

REMEDIES FOR TRADE SECRET INFRINGEMENT IN INDIA: ARE THEY ADEQUATE?

Shweta Singh* Dr. Seema Gupta*

ABSTRACT

This research investigates the adequacy of current remedies for trade secret infringement in India. It explores the limitations of the existing legal framework, which primarily relies on common law principles, and the need for a more comprehensive approach. The study analyzes the effectiveness of injunctions and damages as remedial measures while highlighting the challenges faced by trade secret owners in obtaining these remedies. By comparing the Indian legal framework with that of other jurisdictions, the research identifies potential areas for improvement. The findings emphasize the urgent need for a codified trade secret law in India to provide greater clarity, consistency, and protection for trade secret owners.

Keywords: Legal Framework, Intellectual Property, Trade Secret, Trade Secret Protection.

INTRODUCTION

Trade secrets, as intangible assets, play a pivotal role in driving innovation and economic growth. They represent valuable proprietary information that provides a competitive advantage to businesses. Protecting trade secrets is essential for fostering a healthy business environment, encouraging research and development, and promoting fair competition. In India, while trade secrets are recognized as a valuable form of intellectual property, the existing legal framework for their protection has been subject to criticism for its inadequacies. The current remedies available for trade secret infringement are primarily derived from common law principles, which can lead to inconsistencies and uncertainties. This research examines the limitations of the existing legal framework, the effectiveness of available remedies, and the need for a more comprehensive approach to trade secret protection in India. The study focuses on analyzing the adequacy of injunctions and damages as remedial measures for trade secret infringement. It investigates the challenges faced by trade secret owners in obtaining these remedies and the potential for inconsistencies in judicial interpretations. Additionally, the research compares the

*LLM, UNIVERSITY INSTITUTE OF LEGAL STUDIES, CHANDIGARH UNIVERSITY.

*ASSOCIATE PROFESSOR, UNIVERSITY INSTITUTE OF LEGAL STUDIES, CHANDIGARH UNIVERSITY.

Indian legal framework with that of other jurisdictions to identify potential areas for improvement. By examining these aspects, this research aims to contribute to a better understanding of the current state of trade secret protection in India and to identify potential reforms that could enhance the protection of trade secrets and promote innovation.

LITERATURE REVIEW

Trade secrets, as intangible assets, play a pivotal role in driving innovation and economic growth. Their protection is essential for fostering a competitive business environment. In India, while trade secrets are recognized as a valuable form of intellectual property, the existing legal framework for their protection has been subject to criticism for its inadequacies. This literature review examines the current remedies available for trade secret infringement in India, their limitations, and the need for a more comprehensive legal regime.

TRADE SECRET

Trade secrets are like special information that only a few people know about. This information is important to a business because it can help them make money. It could be a secret recipe, a special way of doing things, or even a list of customers. If someone else knows this information, it could hurt the business. Trade secrets can be things like blueprints, computer programs, or how to make something. They can also be things like who the customers are, how to advertise, or how to deliver products. Trade secrets are important because they help businesses come up with new ideas and protect their ways of doing things. They also help businesses make agreements with other people, like in contracts. Misappropriation happens when someone gets trade secrets in a bad way, like stealing them or tricking someone into telling them.¹

THE IMPACT OF GLOBALIZATION

The increasing globalization of the economy has highlighted the importance of trade secret protection. As businesses operate in a global marketplace, they rely on undisclosed information to maintain a competitive edge. The absence of a strong legal framework for trade secret protection in India can hinder its ability to attract foreign investment and participate effectively

¹ Kumbhar A, 'Trade Secrets: A Comparative Perspective of Their Protection and Enforcement' (*SC IP*, 17 April 2023) <https://www.sc-ip.in/post/trade-secrets-a-comparative-perspective-of-their-protection-and-enforcement?utm_source=mondaq&utm_medium=syndication&utm_content=articleoriginal&utm_campaign=article> accessed 12 October 2024

in the global economy.²

A comprehensive trade secret law would provide a more secure environment for businesses operating in India. It would also facilitate international cooperation on trade secret protection, ensuring that Indian businesses are not at a disadvantage compared to their foreign competitors.

