



# The Indian Journal for Research in Law and Management

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Editor-in-Chief – Prof. (Dr.) Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

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## TRADE SECRET LAWS

“The true sign of intelligence is not knowledge but imagination” are words marked by Albert Einstein which portray the intricate nuances anchored to the species of human beings. The sole element that characterises us humans from the 8.7 million other species on the planet is the ability to perceive, contemplate and create from our environment. Commensurate to the multifaceted life of the human life, this ability also needs preservation and safeguarding measures.

## INTELLECTUAL PROPERTY RIGHT: HISTORY

According to article 2 of the World Intellectual Right Organisation, a forum made solely missioned with the task of Intellectual Property services, policy, information and cooperation<sup>1</sup>, Intellectual Property is a title given to the rights relating to literary, artistic and scientific works, inventions in all fields of human endeavour, scientific discoveries, industrial designs, trademarks, service marks and commercial names and designations, protection against unfair competition, and all the other rights resulting from intellectual activity in the industrial, scientific, literary or scientific fields.<sup>2</sup> All the intellectual projects are placed in six categories for the ease of trade, which are, Patents, Copyright, Trademarks, Industrial Designs, Geographical Indication and Trade Secrets.<sup>3</sup> The concept was originally introduced in 13<sup>th</sup> century England when King Henry III allowed bakers to use an unique mark in order to tell apart the products, thus, marking the first ever trademark legislation. In the following century, King Edward III of England marked the passing of the first ever patent legislation by providing protection through a letter to

<sup>1</sup> Inside WIPO. (n.d.). WIPO - World Intellectual Property Organization. <https://www.wipo.int/about-wipo/en/#:~:text=What%20is%20WIPO?,Nations,%20with%20193%20member%20states>.

<sup>2</sup> Convention Establishing the World Intellectual Property Organization (1979). [https://www.wipo.int/wipolex/en/text/283854#:~:text=\(2\)%20Amendments%20shall%20be%20adopted,of%20any%20Union%20shall%20vote](https://www.wipo.int/wipolex/en/text/283854#:~:text=(2)%20Amendments%20shall%20be%20adopted,of%20any%20Union%20shall%20vote).

<sup>3</sup> What is Intellectual Property (IP)? (n.d.). WIPO - World Intellectual Property Organization. <https://www.wipo.int/about-ip/en/>.

a weaver of woollen clothes. Following the trend amidst the renaissance period, the Venetian Statute, providing a 10-year monopoly to inventors, was instituted in 1474 followed by the Statute of Anne of 1710 and the Paris Convention for the Protection of Industrial Property in the year 1883. The formulation of legislations in this field continue to augment in the current century with several key milestones being marked by the TRIPS Agreement of 1994 and the the Digital Millennium Copyright Act of 1998.

### **TRADE SECRET LAW**

The mixture of herbs used by Kentucky Fried Chicken, McDonald's recipe for the sauce used in their burgers, Algorithms used by Google, Baseball rubbing mud brought into existence by Lena Blackburn are a handful of instances where one can observe the concept of Trade Secret Law coming into play. Fundamentally Trade Secret Laws are protective laws made for anything that gives an entrepreneur advantage against a competitor and is of paramount importance which precedents protection. Placing reliance of the paradigm set by the Hon'ble High Court of Delhi in the case of Burlington Home Shopping Pvt. Ltd. Vs. Rajnish Chibber in 1995, Trade Secret is defined as any information with commercial value, which is not available in the public domain and the disclosure of which would cause significant harm to the owner.<sup>4</sup> Another definition of the same was offered by the TRIPs Agreement which elucidate it to be information which is kept secret on account of it bearing commercial value and the owner of the information takes reasonable steps to keep it as such.<sup>5</sup> Trade Secret blankets information related to Research and Development, Recipes, Designs. Software Algorithm, Devices and, though not restricted to, Formulas. The case of Bombay Dyeing Vs. Mehar Karan (2010 (112) BomLR 375) Singh deliberated the criteria essential for any information to a be Trade Secret. Those constituents are: -

- “1. The extent to which the information is known outside the business.
2. The extent to which it is known to those inside the business i.e. by the employees.
3. The precautions taken by the holder of the trade secret to guard the secrecy of the information.

