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**PROTECTION OF TRADE SECRETS IN LIGHT OF BUSINESS LAWS,  
HOW CAN THE EXISTING CONFLICT BE EASED?**- Raj Aryan<sup>1</sup>**ABSTRACT**

In general, a business is an entity (or) an organization (or) a group of people who get together for a common interest and participate in commercial or industrial operations. They make money by selling goods and services. With the advancement of technology and advancements in sharing and copying, the most difficult challenge for every firm is today to preserve their secret corporate information.

This sensitive information can contain corporate strategies, compilations, designs, drawings, equations, and so forth, but it cannot include all types of information. Many businesses may encounter threats while protecting this information.

**INTRODUCTION**

Trade secrets are any virtual information that a corporation or organization has acquired through its time and efforts in a rival business sector. In this market, it offers the company an advantage. This knowledge must be hidden from outsiders and unknown to others.

It covers technical and business information, such as production procedures, distribution channels, and advertising tactics.

**Examples:** include the recipe used by KFC and Coca-Cola to prepare their goods.

**II.I. The Fundamentals of Trade Secret –**

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Trade secrets do not need to be registered. There are no procedures that must be followed.

It can be safeguarded for an indefinite period of time; there is no such time restriction.

The information must not be made available to the broader public. It must be difficult to access and available. As a result, the information must be kept secret.

When asserting trade secrets, absolute secrecy must be maintained.

As it is a secret, this information must have some actual/potential value.

Even the owners of such material must have taken reasonable precautions to keep it secret and confidential.

These reasonable steps vary accordingly and are determined by the facts of each situation.

### **Theories for trade secret protection**

Contractual obligation hypothesis – In general, a contractual obligation binds the parties to not divulge the information. It could be any type of contract, such as an employment contract, licensing agreement, or partnership agreement.

The pacta sunt servanda theory also states that secrecy is generally derived from the agreement. As a result, the provisions of the agreement must be followed.

The wording of the agreement become highly significant in this approach, whereas the preservation of sensitive information is dependent on the inclusion of protective clauses.

In *Niranjan Shankar Golikari v. Century Spinning and Mfg. Co. Ltd*, the appellant began working for the company as a Shift Supervisor and was trained in the production of Tyre cord yarn. The contract was for five years, and it was provided in the contract that the appellant would not work in a similar role for any other company during that time, and that he would keep the technical parts of his job confidential.

However, shortly after completing his training, the appellant was hired by a competing company at a greater salary. The respondent firm then filed an action for an injunction order against the appellant, preventing him from working elsewhere as a shift Supervisor in the manufacture of Tyre cord yarn (or) in a comparable role, as well as from disclosing the respondent company's trade secrets.

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The Trial Court granted an interim judgement, which was later affirmed by the Hon'ble Supreme Court, on the grounds that negative covenants in effect during the contract period do not fall under Section 27 of the Indian Contract Act, and hence the contract does not amount to trade restraint<sup>[1]</sup>.

Fiduciary Relationship Theory –

Fiduciary relationships are typically built on trust. The most important factor in such relationships is trust.

Examples include doctor-patient relationships, trustee-beneficiary relationships, client-lawyer relationships, employer-employee relationships, and so on.

This theory also has implications for the employer-employee relationship since, in the absence of a non-disclosure agreement, information is deemed to be transferred under fiduciary relations. The responsibility of confidence is included in these fiduciary relationships.

When an employee contributes to the creation of private company information, he may have some rights to such information under common law principles; fact, the employee may be the sole owner of such knowledge. Even if the employer owns the information, courts may be less willing to protect the employer against a former employee's use (or) publication of the information if the employee was the source or producer of the information.

The English Trade Secrets Act Is founded on the premise that the law involves an obligation of concealment in certain circumstances.

The Theory of Misappropriation –

The act of stealing confidential information from an employer and subsequently trading stocks based on such plundered insider knowledge is characterized in this idea. A person convicted of insider trading in the United States will almost certainly be convicted of misappropriation.

In United States v. O'Hagan, the United States Supreme Court established the misappropriation theory of insider trading.

