

LEGAL PROTECTION OF TRADE SECRETS: NEED FOR LEGISLATION IN INDIA

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ABSTRACT

Trade secrets are extremely important since they give firms the opportunity to be distinctive and thrive. Trade secrets are private information used in business that gives a company an advantage over rivals. Trade secrets may occasionally be disclosed to employers, clients, business partners, and investors in order to forward the goals of the company. Trade secrets are essential to the survival of any organisation, especially those that focus primarily on their capacity to retain their trade secrets; the formula for Coca-Cola drinks and their prolonged market dominance is a top-secret only known to a select group. Protection of trade secrets is necessary because it fosters innovation and business ethics. It is also essential for a company's expansion since it supports fair competition in the market. If sufficient safeguards are in place, more commercial transactions will be transparent, which will undoubtedly lead to an increase in foreign investment and trade. The burden of patent litigation will decrease because there won't be a need to patent an idea because it may be protected under trade secret laws under an effective system or right method. Furthermore, the fundamental right to privacy will not be violated as a result of the effective regime. Despite the fact that Section 27 of the Contract Act, 1872 offers civil remedies up to a specific threshold, there is no effective legislation or mechanism for the protection of trade secrets in India. A person is prohibited from releasing information that was acquired while they were employed. However, the opinions of the Courts on this matter are not consistent. In contrast to the US, India does not have a criminal culpability provision. Therefore, a clear and unambiguous legislation regarding trade secret protection is required for the protection of trade secrets in India.

Keywords: Trade Secrets, protection, innovation, business ethics, civil remedies, legislation, Contract Act.

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INTRODUCTION

To obtain an advantage over their rivals and retain the distinctiveness of their product or service, businesses frequently collect and deploy creative and original ideas that are unheard of by their competitors. Trade secrets are information that isn't generally known by rivals and is shielded by confidentiality agreements and qualify as quasi-intellectual property and are shielded from disclosure and illegal use under tort or contract law. A company does not need to be a certain size to qualify for a trade secret and protection for it¹. Enforcing trade secret protection is vital to an organization's survival and is absolutely necessary. In current age of globalization, it is crucial for businesses to make sure that their trade secrets are adequately protected from competitors when there is a concern that they would be revealed, particularly when recruiting new staff for strategic advancements or introducing new products and services. The goal of trade secret legislation is to safeguard, uphold, and encourage moral behavior that fosters innovation. Unauthorized use of a trade secret by a person who is not the holder of the trade secret is regarded as a breach of trade secret law and an unfair business practice.²

MEANING AND CONCEPT OF TRADE SECRET

Any business-related data or information that is not widely known to the public and that has been kept hidden and confidential via reasonable efforts is referred to as a trade secret. A trade secret is described as “knowledge having commercial value, which is not in the public domain, and for which reasonable steps have been taken to safeguard its secrecy by the North American Free Trade Agreement (NAFTA).”³ A trade secret can be defined as information, such as a formula, pattern, compilation, programmed, gadget, method, technique, or procedure that:

(I) derives independent economic value, existing or potential, from not being widely known to and easily ascertainable by appropriate means by other individuals who can get economic value from its disclosure or use, and

(ii) is the subject of reasonable attempts to protect its confidentiality under the circumstances.⁴

¹ Niharika Sanadhya, Protecting Trade Secrets In India In The Absence Of A Regime, KHURANA & KHURANA, (July 17, 2022, 02:11 P.M.),

² Nandan Pendsey, Kirti Balasubramanian, Akriti Kalra and Aashna Sheth, Trade Secrets: India, AZB & PARTNERS, (July 17, 2022, 12:03 P.M.), <https://www.azbpartners.com/bank/trade-secrets-india/>

³ North American Free Trade Agreement (NAFTA), § 3, 1994

⁴ Uniform Trade Secrets Act (UTSA), § 1(4), 1989, (US)

In the case of Burlington Home Shopping Pvt. Ltd. v. Rajnish Chibber⁵, the court ruled that a trade secret is any information that, if revealed to a rival, would be likely to cause the owner of the secret genuine or serious harm. Thus, it may contain not just trade secrets for product manufacturing but, in the right circumstances, client names and the products they purchase.