The existing remedies for trade secret infringement in India are inadequate to provide robust protection for trade secret owners. The reliance on common law principles and the lack of a codified regime create uncertainties and inconsistencies in the legal framework. To address these shortcomings, India needs to enact a comprehensive trade secret law that provides clear definitions, standards, and remedies. This would not only align India with international standards but also foster a more secure environment for innovation and business growth.

WHY TRADE SECRETS NEED TO BE PROTECTED?

Trade secrets are a vital form of intellectual property, especially for businesses aiming to maintain a competitive edge in the marketplace. Unlike patents or trademarks, trade secrets encompass confidential business information that gives a company an advantage over competitors, such as manufacturing processes, formulas, customer lists, or marketing strategies. The unique aspect of trade secrets is that they must remain undisclosed to retain their value.³

As companies increasingly expand their operations beyond national borders, the protection of trade secrets becomes a global concern. The international nature of business makes it easier for sensitive information to cross borders, making it susceptible to theft or misuse in jurisdictions where laws may not be stringent enough to safeguard such information. This necessitates a careful evaluation of a country's legal framework to ensure that it provides effective protection against trade secret breaches.⁴

With the rise of digital transformation and the integration of artificial intelligence (AI) in business processes, the need for robust trade secret protection has become more pressing. Digitalization allows for faster and more efficient business operations, but it also introduces

² (Trade Secret Protection in india - centre for WTO studies) <[https://wtocentre.iift.ac.in/workingpaper/Trade Secret Protection in India- The policy debate.pdf](https://wtocentre.iift.ac.in/workingpaper/Trade%20Secret%20Protection%20in%20India-%20The%20policy%20debate.pdf)> accessed 12 October 2024

³ Shakya S, 'Trade Secrets & Its Protection as Intellectual Property: Revisiting IPR Regime' [2014] SSRN Electronic Journal.

⁴ Ibid.

new risks, such as cyberattacks and data breaches. AI, in particular, often relies on large datasets, which can include proprietary information or trade secrets, heightening concerns about unauthorized access or exposure. Therefore, it is crucial that legal systems adapt to these technological advancements to ensure that trade secrets remain adequately protected.⁵

INDIA'S LEGAL FRAMEWORK AND THE NEED FOR GLOBAL HARMONIZATION

While the country joined the Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement in 1995 India's legal framework on trade secret protection is still in its nascent stage, and there is no specific legislation dedicated to this area. Trade secret protection in India is primarily governed through common law principles, contract law, and specific provisions under various statutes like the Indian Contract Act, of 1872 primarily through legally binding non-disclosure agreements. These agreements impose contractual obligations on parties to prevent the disclosure of confidential information.

The Delhi High Court, in the case of *John Richard Brady & Ors v Chemical Process Equipment P Ltd & Anr*⁶, held the following:

“These rules may, according to the circumstances in any given case, either rest on the principles of equity, that is to say, the application by the Court of the need for conscientiousness in the course of conduct, or by the common law action for breach of confidence, which is in effect a breach of contract.”

The closest India came to codifying trade secret protection was in 2008 when the Draft National Innovation Bill was proposed. However, despite over a decade passing, there has been no significant progress in this area. This means that trade secrets in India continue to be primarily protected through contractual mechanisms, rather than a dedicated legal framework. However, the lack of a comprehensive legal regime means that businesses may face challenges in enforcing their rights or obtaining remedies in cases of trade secret theft or misuse.

Given these challenges, it is necessary to assess India's current legal mechanisms for protecting trade secrets and explore whether they are sufficient in addressing modern-day breaches and

⁵ Chinmaya Kumar Mohapatra, 'TRADE SECRET PROTECTION IN INDIA' (2020) 17(6) Palarch's Journal Of Archaeology Of Egypt.

⁶ (1987) AIR 372 (Delhi).

threats. The question is whether India's laws are equipped to deal with the increasing risks posed by digitalization and AI.