O'Hagan was a partner in a law firm that represented Grand Met as it considered a tender offer for Pillsbury Co.

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O'Hagan profited almost \$4 million from this inside information by purchasing call options on Pillsbury stock.

O'Hagan stated that because neither he nor his firm owed Pillsbury a fiduciary obligation, he did not commit fraud by purchasing Pillsbury options.

The Court rejected O'Hagan's arguments and explicitly stated that "a corporation's information is its property." Confidential information belonging to a firm qualifies as property with exclusive use rights.

The hidden theft of such knowledge in breach of a fiduciary duty constitutes fraud similar to embezzlement – the fraudulent appropriation of money or goods entrusted to one's care by another.<sup>2</sup>

The Security and Exchange Board of India, or SEBI, has banned insider trading and established the SEBI (Prohibition of Insider Trading) Regulation 2008.

In India, there is no explicit law protecting trade secrets. However, the Indian courts have granted protection through numerous statutes, contract law, copyright law, and equity principles. Section 72 of the Information Technology Act of 2000 establishes a punishment for breach of confidentiality and privacy.

## **CONFLICTS IN THE PROTECTION OF TRADE SECRETS**

There is an inescapable contradiction between the disciplines of contract law and trade secrets. It manifests itself in the indiscriminate application of non-compete clauses in contracts. Outgoing employees from companies are prohibited from competing with their employers under this condition. This clause has a significant impact on employee productivity and effectiveness.

The Bombay High Court stated In *Bombay Dyeing & Manufacturing Company Ltd. V. Mehar Karan Singh* that the owner of the trade secret must take certain safeguards in order for the information to be recognized as a trade secret.

Guideline of thumb - This guideline states that companies must take preventive and secret measures to protect their information. These procedures must be so evident that even outsiders will treat them the same way.

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<sup>2</sup> <https://supreme.justia.com/cases/federal/us/521/642/>

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If the owner of a trade secret freely discusses such information, it is possible that the information will lose its trade secret status<sup>3</sup>.

## WHAT CAN BE DONE TO RESOLVE THIS CONFLICT?

In Indian law, there are no specific laws, concepts, or standards for protecting trade secrets. There is presently no explicit legislation available. There are no effective regulations in place to deal with the flow of confidential information between businesses.

There is an urgent need and necessity for trade secret laws to govern all forms of malpractices occurring in business jurisprudence. Whereas it also allows for growth and creativity.

Contract law – Under Indian law, a person might be obligated by contract not to reveal information entrusted to him/her in confidence.

The court claimed a broader equitable jurisdiction in *Richard Brady v. Chemical Process Equipments P Ltd.* The plaintiff in this case had invented a fodder manufacturing unit. He requested thermal panels from the defendant for industrial purposes.

In this regard, the plaintiff provided the defendant with technical resources, know-how, and specifications for that fodder production. Following that, these parties reached an arrangement for the defendants to furnish thermal panels. The plaintiffs then realized that the defendants were unable to supply the thermal plants.

The plaintiffs filed a lawsuit for misappropriation of trade secrets after learning about the defendant's own fodder production unit.

In the lack of a contract, an injunction was granted.<sup>4</sup>

Copyright law – In some cases, courts have recognized that client information kept in databases is likewise copyright-able. They acquire data on a regular basis while conducting company activities, which will be organized systematically/methodically for electronic access. Databases are protected under the Copyright Act of 1957, where 'Section 2(o)' defines compilations, including computer databases, as "literary works."

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<sup>3</sup> <https://indiankanoon.org/doc/286447/>

<sup>4</sup> <https://indiankanoon.org/doc/1739601/>

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The issue in *Govindan v. Gopala Krishna* concerned a compilation. Even if the amount of originality in this compilation is quite little, it can nevertheless be legally protected. As a result, a person (or) a party cannot appropriate the skills/intelligence of another.<sup>5</sup>

According to the current legal position, those works that are protected are - • Different in nature • Involvement of certain intellectual endeavour • Involvement of a minimal degree of originality

## THE INTERSECTION OF COPYRIGHT LAW AND TRADE SECRETS

The databases are being fortified with additional safeguards.