Article 39.2 of the Trade-related Aspects of Intellectual Property Rights (TRIPS) specifies three criteria for classifying information as undisclosed⁶:

- (a) the information is not generally known among or readily accessible to persons who normally deal with the type of information in question as a whole or in the precise configuration and assembly of its components;
- (b) Because the information is secret or confidential, it has actual or potential business value; and
- (c) the information has actual or potential commercial value because it is secret.

There are different types of trade secrets, which may include financial records, client lists, contact information, and even a company's strategy or policies.

LEGAL POSITION OF PROTECTION OF TRADE SECRETS IN INDIA

Trade secrets are a deserted field in India since there is no suitable policy framework in place to protect trade secrets. In India, trade secrets are primarily protected under contract law. Section 27 of the Contract Act provides a remedy and prohibits a person from releasing any information obtained during employment or through a contract, but there is no provision for criminal prosecution. Section 27 of the Contract Act states that confidential information must be extremely confidential before it may be classified as a trade secret. In determining whether information is a trade secret, the following aspects must be considered:

- (a) the employee's status and the nature of his work
- (b) the nature of the information itself
- (c) the employer's emphasis on the confidentiality of the information with respect to his staff

⁵ 1995 PTC (15) 278.

⁶ G. Lee Skillington and Eric M. Solovy, The Protection of Test and Other Data Required by Article 39.3 of the TRIPS Agreement, Volume 24, NORTHWESTERN JOURNAL OF INTERNATIONAL LAW & BUSINESS, (2003)

(d) the ease with which the information could be separated from other information that the employee was free to use.⁷

After determining his employment, an employer may legally forbid his employee from obtaining a position where he is likely to use the knowledge of secret procedures and trade secrets he has amassed during his employment.⁸ Additionally, he may agree to forbid his employee from opening up shop on his own or accepting employment with rival businesses that could jeopardise the employer's business relationships through improper exploitation of customer relationships. In *Burlington Home Shopping Pvt. Ltd. v. Rajnish Chibber*⁹, the court pointed out that a variety of business data are protected under trade secret legislation, and that customer lists and other collections of business data may be protected under the copyright as fact works. Theoretically, trade secret law protects the underlying material, but copyright protects the expression in these compilations. Copyright protects diverse parts of compiled business data. In actuality, copyright and trade secret protection for corporate data compilations regularly overlap. Trade secret protection may cover specific expressive arrangements of data, and copyright protection for business directories frequently covers the underlying data as well. In this case, the defendant was forbidden from using the plaintiff's database, which contained a compilation of the clients' addresses. The court ruled that if the defendant is allowed to utilise the plaintiff's database, it will undoubtedly result in harm to the plaintiff that cannot be quantified in monetary terms. The Supreme Court ruled in *Niranjan Shankar Golikari v. The Century Spinning and Mfg. Co. Ltd.*¹⁰ that an injunction to enforce a negative contract that is time-limited can be given to safeguard the employer's interests. In this instance, the defendant was assigned for a five-year term with the requirement that he not serve during that time somewhere else, even if he quit the service earlier. Later on, he managed to obtain a better-paying job elsewhere. The Supreme Court noted that the Appellant's knowledge and information acquired during this time were distinct from any general knowledge and experience he may have acquired while working for the Respondent Company, and it was against his disclosure of the latter to the Competitor Company, which required protection. In light of this, it was decided that it was appropriate to enjoin him from disclosing any and all

⁷ Pollock & Mulla, "Indian Contract and Specific Relief Acts" (Thirteenth Edn., Volume I, Lexis Nexis Butterworths Wadhwa, Nagpur, 2006), pg. 839

⁸ Ravindra Chhaba and Shyam Sunder Chhaba, Inadequacy of the Trade Secret's Protection Laws in India and Legal Regime Existing in U.S., MANUPATRA, (July 18, 2022, 07:22 P.M.)
<http://www.manupatra.com/roundup/369/Articles/Inadequacy.pdf>

⁹ 1995 PTC (15) 278.