Moreover, harmonizing trade secret laws across jurisdictions can significantly enhance global protection. Many companies operate in multiple countries, and varying legal standards for trade secret protection can create complications in international business operations. Uniformity in laws, such as those provided under international agreements like the TRIPS Agreement (Trade-Related Aspects of Intellectual Property Rights), can help create a more predictable legal environment. This would not only strengthen trade secret protection globally but also facilitate smoother business operations and cross-border collaborations.⁷

TRADE SECRET INFRINGEMENT

Trade secret infringement, known as "misappropriation," happens when someone unlawfully obtains, discloses, or uses a trade secret without permission. This can occur even if the individual knows or should know that the trade secret was acquired through an error or accident. Misappropriation does not have to be intentional; it can also result from inadvertence or negligence.

Misappropriation of trade secrets occurs when a person or entity acquires or discloses a trade secret improperly. Improper acquisition can involve breaches of non-disclosure agreements, industrial espionage, theft, fraud, or bribery. For example, hacking into a company's computer system to obtain confidential information or working on trade secrets on a personal device in violation of company policy can constitute misappropriation.⁸

Disclosure of a trade secret can also lead to misappropriation if the person disclosing the secret knew or should have known that it was acquired improperly. This includes situations where the trade secret was obtained through a breach of confidentiality or under circumstances that indicated the need to maintain its secrecy. For instance, publishing a trade secret obtained from a source who violated a non-disclosure agreement or decrypting and disclosing encrypted

⁷ Authors and others, 'Trade Secrets: A Comparative Perspective of Their Protection and Enforcement' (*Trade Secrets: A Comparative Perspective Of Their Protection And Enforcement - Trade Secrets - Intellectual Property - India*, 1 May 2023) <<https://www.mondaq.com/india/trade-secrets/1309578/trade-secrets-a-comparative-perspective-of-their-protection-and-enforcement>> accessed 12 October 2024

⁸ Veena TN, 'Misappropriation of Trade Secrets Under the Indian Legal Framework: An Analytical Study' (2023) 12 Christ University Law Journal.

files that were likely acquired improperly could constitute misappropriation.⁹

While India lacks a specific law defining the misappropriation of trade secrets, the act of discovering a trade secret through improper means can still constitute misappropriation. This can occur through civil actions, such as breaches of contract or tortious wrongs, as well as criminal acts. For example, if a competitor obtains a trade secret through industrial espionage or a former employee breaches a non-disclosure agreement, it would be considered misappropriation even though there is no explicit law against it.¹⁰

To prove trade-secret misappropriation, the owner or rights holder must demonstrate (as established in *Beyond Dreams Entertainment Pvt. Ltd. & Ors. vs. Zee Entertainment Enterprises Ltd. & Anr.*¹¹):

- **Confidentiality:** The information was a trade secret, not publicly known or readily accessible to those dealing with such information.
- **Reasonable Measures:** The owner took reasonable steps to protect the secrecy of the information and communicated it under circumstances implying a duty of confidentiality.
- **Unauthorized Use:** The information was used or threatened to be used without authorization, causing harm to the party who disclosed it.¹²

In the absence of a dedicated trade secret law, the general rules for determining who has the burden of proof are found in the Indian Evidence Act of 1872.¹³ [According to Section 101 of the Indian Evidence Act (now known as the Bharatiya Sakshya Adhiniyam since July 1, 2024), the burden of proof lies with the person making a claim. Therefore, in a case of alleged trade secret misappropriation, the onus is on the party making the accusation to prove their claim.

In a trade secret misappropriation case, the owner doesn't have to prove that the other person actually used the secret in a bad way. Just the fact that the other person stole the secret shows

⁹ 'Trade Secret Infringement & Potential Legal Defenses' (*Justia*, 15 October 2023)

<<https://www.justia.com/intellectual-property/trade-secrets/infringement/>> accessed 12 October 2024

¹⁰ 'Trade Secrets: India' (*azb*, 13 September 2021) <<https://www.azbpartners.com/bank/trade-secrets-india/#:~:text=There%20is%20no%20specific%20offence,three%20years%20or%20a%20fine>> accessed 12 October 2024

¹¹ (2016) 5 CR 266 (Bom).

¹² *Beyond Dreams Entertainment Pvt. Ltd. & Ors. vs. Zee Entertainment Enterprises Ltd. & Anr.* (2016) 5 CR 266 (Bom).

¹³ *Supra* note 4.

that they wanted to gain from it illegally. This means the owner has a good reason to worry that the other person will use the secret badly in the future and can take legal action.

