

“Evolving Concept of Trade Secret”

*Mohammad Zahid,
Maharashtra National Law University,
Aurangabad*

The Trade Secret Law fits in to many other laws like Competition Law, Contract Law, Tort and Intellectual Property Rights. The Paper traces the evolution of Trade Secret from 1970's till present. How India First ignored this subject and had to suffered disinvestment and Loss from not bringing it under proper Legislation. It also shows the law or provision governing Trade Secret.

A trade secret contains information, technique, format or other method, which has commercial benefit to the person using it. The person can apply for trade secret so that other person won't use the information and monetarily gain benefit out of it. Not all invention can gain patent so trade secret is their savior, it is usually the formula or techniques which comes under like method or recipe of food .i.e. KFC and formulas of drinks .i.e.

First Approach of Trade Secret in India- In the year 1977 George Minister asked Coca Cola to transfer 60% of Indian shares to Indian Firm but also the formula for Coca Cola to the Indian Share Holders. Coca Cola was ready to agree on the sharing of shares but was not ready to give up the formula which was preserved from past 100 years. From there Coca Cola decided to quit from India.

Sight of Introduction in India-

In the year 1991 the first liberalization of India, the policy constituted role of expanding the foreign company investment. Which introduced many companies to India for business. By this time India became a member of World Trade Organization (WTO) and had to sign the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) in 1994. As India doesn't have any provision regarding trade secret it follows the TRIPS Article 39 as a guideline for governing Trade Secret¹. Requires 3 conditions

- 1- Secret- the Information should be a secret, it should not be easily accessible to the general public.
- 2- Monetary Value- The information should have some monetary benefit to the owner, it should be of some worth.
- 3- Efforts- There should be some efforts by the real owner to protect he information.

Before this India showed it thoughts on Trade Secret. They said trade secret should not be considered under intellectual property because, in intellectual property the product is published and revealed to the public and in trade secret it is protected from the public.

¹ Trade-related Aspects of Intellectual Property Rights. India is a signatory to the TRIPS Agreement

Foundation of Trade Secret –

Common Law- In American Express Bank Ltd. v. Priya Puri², where the delhi high court gave the definition of Trade Secret under the guidance of common law principle. If the Trade Secret is leaked the harm will be to employee identity, he will be allowed to carry on his work on his knowledge and would be restrained from working from material provided by the employer.

Contractual Breach- In Niranjana Shankar Golikari case, the Supreme Court held that an employee cannot take an advantage of Trade Secret of the employer, as it falls under the ambit of non-disclosure of agreement with confidential agreement during the course of employment.

Equity- John Richard Brady v. Chemical Process Equipments P. Ltd. it was held that independent of an underlying contract, the person who has received information in confidence is not allowed to take advantage of it.

Popular Trade Secret-

Coca Cola- Rather than patent the formula the inventor Mr. John Pemberton, decided to protect his recipe through Trade Secret. This is till now considered the best business move till now, because if it would have been patented, the formula would have been disclosed to the public.

KFC- Kentucky Fried Chicken, it was made by the legend Colonel Sanders with a secret recipe of 11 herbs and had kept it secret from the world. Only few employees know about the recipe who are bound by the confidentiality agreement. KFC is the second largest restaurant in the world, with a net worth of 23 Billion dollars.

Trade Secret After 2000

In the year 2008, after a big increase of Trade Secret cases before Indian Courts, India came up with National Innovation Bill, 2008 which consisted of certain trade Secret provisions. This witnessed the very first move to bring some legislation for Trade Secrecy. The bill consisted of words like ‘Confidential Information’, and provisions relating to obligations for maintaining confidentiality.

After this India was silent for around 8 years and didn't mention anything about this provision nor its development. Then in the year 2016 under the ministry of Nirmala Sitharam, where she approved National IPR Policy with many objectives and steps which were identified by the ministry and department. In U.S.- India Trade Policy Forum, in 2016 Delhi, and a meeting with Big IP groups, India announced that it has taken steps to bring improvement to the field of Trade Secret.

- They said they will conduct many workshops for awareness and knowledge of this filed for legal experts and judges.

² (2006) III LLJ 540(Del)

- They will try to bring trade secret under common law approach.
- Training for Judicial Academies for Trade Secret.
- Further many legal approach to protect Trade Secret.

Consequence of not taking Trade Secret in Legislation

Even after liberalization many foreign company refrained itself from entering India because of lack of protection and legislation of trade secret. This was obviously a loss for the company as if in the correct time it would had introduced the Legislation we would not had to suffer these losses of investment.

Israel- Israel provides penal action (Penal Law 1977 section 496) refraning the secrets to be revealed by an employee.

Brazil- Brazil has copied Trade secret Law from the United States Law, Section 757 Factor 4 brazil has named it as unfair competition

Korea- Korea Enacted Trade Secret Law after the case of GE and American Firm, Unfair Competition Prevention Ac defines trade secrets and Misappropriation ("infringing" acts).