acts of such a nature as to create confusion by any means whatever with the establishment, the goods, or the industrial or commercial activities, of a competitor;
- b) false allegations in the course of trade of such a nature as to discredit the establishment, the goods, or the industrial or commercial activities of a competitor;

the industry. The purpose of TRIPS is aimed to strengthen patent protection and trade secret protection. The law of trade secret would protect only the know-how that cannot be reverse engineered by analyzing the product in the market.

(B) CONTRACTUAL OBLIGATIONS

Trade secret owner and those who are communicated business secrets must be obligated not to disclose it to anyone under a confidentiality/non-disclosure agreement. The obligation may be implied or express form in the agreement. Violation of this rule will result in a fine penalty for damages. But when someone with the knowledge of trade secrets later becomes an employee of a competitor, then any such contractual obligations do not apply to the Competitors gaining the company's business secrets.

In a case of *Tipping v. Clarke*³⁸, the Court was of the opinion that everyone employed is under an implied contract not to disclose trade information anywhere in the public.

In the case of *Sanders v. Parry*³⁹, it was held that there was implied duty upon an employee to serve his master with good faith and fidelity.

(C) FIDUCIARY RELATIONSHIP

If there is a fiduciary relationship, the obligation towards non-disclosure of trade secrets is implied. In *Yovatt v. Winyard*⁴⁰, a medicine formula was disclosed to an apprentice by the veterinarian and it was held that there is a duty of confidentiality of such information, even if there is no corresponding agreement between them. Where there is a fiduciary relationship, if you have faith, you should not destroy it.

(D) UNJUST ENRICHMENT AND MISAPPROPRIATION

Misuse of trade secrets can be considered as misappropriation leading to unjust enrichment.⁴¹ Misappropriation provides a very stable foundation to seek remedies against misuse of trade secrets.⁴² Since India is a signatory to the TRIPS Agreement, it is obliged to ensure intellectual property rights that meet the international standards. According to Article 51 of the Constitution of India,⁴³ the country is bound to promote respect for international law

c) indications or allegations the use of which in the course of trade is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity, of the goods.

³⁸ (1843) 2 Hare 393.

³⁹ [1967] 1 W L R 753.

⁴⁰ 1J and W 394(1820).

⁴¹ *Matarese v. Moore-McCornackLines, Inc.*, 71 USPQ 311 (2nd Cir. 1946).

⁴² *Chiarella v. United States*, 445 U.S. 222 (1980).

⁴³ Promotion of international peace and security: The State shall endeavor to (a) promote international peace and security; (b) maintain just and honorable relations between nations; (c) foster respect for international law and

and adhere to treaty obligation.⁴⁴

IX. INFRINGEMENT OF TRADE SECRET AND REMEDIES

The owner of the trade secret has the right to prevent others from misappropriating and using its trade secret. Although embezzlement is sometimes the result of industrial espionage, it is usually a case involving former employees in new businesses or new employers. As long as the requirement for protection persists i.e. secrecy and the value to the owner, the protection of trade secret continues to endure. If the owner fails to take reasonable measures to keep the information secret, the protection is lost. Furthermore, not all trade secrets disclosure is actionable i.e., owners of trade secrets can only resort to remedy in cases of misappropriation, and there are many defenses for disclosure of trade secrets:⁴⁵

(A) GENERAL KNOWLEDGE

In common law, the generally accepted principles of public policy are: Former employees are free to use the general skills and knowledge they have learned during their prior employment.⁴⁶

(B) Parallel Development

The owner of the trade secret has no monopoly on the data containing trade secrets. Other companies and individuals have the right to discover elements of trade secrets through their own research and hard work.⁴⁷

(C) REVERSE ENGINEERING

Discovery through reverse engineering, that is, starting from the known product and working to find its development method, is considered appropriate. Therefore, in order to avoid the defendant's successful assertion that he discovered the trade secret in the following way, prosecutors should establish misappropriation of trade secrets by the defendant. If the prosecution can prove that the defendant has illegally obtained trade secrets, it will refute his claim that he learned trade secrets through the following channel of reverse engineering.

treaty obligations in the dealings of organized peoples with one another; and encourage settlement of international disputes by arbitration.

⁴⁴ India has taken the following legislative steps to comply with its obligations under TRIPS: Copyrights Act, 1957

amended in 2000, The Trademarks Act, 1999, The Geographical Indications of Goods (Registration and Protection)

Act, 1999, The Designs Act, 2000, The Semi Conductor Integrated Circuits Layout Design Act, 2000, The Patents Act, 1970, Protection of Plant Varieties and Farmers Rights Act, 2001.