In a civil case, the owner of the trade secret only needs to show that the other person stole the secret without permission. A court can then stop the other person from using the secret, even if they didn't mean to do anything bad.]¹⁴

CURRENT REMEDIES FOR TRADE SECRET INFRINGEMENT

The primary remedies for trade secret infringement in India are derived from common law principles, primarily tort law. Indian courts have employed injunctions and damages as remedial measures in cases of trade secret misappropriation (Zafar et al., 2011; Kumar et al., 2006). However, the application of these remedies has been inconsistent due to the lack of a specific trade secret statute, leading to ambiguities and uncertainties for trade secret owners.¹⁵

Injunctions

When considering an injunction for trade secret infringement, Indian courts often apply the following tests:

1. **Prima Facie Case:** The plaintiff must demonstrate a credible claim of trade secret infringement.
2. **Balance of Convenience:** The court assesses whether granting the injunction would cause less harm to the plaintiff or the defendant.
3. **Irreparable Harm:** The plaintiff must show that they would suffer significant and irreparable damage if the injunction is not granted.

Courts emphasize that the purpose of an interim injunction is to protect the plaintiff's rights, especially in cases involving trade secrets, where monetary compensation might not be sufficient. However, the potential harm to both parties must be carefully weighed.¹⁶

To meet these criteria, the plaintiff should clearly identify the trade secrets in question, even if specific details are not provided. The commercial value of the trade secret and its importance

¹⁴ 'Trade Secrets 2024' (Trade Secrets 2024 - India | Global Practice Guides | Chambers and Partners) <<https://practiceguides.chambers.com/practice-guides/trade-secrets-2024/india>> accessed 12 October 2024

¹⁵ Satija N, 'Trade Secret: Protection & Remedies' [2009] SSRN Electronic Journal

¹⁶ *Gujarat Bottling Co Ltd v Coca Cola Co* (1995) 5 SCC 545

to the plaintiff's business must be demonstrated. Evidence of competitive advantage gained through the trade secret is also relevant. The extent and duration of the trade secret's use can help determine the balance of convenience and potential harm.¹⁷

In cases involving employer-employee relationships, the Indian Contract Act of 1857's Section 27 must be considered. This section voids any contractual terms that unreasonably restrict a person's trade or employment. Therefore, if an employer seeks to prevent a former employee from working for a competitor based on a confidentiality agreement, those terms might not be enforceable.

The availability of injunctions in trade secret cases can be crucial in preventing irreparable harm to the trade secret owner. However, obtaining an injunction can be challenging, as courts may require the plaintiff to demonstrate a likelihood of success on the merits of the case and irreparable harm if the injunction is not granted.

Damages

Damages are monetary awards that can be granted to compensate a trade secret owner for the harm caused by infringement. The amount of damages awarded can be based on various factors, including the value of the trade secret, the profits made by the infringer, and the harm suffered by the trade secret owner.

In trade secret misappropriation cases, litigants can seek damages and an accounting of profits.¹⁸ The types of damages include:

- **Liquidated Damages:** These are damages specified in a contract. If not quantified, they must be determined based on the contract's terms.
- **Actual Damages:** These are proven through evidence and represent losses incurred due to the trade secret disclosure or the market value of the trade secret. Expert testimony can support the quantification.
- **Punitive Damages:** These are discretionary awards by the court, typically granted in cases of egregious infringement or torts.

¹⁷ Ibid.

¹⁸ Satija, Neelam, Trade Secret: Protection & Remedies (June 1, 2009). Available at SSRN: <<https://ssrn.com/abstract=1614222>> accessed 12 October 2024.

Burden of Proof: The plaintiff bears the burden of proving the amount of damages. This often involves providing evidence of losses or valuations.

Expert witnesses can be crucial in quantifying damages, especially when determining the market value of a trade secret or the lost profits resulting from its misappropriation.

Punitive Damages: While punitive damages can be significant, they are generally awarded in cases where the defendant's actions were particularly egregious, such as wilful or malicious misconduct.

Calculating damages in trade secret cases can be complex, as it often involves determining the value of intangible property. Courts may consider factors such as the cost of development, the commercial value of the trade secret, and the potential future earnings that the trade secret owner may have lost due to infringement.