In the case of *Burlington Home Shopping Pvt Ltd. V. Rajnish Chibber*, the Delhi High Court issued its decision. A mail order service company filed an application for an interim injunction against one of its employees due to a violation of confidence. In this case, the defendants' database was a carbon replica of the plaintiffs'. It was held that, while the sources for both works were shared, the dedication of time, efforts, labour, and talents resulted in a literary work for which the author may claim copyright. However, the interim injunction was granted in this case.<sup>6</sup>

Information confidentiality –

The plaintiffs filed a claim in *Ritika Pvt Ltd v. Biba Apparels Pvt Ltd*. The issue was that the plaintiff's clothes designs had been copied.

The court ruled that in order to grant an injunction order, the trade secrets must be exceedingly explicit. It is also necessary to prove that the plaintiff owns the trade secrets, and the precise trade secrets must be specified properly. An order against the defendant cannot be issued for an unspecified trade secret.

Furthermore, the court stated that under Section 15(2) of the Copyright Act, if a drawing, sketch (or) design is utilized once for more than 50 garments, copyright cannot exist.<sup>7</sup>

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<sup>5</sup><https://indiankanoon.org/doc/1836871/>

<sup>6</sup><https://indiankanoon.org/doc/130087/>

<sup>7</sup><https://www.casemine.com/judgement/in/5728e430e56109277ee48589>

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The court stated in *Genetics India Pvt Ltd v. Shailendra Shivam* that the subject matter of a trade secret claim must be kept confidential. The plaintiffs/owners must demonstrate that they made reasonable efforts to protect the confidential information. Otherwise, there may be hazards of loss of confidentiality quality.<sup>8</sup>

A breach of trust –

In *Diljeet Titus, Advocate v. Alfred A Adebare*, it was determined that there are copyrights in works in the context of a law firm designed by an advocate and containing the details of the firm's clients. This type of obligation does not have to be expressed, but it can be implied.<sup>9</sup>

## **PRACTICAL STRATEGIES FOR SAFEGUARDING TRADE SECRETS INFORMATION**

Labeling such information as “confidential” is useful to make staff aware that they are dealing with the company's secret information.

Restricted access must be granted to servers and databases containing secret information.

The owners must protect this type of information, and they must ensure that it is protected by passwords for access to sensitive areas.

Employees must be taught in this regard as to why trade secrets must be preserved.

Employees must be educated on the value of trade secrets in businesses.

When a corporation shares sensitive information with outsiders/some businesses, they must create an agreement that the secret information will not be exploited or disclosed for any purpose.

Agreements bind the parties and obligate them to work in accordance with the terms.

## **CONCLUSION**

Trade secrets protection is not protected by any legislative position in India, and trade secrets are considered to be one of the most isolated regimes from a legal standpoint. The current legal

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<sup>8</sup><https://indiankanoon.org/doc/183763759/>

<sup>9</sup><https://indiankanoon.org/doc/1023088/>

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framework, which aims to offer interim protection to persons with technical know-how (or) information, has various problems and weaknesses. There is no consent (or) uniformity among the current laws, and when the ground of action is a breach of confidence, the only possible remedies are civil (or) equitable. The law on this subject is still in its early stages, and various notions have yet to be incorporated into the existing legislation.

As a result, the current system is exceedingly unclear and inconsistent, which further impedes economic growth. There is an urgent need to broaden protection in order to reassure innovation and promote commercial ethics and fair dealing in the field. In India, the discovery of trade secrets is not always actionable, and trade secret owners have only recourse against misappropriation; this necessitates the adoption of laws imposing criminal punishment on infringers.

A number of critical areas of Indian trade secret law remain uncertain, including:

Damages in the event of a breach of confidential information; Theft of trade secrets by company competitors; and Procedural safeguards during court action.

As a result, proper law is required to address all of these difficulties concerning trade secrets. The recent formation of the National IP Rights Policy has boosted hopes for the passage of a trade secrets law, as one of the policy's aims. Although no timetable has been set for achieving this goal, it seems certain that a trade secrets law will be enacted in the near future.

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