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Author:

Sahil Ujawane

Christ (Deemed to be University), Bengaluru

5th Year, BBA LL.B. (Hons.)**TRADE SECRECY LEGISLATION: A SCOPE FOR LEGISLATION****Abstract**

A number of cases filed in recent times include misappropriation or unauthorised use of information shared during business transactions, employer-employee relationships, contractual works, lease or rental agreements in regular course of business. These information pieces are often the confidential information material or preferably known as trade secrets which are the original work of the creator who for the sake of any such above mentioned relationship provides it to the other party. Such information's unauthorised access for personal benefits would in general fall under the purview of a specific legislation that not only considers violation of such a mutual trust relationship and agreement or contract but also consider the extent and scale of loss if any while pronouncing the punishment or penalty. However due to absence of any such specific legislation in India the same falls within the purview of various Intellectual Property laws like Copyrights Act and other commercial laws like Contracts Act, etc. which even though provide remedy but fail to match the level of the actual loss and absence of due credit to the original creator or owner of this vital information.

This paper tries to track down the regime of trade secret protection in India and its grave implications of inadequate trade secret protection on the market conditions. Through this paper, the authors try to establish the need for a separate legislation regulating the domain of trade secrets. The approach adopted is founded on secondary research, including a study of the law under various regimes across the world. The paper concludes that in the light of the potential that trade secrets behold for a business, it is imperative to formulate adequate protection under the Indian IPR regime in order to boost the growth of a globalised economy. The paper seeks to aid the existing literature with respect to trade secrets and its protection in India, while delving upon the exclusive provisions made in this regard in other countries. By way of this study and paper the author makes an attempt to understand

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the ever increasing scope and importance of intellectual property right's onespecific area which is trade secret and if it really is established the paper would try to resolve the issues faced by businesses operated in India by making a step to suggest for a specific legislation that deals with trade secrets. The objective is to ensure protection, promotion and effective handlingof trade secrets along with prescribing punishments for offenders and trespassers.



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Trade Secret's Protection

The current legal system in our country does not provide for a distinct specific legislation that would govern, regulate and develop the area of trade secrets.² This however, did not restrict the Indian courts to restrain the growth of this type of intellectual property. At numerous instances they have relied upon the equitable and common law approaches as a way of protecting the trade secrets. The principles laid out in the leading case of *Saltman Engineering*³ have been the standard unmark the courts have used and given benefit of, which, according to Patrick Hearn, in this book titled *The Business of Industrial Licensing*, understands that it is a necessity to maintain secrecy, which could be done by different ways in different cases, but mainly by following the principles of equity, which can be attempted by the courts for conscientiousness in the course of conduct, and another way is by the means of the common law action as a consequence for breach of confidence, which could be in effect a breach of contract.”⁴ In other words, when following such principles and if courts sustain them the parties must primarily rely upon such contracts to protect the trade secrets.”⁵

The above mentioned provisions can be relied upon as, Indian tort law recognises the common law tort of ‘breach of confidence’ whether or not there existed a contract. Indian courts have already analysed and accepted the fact by increasing the scope of trade secrets that it can be a formulae, a peculiar mode, technical know-how or a method of business that is adopted by a particular employer which is commonly unknown to others.⁶ In this regard, however, the courts have also clarified that, those routine affairs and day-to-day transactions of employer that are in knowledge of many and are commonly known to others are out of scope and cannot be protected as trade secrets.⁷ English common law is the source for Indian courts that has now brought us to those requirements by way of which a cause of action may be brought in for a breach of confidence. They are:

² Zafar Mahfood Rahmani & Faizanur Rahman, *Intellection of Trade Secret and Innovation Laws in India*, 16(4) J. Intell. Prop. Rts. 341, 347 (July 2011), [http://nopr.niscair.res.in/bitstream/123456789/12449/1/IJPR%2016\(4\)%20341-350.pdf](http://nopr.niscair.res.in/bitstream/123456789/12449/1/IJPR%2016(4)%20341-350.pdf).

³ *Saltman Engineering Co. Ltd. v. Campbell Engineering Co. Ltd.*, 1948 (65) R.P.C. 203.

⁴ Patrick Hearn, *The Business of Industrial Licensing: A Practical Guide to Patents, Know-How, Trade Marks, and Industrial Design* 112 (1986), quoted in *John Richard Brady and Others v. Chemical Process Equipments P. Ltd. and Another*, A.I.R. 1987 Delhi 372.

⁵ Sonia Baldia, *Offshoring to India: Are Your Trade Secrets and Confidential Information Adequately Protected?*, *Mayer Brown Bus. & Tech. Sourcing Rev.*, Mar. 1, 2008, at 10, http://www.mayerbrown.com/files/Publication/c4321838-f2ec-4fe5-990d-1ea497a7398b/Presentation/PublicationAttachment/5a87579c-8d2b-469d-ad3d-bb95435fe6ff/ART_OFFSHORINGTOINDIA_0308.PDF.

⁶ *Ambiance India Pvt. Ltd. v. Shri Naveen Jain*, 122 (2005) D.L.T. 421, para. 6.; see also *American Express Bank, Ltd. v. Priya Puri*, (2006) 3 L.L.N. 217.

⁷ *Ambiance India Pvt. Ltd. v. Shri Naveen Jain*, para. 6.

1. The information in itself must include the necessary quality of having confidence about it.
2. The circumstances in which the information is passed must also pass confidence along with.
3. The person having access must make an unauthorised use of such an information, causing detriment to the party passing it.