Criminal Remedies

There is no specific offence of trade-secret misappropriation under the Indian Penal Code 1860 (IPC); however, related offences such as criminal breach of trust, theft, or cheating may apply depending on the case specifics.

The IPC includes provisions for several offences that can incur penalties including imprisonment or fines. Criminal breach of trust, for instance, carries a penalty of up to three years of imprisonment or a fine.

To establish a criminal breach of trust, it must be shown that the accused dishonestly misappropriated or converted the entrusted property for personal use, violated any express or implied contract, or allowed others to misuse it. The complainant bears the burden to demonstrate the dishonest intent of the infringer or accused.¹⁹

The procedural law governing criminal proceedings is outlined in the Code of Criminal Procedure 1973. If a trade secret misappropriation claim qualifies as a cognizable offence (i.e., carrying a penalty exceeding three years), the police are obliged to register a First Information Report (FIR) and can initiate investigations without a warrant.

¹⁹ T. N. V, 'Misappropriation of Trade Secrets under the Indian Legal Framework: An Analytical Study' (2023) 12 Christ University Law Journal

However, for non-cognizable offences, police action is contingent upon a magistrate's orders, who must evaluate the complaint before any investigations or arrests can be ordered.

Rights holders often find the criminal justice system in India to be slow and inefficient. It may not be the preferred avenue for enforcement unless the situation warrants such action due to the severity of the offence or when the identity of the offender is in question and requires further investigation.²⁰

LIMITATIONS OF CURRENT REMEDIES

The existing remedies for trade secret infringement in India have several limitations. First, the reliance on common law principles can lead to inconsistent judicial interpretations, making it difficult for trade secret owners to predict the outcome of infringement cases. Second, the available remedies may not always be sufficient to adequately protect trade secrets, especially in cases of complex or widespread infringement. Third, the process of obtaining remedies can be time-consuming and expensive, which can deter trade secret owners from pursuing legal action.²¹

NEED FOR CODIFICATION

In today's globalized world, businesses are increasingly expanding their reach across borders. This expansion creates a critical need to protect their confidential information, strategies, and technologies. Competitors can easily copy valuable ideas and inventions if they are not adequately protected, causing significant economic harm.

Several international agreements exist to protect intellectual property, including trade secrets. These include the Trade-Related Aspects of Intellectual Property Rights (TRIPS), the General Agreement on Tariffs and Trade (GATT), and the North American Free Trade Agreement (NAFTA).²²

Unlike many other countries, India lacks a dedicated legal framework for trade secret protection. Instead, businesses must rely on a patchwork of scattered laws²³, including:

²⁰ Supra note 4.

²¹ Juhi Saxena, 'Study of Trade Secret Laws in India in Comparison to United States' (2020) 3 International Journal of Legal Science and Innovation.

²² Ibid.

²³ Id, at 280.

- **Contract Law (Section 27):** This section prohibits the disclosure of confidential information. However, its application can be limited.
- **Information Technology Act (Sections 72 & 43A):** These sections offer criminal remedies and compensation for unauthorized access to electronic data and protection of sensitive personal data, but their application to trade secrets can be restrictive.

The National Innovation Bill 2008, while not enacted, aimed to address some of the shortcomings of the existing legal framework. However, its failure to become law has left trade secret protection reliant on common law principles and contractual obligations.

The lack of a unified legal framework creates uncertainty and ambiguity for businesses seeking to protect their trade secrets. Judicial rulings can be inconsistent due to the reliance on diverse legal provisions. The existing laws may not effectively address all situations involving trade secret misappropriation. There might be gaps in legal coverage for specific situations.²⁴

To address the challenges faced by businesses in protecting their trade secrets, India needs a comprehensive and separate statute specifically focused on this area. Such a law would:

- **Provide Clear Definitions:** A dedicated law would offer precise definitions of trade secrets, ensuring a consistent understanding of what constitutes protected information. This clarity would reduce ambiguity and facilitate legal proceedings.
- **Establish Enforcement Mechanisms:** It would outline clear procedures for filing complaints, gathering evidence, and obtaining remedies in cases of trade secret infringement. This would streamline the process and make it easier for businesses to seek justice.
- **Offer Strong Remedies:** The law should provide effective remedies, including civil and criminal penalties, to deter misappropriation and compensate for damages. This would discourage unauthorized use of trade secrets and ensure that businesses are adequately compensated for any harm suffered.