¹⁰ 1967 AIR 1098

information, instruments, papers, reports, etc., that he may have learned while working for the respondent corporation.

DETERMINATION OF OWNERSHIP OF TRADE SECRET

If a trade secret is the subject of an action, the proprietor must show, at the very least, the nature of the information thought to be a trade secret and how it came to be in the proprietor's possession in order to establish his or her rights (even if the details of the trade secret are not disclosed in the suit). According to *Ambiance India Pvt Ltd v Shri Naveen Jain*¹¹, the courts have refused plaintiffs relief in the absence of such facts. The courts will make a distinction between trade secrets that can be protected and basic knowledge about a company's operations or general skills and experience that employees have acquired through their employment in a company. Owners must therefore be able to define the information that qualifies as a trade secret.

In some cases, this trade-secret information may include works created and developed by the proprietor that are the subject of copyright protection, such as client lists in *Diljeet Titus and Ors v Alfred A Adebare and Ors*.¹² or technical drawings in *John Richard Brady and Ors v Chemical Process Equipments Pvt Limited & Anr*.¹³ As a result, the authorship and ownership concepts related to copyright would apply. In other circumstances, the trade-secret knowledge may have been acquired, and the proprietor must demonstrate proper title to such information. This means that such knowledge will not be protected as a trade secret if it is generated or created independently by any individual (who does not have access to the trade secret) using publicly available information.

STATE OF SECRECY OF TRADE SECRET DETERMINATION OF OWNERSHIP OF TRADE SECRET

The High Court of Bombay established certain conditions for knowledge to be designated a trade secret in the case of *Bombay Dyeing*¹⁴. The first three criteria are concerned with the level of concealment. These include:

- a. the amount to which the information is known outside the business;

¹¹ 122 (2005) DLT 421

¹² 2006 (32) PTC 609 (Del)

¹³ AIR 1987 DEL 372

¹⁴ Ashok G.V., India: Describing The Trade Secret In Your Complaint, MONDAQ, (July 17, 2022, 08:18 P.M.), <https://www.mondaq.com/india/trade-secrets/1055284/describing-the-trade-secret-in-your-complaint>

- b. the extent to which it is known by employees and others involved in the business; and
- c. the extent to which the employer takes efforts to protect the confidentiality of the information.

Trade secrets must be information utilised in trade or business whose disclosure is restricted, discouraged, or outright forbidden, therefore the safeguards put in place by a corporation to maintain secrecy are a reliable indicator of the level of secrecy.¹⁵ There may be an implied obligation of confidentiality or secrecy associated with information that is accessed by any person due to their relationship to the owner of the information (such as employees or vendors), whether or not such an obligation is expressly stated in a contract or through any other communication (especially if it is not otherwise available through other sources or in the public domain). In such situations, it must be proved that¹⁶:-

- a. no one other than the proprietor himself or herself had access to this information and
- b. the implicit responsibility is supported by the facts and circumstances surrounding the correspondence, other action of the parties, etc (provided it meets the other criteria for trade secrets).

PROTECTIVE MEASURE TO PREVENT DISCLOSURE AND MISAPPROPRIATION OF TRADE SECRET

Since a trade secret's value derives on its secrecy, courts frequently scrutinise the technical, contractual, access control, and physical safeguards put in place by the owner or rightholder to prevent the disclosure of trade secrets. Among these safeguards are confidentiality agreements with clients, partners, and others; technical and security measures implemented internally to limit access to trade secrets; technical precautions taken to safeguard the organisation against cyberattacks; and explicit, written company policies governing the protection of confidential data and trade secrets¹⁷. In some cases, even in the absence of such precautions, the proprietor's express actions, such as designating material or correspondence as "confidential," may be adequate and reasonable to support the preservation of the trade secret.¹⁸

¹⁵ Johann Claudius Knobel, The Right to The Trade Secret, CORE, (July 15, 2022, 02:57 P.M.), <https://core.ac.uk/download/pdf/43176261.pdf>

¹⁶ Nandan Pendsey, Kirti Balasubramanian, Akriti Kalra and Aashna Sheth, *supra* note 2.