⁴⁵Seetharaman R, Legal protection of trade secret (SCC, 2004).

⁴⁶Mason v.Provident Clothing and Supply Co Ltd (1913) AC 724.

⁴⁷Kewanee Oil Co v.Bicron Corporation, 416 US 470 (1974).

However, the defendant cannot defeat the lawsuit by claiming that the trade secrets could have been discovered through reverse engineering.⁴⁸

(D) INNOCENT ACQUISITION OF INFORMATION

Where the accused obtained the information innocently, that is to say, without knowing that this belongs to a trade secret of a person who hasn't consented with the accused obtaining the trade secret, he shall not be liable for infringement of trade secret under the English law.

(E) PUBLIC INTEREST

It's a common principle that, there is no responsibility for the use or disclosure of information done in the public interest. Therefore, a defendant assumes no responsibility for the disclosure or use of information even when he violated the duty of confidentiality in the following circumstances: (a) The defendant raised a public issue interest related to the disclosure or use of that information; (b) the plaintiff cannot satisfy the court that the defendant's public interest concern doesn't exceed the public interest invoked in maintaining the confidentiality of information.⁴⁹

(F) STATUTORY OBLIGATION

If the information is used or disclosed according to law, or a given statutory power, the defendant shall not be liable. For example, if the information is disclosed in accordance to a court order, or any other litigation for legal process purposes. Similarly, use or disclosure for, national security or preventive purposes, investigation or prosecution of crimes is allowed. However, it must be disclosed to someone who has "proper interest" in receiving the information in question.⁵⁰

X. HOW TO IMPROVE THE SITUATION

The protection of trade secrets plays an important role in keeping the confidential information of companies and firms a secret. The main purpose of the protection of trade secrets is to obtain a good reputation in the market and to improve the market productivity and services. In addition to reforms brought in by the legislature and the judiciary, there are certain ways which might go a long way in bringing substance, importance and application of the concept of trade secrets in the country:

⁴⁸Telerate Systems Incv. Caro, 689 F Supp 221, 232 (1988).

⁴⁹Nomani, Md Zafar Mahfooz, Intellection of Trade Secret and Innovation Laws in India 341-350 (Journal of Intellectual Property Rights, Vol. 16, 2011).

⁵⁰Initial Services v.Putterill, (1968) 1 QB 396.

- India has no special laws to regulate the protection of trade secrets. The Indian Parliament should enact a legislation to bring in specific laws on trade secret protection.
- The Indian government should work towards formulating policies involving trade secrets protection.
- Before using a social media account or registering in a virtual site, each citizen must check the terms and conditions of that particular website carefully, because otherwise you might not know about an action from a legal point of view, which may amount to commission of an offence. It can also take your personal details and company trade information and hack your company website.
- When a police officer receives a complaint regarding blockade of a content or removal of any trade secret, information from the internet, he must not take action just based on the complaints unless they get a corresponding court order or follow any specific procedures prescribed by the law or the court.

XI. CONCLUSION

The policy of the trade secret laws is to protect, maintain and promote business ethics standards, fair dealings and innovation. The law protecting trade secrets originated from the common law principles of unfair competition developed by the British Courts in the 19th century. Since the advantages in the information economy have grown rapidly, it has consolidated trade secrets as one of the most important branches of the intellectual property rights. Unauthorized use of information by someone other than the holder is considered unfair practice and violates the trade secrets law. Disclosure of trade secrets harms the true owner of the secret.

Trade secrets usually refer to trade-related data or information that is generally unknown to the public and the owner reasonably tries to keep it a secret. Once the trade secret has been exposed to the public, it cannot be evoked even if the product itself used leads to the disclosure. If trade secrets are obtained during use, there will be no protection. Therefore, in order to obtain effective transparency in commercial transactions, there is an urgent need to draft laws to properly protect trade secrets in the country and to ensure good operation of companies and fair competition in the market.

Getting trade secret protection will help the country's economic growth. Being a signatory to the TRIPS agreement, India has enacted laws to protect intellectual property rights, such as the Copyright Act, the Trademark Act and the Patent Act, but still laws protecting trade

secrets have been neglected. Hence India is obliged to make comprehensive rules and regulations to eliminate uncertainty in the protection of trade secrets and provide an international standard environment in the Indian market which ensures the highest standards of all intellectual property rights.