A dedicated trade secret law would offer several benefits, including:

²⁴ Tania Sebastian, 'Locating Trade Secrets under Indian Laws: A Sui Generis Mode of Protection' (2022) 27 Journal of Intellectual Property Rights.

- **Enhancing Business Confidence:** It would provide businesses with greater certainty and confidence in the protection of their valuable assets. This would encourage investment and innovation.
- **Attracting Foreign Investment:** A strong legal framework for trade secret protection would make India more attractive to foreign investors seeking to protect their intellectual property. This could lead to increased economic growth and job creation.
- **Promoting Innovation:** By fostering a secure environment for trade secrets, the law would encourage businesses to invest in research and development, leading to increased innovation and competitiveness.

KEY PROVISIONS OF A CODIFIED TRADE SECRET LAW

A codified trade secret law in India should include the following key provisions²⁵:

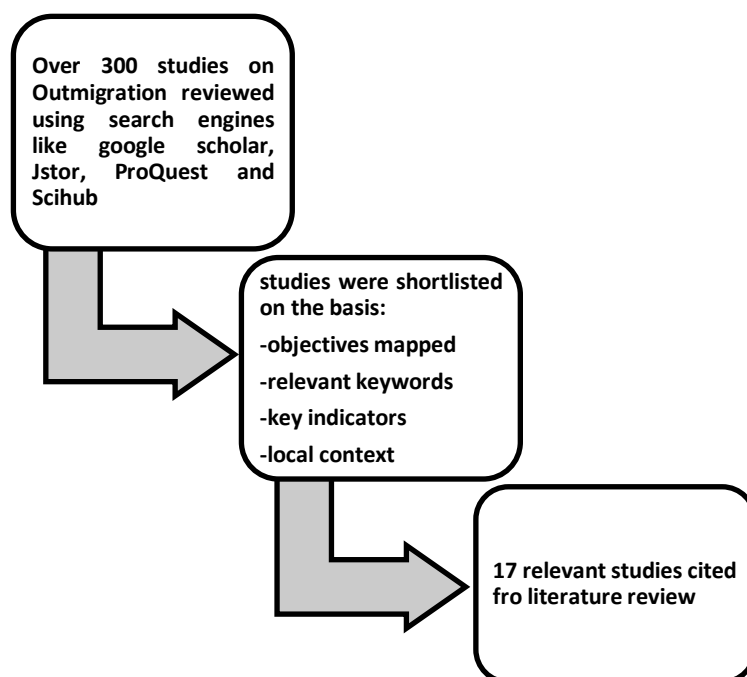
- **Definition of a trade secret:** A clear and concise definition of a trade secret that encompasses the essential elements of novelty, secrecy, and economic value.
- **Ownership and rights of trade secret owners:** Provisions that establish the ownership of trade secrets and outline the rights of trade secret owners, including the right to prevent unauthorized disclosure or use.
- **Duties of confidentiality:** Obligations imposed on individuals and entities who have access to trade secrets to maintain their confidentiality.
- **Remedies for infringement:** A comprehensive list of remedies available for trade secret infringement, including injunctions, damages, and other appropriate measures.
- **Presumption of confidentiality:** A presumption that information is confidential if it meets certain criteria, such as being disclosed under an obligation of confidentiality.
- **Reverse engineering:** Provisions addressing the issue of reverse engineering and the extent to which it is permissible to analyse a product to discover its trade secrets.

²⁵ Abinav Kumar 'Lehal Protection of Trade Secrets: Towards a Codified Regime' (2016) 11 Journal of Intellectual Property Rights.