¹⁷ Safeguarding Trade Secrets in the Era of Digitization, AMLEGALS, (July 15, 2022, 06:22 P.M.), <https://amlegals.com/indian-law-firm/>

¹⁸ Nandan Pendsey, Kirti Balasubramanian, Akriti Kalra and Aashna Sheth, *supra* note 2.

Confidentiality may be implied as well. As a result, the facts and circumstances surrounding the access, disclosure, and delivery of confidential or trade-secret information may become significant in determining whether the proprietor's protective measures were reasonable. Companies should implement the following practises to protect secrets¹⁹:

- a. organisations should itemise and identify information that they believe constitutes a trade secret - not all information relating to a company's business will be considered a trade secret by the courts, and such information should be reviewed on a regular basis by the company;
- b. organisations should clearly label the information in physical or digital form as a "trade secret"²⁰;
- c. It is necessary to restrict and manage access to trade secrets via managerial, contractual, technological, and physical safeguards²¹;
- d. Employees shouldn't be allowed to access trade secrets from outside the organisation or take such trade secrets out of the building;
- e. In the case of confidentiality agreements between employees and third parties, when a person may be given access to trade secrets (even for a small period of time), such duties to maintain confidentiality should endure the expiration or termination of these agreements²²;
- f. creating and implementing a strong trade-secret policy for the company, especially if such trade secrets are essential to the value proposition for the business; and
- g. controlling risks connected with reverse engineering (which may expose trade secrets) via technological techniques, if the organisation provides a technology product²³.

¹⁹ Niharika Sanadhya, *supra* note 1.

²⁰ Eight steps to secure trade secrets, WIPO Magazine, WORLD INTELLECTUAL PROPERTY ORGANISATION (July 16, 2022, 07:12 P.M.), https://www.wipo.int/wipo_magazine/en/2016/01/article_0006.html

²¹ *Ibid.*

²² Ranjan Narula and Rachna Bakhru, Protecting trade secrets in India, LEXOLOGY, (July 20, 2022, 09:22 P.M.), <https://www.lexology.com/library/detail.aspx?g=c83e8a6c-a02e-44ba-8723-94087d2e5e20>

²³ *Ibid.*

MISAPPROPRIATION OF TRADE SECRET

The discovery of a trade secret through unlawful means (resulting from civil, including contract violation or tortious wrongs or criminal conduct) would constitute misappropriation of trade secrets, even though there is no law specifically defining it.²⁴ To establish trade-secret theft, the owner or rights holder must show (Beyond Dreams Entertainment Pvt. Ltd. & Ors. vs. Zee Entertainment Enterprises Ltd. & Anr.²⁵):

- a. the information was a secret and not widely known, or was not easily accessible to persons who deal with such information;
- b. the individual or owner of such information took reasonable steps to ensure and maintain its secrecy, and the information was imparted in circumstances implying a duty of confidence; and
- c. there has been an unauthorised use of the information to the detriment of the party disclosing it or there was a threat to use it.

EXCLUSION FROM THE SCOPE OF TRADE SECRET MISAPPROPRIATION

The "inevitable disclosure" argument, which forbids an employee from engaging in a lawful profession or trade, is not upheld by Indian courts.²⁶ The knowledge that an employee retains in his or her head and the skills they learn while working for a company may not be able to be protected as trade secrets. Additionally, it may not be considered misappropriation of a trade secret if the information was learned independently through an honest and ethical discovery process, such as reverse engineering, and if it did not otherwise violate any statutory intellectual property rights. Last but not least, if the material was already public knowledge and not otherwise 'secret,' it might not be shielded.