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<sup>4</sup> Burlington Home Shopping Pvt. Ltd. Vs. Rajnish Chibber, Delhi High Court, October 20, 1995 (India).

<sup>5</sup> Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). (1994, April 15). WIPO - World Intellectual Property Organization.

<https://www.wipo.int/wipolex/en/treaties/details/231>

4. The savings effected and the value to the holder in having the information as against competitors.
5. The amount of effort or money expended in obtaining and developing the information; and
6. The amount of time and expense it would take for others to acquire and duplicate the information.”<sup>6</sup>

### **COMMERCIAL VALUE OF TRADE SECRET LAWS**

In accordance to an article on Trade Secret Law, trade secret has to confer some sort of financial benefit on its owner. This benefit must derive specifically from the fact that it is not generally known, and not just from the value of the information itself. It must have commercial value because it is a secret.<sup>7</sup> This value can be asserted either actual and potential. It assists in the furtherance of creating a bloc of clientele with form the market which exploits the commercial value of that individual Trade Secret.

### **INDIAN LEGISLATIONS ON TRADE SECRET**

In absence of earmarked legislation for Trade Secret in India, the Indian Judiciary has pronounced certain landmark judgements over the course of time which currently establishing precedence to the effect of any Trade Secret conflict. However, there exists two legislations in India of utmost significance when the rumination is central to Trade Secret Law. These enactments include Section 27 of the Indian Contract Act of 1872 which reads as, “Every agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void.”<sup>8</sup> and Section 405 to Section 409 of the Indian Penal Code of 1860 which penalises Criminal Breach of trust. One of the primary cases of chief importance in India is *Niranjan Shankar Golikar V. Century Spinning and Mfg. Co. Ltd.* (AIR 1967 SC1098) in which the Hon’ble Supreme Court of India restrained an employee from divulging trade Secrets to the rival company after having being dismissed by the initial employer. This was followed by *Krishnan Murgai v Superintendence Co.*(AI R197 9Del 232) which emphasised on distinct circumstances in which the court upheld post-employment injunction, but only

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<sup>6</sup> *Bombay Dyeing Vs. Mehar Karan*, Bombay High Court, August 24, 2010, (2010 (112) BomLR 375).

<sup>7</sup> Trade Secrets, IPEG, Intellectual Property Expert Group, 2016, <https://www.ipeg.com/trade-secrets/>.

<sup>8</sup> THE INDIAN CONTRACT ACT, 1872, No. Section 27 (n.d.).

for purpose of protection of Trade Secrets.<sup>9</sup> In another instance of *Burlington Home Shopping v Rajnish Chibber* (Air 1987 Del 32) wherein the court held that “a compilation of addresses, phone numbers, etc, is a database prepared employing a lot of time, energy, resources and skill and thus constitutes literary work, which has to be protected... that the database and the information there is a trade secret; information which, if divulged to a competitor, would cause real or significant harm to the owner.”<sup>10</sup>

## CONCLUSION

In India the lack of specific laws ensures that each and every case revolving around the aspects of Trade Secret is to be tested based on the evidence presented in coherence with the circumstances of the case. It has been observed that more and more corporates are becoming aware of their rights and seeking to enforce such contracts; small entities are becoming more aware and taking steps to protect their intellectual property rights. The positive approach of the courts in entertaining such disputes and resolving the same either through ADR (alternate dispute resolution), mediation or through judgments is a silver lining in an otherwise tricky area of law without much legislative backing.<sup>11</sup>

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<sup>9</sup> *Krishnan Murgai v Superintendence Co.*, July 20, 1979, AIR 1979 Del 232.

<sup>10</sup> *Burlington Home Shopping Pvt. Ltd. Vs. Rajnish Chibber*, Delhi High Court, October 20, 1995 (India).

<sup>11</sup> Trade Secrets 2023 - India | Global Practice Guides | Chambers and Partners. (2023, April 11). Trade Secrets 2023. <https://practiceguides.chambers.com/practice-guides/trade-secrets-2023/india/trends-and-developments#:~:text=The%20Bombay%20Dyeing%20case%20identifies,protection%20as%20a%20trade%20secret.>