RESEARCH METHODOLOGY

This research employed a doctrinal research methodology, which involved a systematic analysis of legal texts, including statutes, case law, and scholarly articles. The research question for this study was “Are the current remedies available for trade secret infringement in India adequate to protect the interests of trade secret owners?” to further investigate primary and secondary data was collected. The primary sources of data were the Indian Copyright Act, 1957; the Indian Trade Marks Act, 1999; India Contract Act; Indian Penal Code and other relevant laws, along with Indian court decisions related to trade secret infringement cases and academic publications on trade secret law, intellectual property law, and related fields. The data collection process involved a comprehensive literature review, statutory analysis, case law analysis, and comparative analysis with other jurisdictions. The collected data was analysed using a qualitative research approach to identify patterns, trends, and gaps in the existing legal framework, as well as to assess the effectiveness of remedies in protecting the interests of trade secret owners. This research adhered to ethical guidelines, including avoiding plagiarism and ensuring the accuracy of information.

A systematic review of 30 research papers, Intellectual Property Rights journals, policy documents, and government reports related to trade secrets was conducted. Literature was searched in online search engines like Google Scholar, Jstor, ProQuest, and ResearchGate in which keywords like trade secret, legislations related to trade secrets, trade secrets protection at an international level, trade secrets protection in India, inadequacy of trade secrets laws in India and need for trade secrets protection in India. After reviewing nearly 22 studies and filtering them according to the set objectives 17 research studies were shortlisted to identify the gaps which were addressed in the study.



FINDINGS AND DISCUSSIONS

The analysis of the existing legal framework for trade secret protection in India reveals several significant shortcomings. While common law principles and contractual obligations provide some degree of protection, the lack of a specific trade secret statute creates ambiguities and inconsistencies. The available remedies, including injunctions and damages, are often inadequate to fully protect the interests of trade secret owners.

Injunctions, while potentially effective in preventing further infringement, can be challenging to obtain. Courts often require the plaintiff to demonstrate a likelihood of success on the merits of the case and irreparable harm if the injunction is not granted. This can be particularly difficult in cases where the trade secret is difficult to quantify or where the potential harm is difficult to prove. Damages, as a monetary remedy, can also be limited in their effectiveness. Calculating damages in trade secret cases can be complex, as it often involves determining the value of intangible property. This can be challenging, especially when the trade secret does not have a readily ascertainable market value. Additionally, the amount of damages awarded may not always adequately compensate the trade secret owner for the harm suffered. The reliance on common law principles can lead to inconsistent judicial interpretations, making it difficult for trade secret owners to predict the outcome of infringement cases. This uncertainty can deter businesses from investing in research and development and may discourage them from disclosing confidential information to partners or collaborators.

Moreover, the available remedies may not always be sufficient to protect trade secrets in cases of complex or widespread infringement. For example, if a trade secret has been widely disseminated or if the infringer is a large corporation with significant resources, it may be difficult to obtain effective remedies. The process of obtaining remedies for trade secret infringement can also be time-consuming and expensive. This can deter trade secret owners from pursuing legal action, especially if the potential costs outweigh the expected benefits. To address these limitations, a codified trade secret law is essential. Such a law would provide a clearer and more comprehensive legal framework, defining trade secrets, outlining the rights of owners, and establishing remedies for infringement. This would reduce ambiguities, enhance legal certainty, and provide greater protection for trade secrets. The National Innovation Bill 2008, while not enacted, aimed to address some of the shortcomings of the existing legal framework. However, its failure to become law has left trade secret protection reliant on common law principles and contractual obligations.

CONCLUSION

This research investigates the adequacy of current remedies for trade secret infringement in India and finds them to be lacking. The existing legal framework, primarily rooted in common law principles, is ambiguous and inconsistent, leading to challenges for trade secret owners. The available remedies, injunctions and damages, often prove insufficient to protect trade secrets effectively.

Injunctions can be difficult to obtain as courts require strict criteria to be met. Damages can also be challenging to calculate, especially for intangible assets like trade secrets. The reliance on common law principles leads to inconsistent judicial interpretations, further complicating matters for trade secret owners. Additionally, the remedies may not be sufficient in cases of complex or widespread infringement, and the legal process can be time-consuming and expensive.

To address these shortcomings, the research advocates for a codified trade secret law in India. Such a law would provide a clearer and more comprehensive legal framework, reducing ambiguities and enhancing legal certainty. It would also establish specific definitions, standards, and remedies for trade secret infringement, providing greater protection for trade secret owners. The National Innovation Bill 2008, while not enacted, aimed to address some of these issues but failed to materialize.