BURDEN OF PROOF IN CASES OF TRADE SECRET MISAPPROPRIATION

The Indian Evidence Act of 1872 outlines the general rules of the burden of proof in the absence of special legislation regulating trade secrets. In accordance with Indian law, the burden of

²⁴ Eight steps to secure trade secrets, WIPO Magazine, WORLD INTELLECTUAL PROPERTY ORGANISATION (July 16, 2022, 07:12 P.M.),

https://www.wipo.int/wipo_magazine/en/2016/01/article_0006.html

²⁵ (2016) 5 Bom CR 266

²⁶ Deepak P. Singh, Some Facts Related to Trade Secrets, TAXGURU, (July 16, 2022, 04:34 P.M.), <https://taxguru.in/corporate-law/facts-related-trade-secrets.html>

proof is with the party making the assertion. The one who would lose if neither side provided any evidence has the burden of proof.²⁷

CONFIDENTIALITY OF TRADE SECRET DURING LITIGATION

Indian courts allow litigants to pursue a variety of actions to prevent their trade secrets from being revealed to third parties or other plaintiffs. The first of these is the custom of delivering documents in sealed envelopes, available to a judge only for examination. Additionally, a more recent practise is the creation of confidentiality clubs, which ensures that under the protection of a confidentiality agreement, trade-secret information is only made accessible to a select group of people and that any proceedings involving the review of the trade-secret information or arguments thereon are conducted in camera (without the presence of third parties in the courtroom) in the presence of only the members of the confidentiality club.²⁸

DEFENCE IN CASES OF TRADE SECRET MISAPPROPRIATION

The available defences would primarily depend on the specifics of each case, but generally speaking, they would be as follows:

- a. the information is already known and available to the public²⁹;
- b. the information sought to be safeguarded is not a trade secret (even if it is confidential);
- c. the plaintiff's negligence and failure to maintain confidentiality resulted in the disclosure of information³⁰;
- d. the defendant obtained the information through independent study, skill, or labour (including reverse engineering) and without access to the plaintiff's information³¹; or
- e. the defendant is under no stated or implicit obligation to keep the information supplied to it secret³².

REMEDIES FOR INFRINGEMENT OF TRADE SECRET

²⁷ Ibid.

²⁸ Ashok G.V., supra note 14

²⁹ Nandan Pendsey, Kirti Balasubramanian, Akriti Kalra and Aashna Sheth, supra note 2.

³⁰ Ibid.

³¹ Pravin Anand, Achuthan Sreekumar and Rohil Bansal, Trade Secrets 2022, CHAMBERS AND PARTNERS, (July 21, 2022, 04:22 P.M.), <https://practiceguides.chambers.com/practice-guides/trade-secrets-2022/india>

³² Ibid.

Injunctions

In India, plaintiffs or rights holders can get an injunction to prevent the defendant from utilising or disclosing trade secrets during both the preliminary and final stages of an action. The court grants these injunctions at its discretion, generally by applying the following tests (introduced in *Gujarat Bottling Co Ltd v Coca Cola Co*³³):

- a. whether the plaintiff has established a prima facie case;
- b. whether the plaintiff is favoured by the balance of convenience; and
- c. whether the plaintiff would sustain irreparable harm if the injunction were denied.

Additionally, courts have ruled that the purpose of an interim injunction is to safeguard the plaintiff against harm caused by a violation of their rights where such harm cannot be satisfactorily made up for by damages. Particularly true in the case of trade secrets, whose value stems on their secrecy.³⁴ Therefore, the harm that could result from preventing the defendant from exercising its legal rights must be evaluated against the need for such protection of the plaintiff. The plaintiff must clearly state the trade secrets sought to be enforced at the outset in order to meet each of the aforementioned standards (even if details are not provided). The claimant must also present evidence of the trade secret's importance to them as well as its commercial value. Statements about the trade secret's ability to give an edge over the competition will also be pertinent. To strike a balance between potential harm and convenience, it is crucial to consider the nature and scope of the trade secret's use throughout time.³⁵ In situations involving employer-employee interactions, section 27 of the Indian Contract Act³⁶, must also be taken into account. Under this Article, any agreements or clauses that restrict trade are void and unenforceable. Therefore, a secrecy clause in an employment contract may not be enforceable if the plaintiff, who is the employer, seeks to prevent the accused defendant from getting a position with a rival or anywhere else.

³³ (1995) 5 SCC 545

³⁴ Eriobu-Aniede Onyekachi, Available remedies in trade secret and restrictive covenant cases under US laws, IPLEADERS, (July 21, 2022, 08:11 P.M.), https://blog.ipleaders.in/available-remedies-in-trade-secret-and-restrictive-covenant-cases-under-us-laws/#Remedies_available_under_the_DTSA

³⁵ Khyati Sharma, Protection Of Trade Secrets – The Scenario In Indian Legal System, IPR LAW INDIA - INDIAN IP LAW RESOURCES, (July 20, 2022, 04:11 P.M.), <https://iprlawindia.org/protection-of-trade-secrets-the-scenario-in-indian-legal-system/>

³⁶ Indian Contract Act, 1872, § 27, No. 9, Acts of Parliament, 1872 (India).

Damages

In circumstances of trade-secret misappropriation, plaintiffs may ask for monetary compensation as well as the rendition of profit accounts. In order for the court to award damages, they must first be calculated and proven during the trial. Liquidated, actual, or punitive damages are all possible. If liquidated damages are not clearly stated, they must be quantified in accordance with the provisions of the parties' agreement.³⁷ Actual damages must be backed up by evidence (in relation to which witnesses may also be cross-examined). This will probably involve calculating the damages suffered as a result of trade secret disclosure or performing a valuation based on the hypothetical market value of the trade secret in question. The expert's report can substantiate this. Finally, punitive damages are often imposed in circumstances when the infringement or tort is extreme, based on the court's authority and judgement.³⁸

Other civil remedies

In circumstances of willful trade-secret appropriation, no additional civil remedies are available. Other civil remedies available to a plaintiff or rights holder, in addition to injunction and damages, include orders granting return of trade secrets or delivery of materials containing trade secrets, and appointment of court commissioners to take stock of the materials misappropriated by the defendant (for assistance in quantification of damages). Courts can even ask local police to help court commissioners in carrying out relevant search and seizure orders.³⁹

Criminal remedies

The Indian Penal Code (IPC) and particular subject-matter laws, such as the Copyright Act 1957 (regulating copyrights) and the Information Technology Act 2000 (controlling electronic records), have provisions outlining specific offences that may result in imprisonment or a fine. Trade-secret misappropriation is not a distinct crime. However, depending on the details of the case, offences such as criminal breach of trust, theft, or cheating may be applicable.

³⁷ Khyati Sharma, *supra* note 35.

³⁸ Ranjan Narula and Rachna Bakhru, *supra* note 22.

³⁹ Nandan Pendsey, Kirti Balasubramanian, Akriti Kalra and Aashna Sheth, *supra* note 2.

The penalty for criminal breach of trust is up to three years in prison or a fine. A criminal breach of trust occurs when a person dishonestly misappropriates or converts for his or her personal use any property entrusted to him or her, or dishonestly uses or disposes of such property in contravention of a contract (explicit or implicit) or relevant legislation, or allows another person to do so. As a result, the complainant must first demonstrate the infringer's or accused's dishonest intent in misappropriating, converting, utilising, or disposing of the property.⁴⁰

The Code of Criminal Procedure, 1973 establishes the procedural law governing criminal procedures. A complaint can bring an offence to the attention of the police. If the crime is a cognizable offence under the IPC (one punishable by imprisonment for more than three years), a police officer is required to file a First Information Report and can conduct investigations and arrests without a warrant⁴¹. However, if it is not cognizable, the police are not forced to take action, and all action must be performed in accordance with the orders of a metropolitan magistrate, who is required to review a criminal complaint in the first instance and order investigations, arrests, and so on, as appropriate.⁴² The criminal justice system in India is plagued by delays and is not the preferred enforcement option for rights holders unless the conduct is serious and warrants such action and attendant fines, or the identity of the criminals is unknown and requires investigation.