In conclusion, the existing remedies for trade secret infringement in India are inadequate. A codified trade secret law is essential to provide robust protection for trade secrets, align India with international standards, and foster a more secure environment for innovation and business growth.



REFERENCES

1. Tania Sebastian, 'Locating Trade Secrets under Indian Laws: A Sui Generis Mode of Protection' (2022) 27 Journal of Intellectual Property Rights.
2. Abinav Kumar 'Lehal Protection of Trade Secrets: Towards a Codified Regime' (2016) 11 Journal of Intellectual Property Rights.
3. Juhi Saxena, 'Study of Trade Secret Laws in India in Comparison to United States' (2020) 3 International Journal of Legal Science and Innovation.
4. Satija, Neelam, Trade Secret: Protection & Remedies (June 1, 2009). Available at SSRN: <<https://ssrn.com/abstract=1614222>> accessed 12 October 2024.
5. T. N. V, 'Misappropriation of Trade Secrets under the Indian Legal Framework: An Analytical Study' (2023) 12 Christ University Law Journal.
6. Satija N, 'Trade Secret: Protection & Remedies' [2009] SSRN Electronic Journal
7. Gujarat Bottling Co Ltd v Coca Cola Co (1995) 5 SCC 545.
8. Beyond Dreams Entertainment Pvt. Ltd. & Ors. vs. Zee Entertainment Enterprises Ltd. & Anr. (2016) 5 CR 266 (Bom).
9. 'Trade Secrets 2024' (Trade Secrets 2024 - India | Global Practice Guides | Chambers and Partners) <<https://practiceguides.chambers.com/practice-guides/trade-secrets-2024/india>> accessed 12 October 2024.
10. Trade Secrets: India' (azb, 13 September 2021) <<https://www.azbpartners.com/bank/trade-secrets-india/#:~:text=There%20is%20no%20specific%20offence,three%20years%20or%20a%20fine>> accessed 12 October 2024
11. Beyond Dreams Entertainment Pvt. Ltd. & Ors. vs. Zee Entertainment Enterprises Ltd. & Anr. (2016) 5 CR 266 (Bom).
12. 'Trade Secrets 2024' (Trade Secrets 2024 - India | Global Practice Guides | Chambers and Partners) <<https://practiceguides.chambers.com/practice-guides/trade-secrets-2024/india>> accessed 12 October 2024.

[guides/trade-secrets-2024/india](#)> accessed 12 October 2024.

13. Authors and others, 'Trade Secrets: A Comparative Perspective of Their Protection and Enforcement' (Trade Secrets: A Comparative Perspective Of Their Protection And Enforcement - Trade Secrets - Intellectual Property - India, 1 May 2023) <<https://www.mondaq.com/india/trade-secrets/1309578/trade-secrets-a-comparative-perspective-of-their-protection-and-enforcement>> accessed 12 October 2024
14. Veena TN, 'Misappropriation of Trade Secrets Under the Indian Legal Framework: An Analytical Study' (2023) 12 Christ University Law Journal.
15. 'Trade Secret Infringement & Potential Legal Defenses' (Justia, 15 October 2023)<<https://www.justia.com/intellectual-property/trade-secrets/infringement/>> accessed 12 October 2024.
16. Chinmaya Kumar Mohapatra, 'TRADE SECRET PROTECTION IN INDIA' (2020) 17(6) Palarch's Journal Of Archaeology Of Egypt.
17. Kumbhar A, 'Trade Secrets: A Comparative Perspective of Their Protection and Enforcement' (SC IP, 17 April 2023) <https://www.sc-ip.in/post/trade-secrets-a-comparative-perspective-of-their-protection-and-enforcement?utm_source=mondaq&utm_medium=syndication&utm_content=articleoriginal&utm_campaign=article> accessed 12 October 2024
18. (Trade Secret Protection in India - centre for WTO studies) <[https://wtocentre.iift.ac.in/workingpaper/Trade Secret Protection in India- The policy debate.pdf](https://wtocentre.iift.ac.in/workingpaper/Trade%20Secret%20Protection%20in%20India-%20The%20policy%20debate.pdf)> accessed 12 October 2024
19. Shakya S, 'Trade Secrets & Its Protection as Intellectual Property: Revisiting IPR Regime' [2014] SSRN Electronic Journal.