SUGGESTIONS FOR ENACTMENT ON TRADE SECRETS

In India, the National Innovation Act of 2008 was passed in an attempt to preserve trade secrets. The Act's Chapter VI addresses confidentiality and confidential information, as well as remedies. This legislation enables parties to contractually establish the terms and conditions controlling rights and obligations in relation to sensitive information, including with the goal of maintaining secrecy and preventing misappropriation. Furthermore, without prior court orders, any person or class of individuals impleaded in an action may be barred from disclosing the Confidential Information referred to in the claim. Furthermore, Section 11 of the said act provides exceptions, in which confidential information shall not have been misappropriated if the Confidential Information was available in the public domain; or the Confidential Information was independently derived by the alleged Misappropriator, or by any third party from whom the alleged Misappropriator received the information; or disclosure of the

⁴⁰ Indian Penal Code, 1860, § 405, No. 9, Acts of Parliament, 1872 (India).

⁴¹ The Code of Criminal Procedure, 1973, § 155, No. 2, Acts of Parliament, 1973 (India).

⁴² The Code of Criminal Procedure, 1973, § 156, No. 2, Acts of Parliament, 1973 (India).

Confidential Information is held to be in the public interest by a court of law. However, this draft did not come into existence. Protection of trade secrets is necessary because it fosters innovation and business ethics. It is also essential for a company's expansion since it supports fair competition in the market. If sufficient safeguards are in place, more commercial transactions will be transparent, which will undoubtedly lead to an increase in foreign investment and trade. The burden of patent litigation will decrease because there won't be a need to patent an idea because it may be protected under trade secret laws under an effective system or right method. Furthermore, the fundamental right to privacy will not be violated as a result of the effective regime. Despite the fact that Section 27 of the Contract Act offers civil remedies up to a specific threshold, there is no effective legislation or mechanism for the protection of trade secrets in India. A person is prohibited from releasing information that was acquired while they were employed. However, the opinions of the Courts on this matter are not consistent. In contrast to the US, India does not have a criminal culpability provision. Therefore, a clear and unambiguous policy regarding trade secret protection is required for the protection of trade secrets. To address the issue of unfair competition, a Sui Generis System as stipulated by Article 39 of the Trade-Related Aspects of Intellectual Property Rights (TRIPS) and Article 10 bis of the Paris Convention is necessary. India must establish extensive laws and regulations as a TRIPS member in order to end the uncertainty surrounding the protection of trade secrets. Further, India must adhere to the provisions of the Uniform Trade Secret Act and the Economic Espionage Act of 1996 in the US, thus civil and criminal penalties should be included in any legislation that is implemented. In order to establish complete legislation that would address the difficulties of defining infringers' obligations in both civil and criminal situations, effective and strict measures should be enacted while bearing in mind the Innovation Bill of 2008. The UTSA and EEA clauses in the US may be invoked by the Indian legislature.

CONCLUSION

Even while the law of trade secrets is compatible with the current framework of tort law, contract law, and competition law, there are certain issues with its establishment in the area of intellectual property rights. But eliminating that discrepancy would also require a separate law for commercial secrets. India must have a strong trade secret law because it is a developing country. The TRIPS Agreement required its Member States to amend their existing laws and enact new legislation in order to carry out their duties under the TRIPS Agreement. It is now necessary for a statutory legislation to take effect in India that not only safeguards trade secrets and confidentiality but also makes the necessary changes to the Competition Act's current anti-

misappropriation and regulation provisions. Similar to other countries, the Indian Penal Code, 1860, which establishes criminal responsibility in situations involving a breach of confidence or the disclosure of trade secrets, needs to be amended. Individuals who engage in such actions are not deterred by the mere existence of a criminal law, thus serious action and practise are also required to prevent such instances. Similar rules that include due diligence with regard to trade secrets should be added to the Companies Act of 1956. The Companies are able to safeguard their trade secrets by being proactive and watchful. Companies must create a robust protection mechanism around such information in this way and for this reason. In order for nondisclosure and/or non-compete agreements to be more successful and for companies to more easily protect their trade secrets, strong psychological loyalty must be established among the workforce. With the aforementioned factors taken into account, it is reasonable to believe that trade secret protection in India is in its infancy and that it is crucial for it to develop in light of the fact that India is a developing nation that requires laws and legislation that are favourable to the business environment in order to transform the nation into a haven for companies offshoring as well as entrepreneurs looking for competition favourable to their businesses.