Huge amount of decisions relating to trade secret fall in the purview of breach of a contract proceedings for restraint of trade. In this regard, the courts have stated that, even though an employer is cannot restrain any of his employee or servant from offering competition post the termination of employment, he is capable to enforce certain reasonable protections against exploitation of the trade secrets rendered to such employee.⁸ As discussed earlier, even in the absence of a contract, the courts in India have issued certain injunctions on the grounds of equity.⁹

Trade secrets and confidential information

Before examining the distinction between a trade secret and confidential information, the latter must be defined. 'Confidential information' is typically valuable or sensitive information received in confidence which can be neither be disclosed nor be used for any motive other than that for which the information was received, unless prior consent of the owner is obtained.

In *Zee Telefilms Ltd v Sundial Communications Pvt Ltd* (2003) the Bombay High Court laid down a three-part test that a plaintiff must satisfy when alleging unauthorised or illegal use of confidential information:

1. The information was of a confidential nature.
2. The information was communicated in conditions importing a commitment of confidence.
3. There has been unauthorised use of the information to the detriment of the person who communicated it.

The difference between a trade secret and confidential information is somewhat blurred in the Indian context and the two terms are many a times used interchangeably. However, the difference between the two concepts has also faded in the wake of various Indian judicial precedents, whereby

⁸ Rahmani & Rahman, supra note 1, at 346.

⁹ John Richard Brady and Ors. v. Chemical Process Equipments P. Ltd. and Anr., A.I.R. 1987 Delhi 372.

a rightful owner has sought protection against the illegal or unauthorised use of proprietary information without classifying such information as either a trade secret or confidential information.

Although an overlap between the two concepts is certainly possible, it appears clear and reasonable that the importance and commercial worth of a trade secret is greater than those of confidential information. In the 1986 UK case of *Faccenda Chicken Ltd v Fowler*¹⁰, confidential information was categorised as 'trade secrets', 'highly confidential information' and 'less confidential information'. It was held that information would be protected only after cessation of a person's employment if it could be properly classified as a trade secret or, while not a trade secret, as material of such a highly confidential nature as to require the same protection as a trade secret.

The term 'confidential information' has generally been limited to a single or ephemeral event in the conduct of a business, whereas a trade secret may be a process, device for continuous use or compilation of data that is used repeatedly to generate profit and retain a competitive advantage. Therefore, once it has been established that a certain piece of information would qualify as a trade secret by virtue of its commercial significance, this would have a direct and positive bearing (subject to satisfaction of other legal requirements) on a court's inclination to issue an injunction against an illegal or unauthorised user.¹¹

Legal remedies available to trade secret owner

Civil remedies

The creator or the owner of a trade secret can instigate a civil proceeding seeking an injunction against the unauthorised or illegal user, and can also demand the return or destruction of physical material (in respect of the trade secret being misappropriated).

The probability of obtaining an injunction from the Indian courts in such cases mainly is based on the basic principles formulated in the Code of Civil Procedure 1908. They are:

1. *A prima facie* case in favour of an injunction exists.
2. The balance of convenience should be such as to uphold the granting the injunction.

¹⁰ 117 (05 December 1985)

¹¹ Poorvi Chothani and Vidhi Agarwal, INTERNATIONAL LAW: INTELLECTUAL PROPERTY AND OUTSOURCING TO INDIA, Vol. 29, ABA, pp. 68-69, <https://www.jstor.org/stable/23630646>

There is a risk that, in the absence of an injunction, the owner will suffer irreparable loss and injury. In addition, such creator or owner of the trade secret has the right to claim damages. However, the Indian courts do not usually award exemplary damages and the claiming party is required to adduce proof of actual damage.

Criminal remedies

The creator or the owner of a trade secret can initiate criminal proceeding by lodging a criminal complaint with the police and may allege theft under Section 378 of the Penal Code 1860. However, in order to satisfy the obligations of Section 378, the trade secret should have physical form (eg, client lists, formulae or blueprints) and the complainant must prove the actual theft. Along with the same, a complaint can be made by which criminal breach of trust can be claimed under Section 408 of the code, this can be complemented as read with Section 420 alleging cheating. However, the same would apply only in situations where an agreement (express or implied) of trust exists and has been contravened.

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Value of Trade Secrets

Because of their confidential nature, it is difficult to accurately assess the value of trade secrets today or compare their current value to that of years past. But economists do value intangible assets, which include trade secrets and other types of intellectual property.¹²

Note on the binding value

The premise of the common law is based upon judicial decisions. According to Article 141 of the Indian Constitution the law declared by the Supreme Court either explicitly or through judgement, is binding upon all the other courts within the territory of India. Such law declared is construed as a principle of law that comes out of a judgment, or an interpretation of a law or precedent of the Supreme Court, upon which, the case is decided. Hence, it can be concluded from the discussion

¹² James E. Malackowski, The Intellectual Property Marketplace: Past, Present and Future, Marshall Rev. Intell. Prop. L. 605, 611 (2006); Press Release, Ocean Tomo, Oce Tomo's Annual Study of Intangible Asset Market Value — 2010 (Apr. 4, 2011), avail [http:// www.oceantomo.com/media/newsreleases/intangible_asset_m](http://www.oceantomo.com/media/newsreleases/intangible_asset_m)

that the 'law declared' is nothing but the principle brought out on the understanding and reading of a judgment as a whole in itself, in the light of the issues and questions raised, based on which the case is decided. A lower court is bound to follow the decision of a higher court and cannot overturn it. The court itself too can overturn its own decision only when the reasoning is strong enough to have a fundamental backup. This is doctrine of stare decisis, the benefit of which is to provide certain amount of stability, credibility, certainty, uniformity and predictability. This expands the chances of judges arriving at a correct and stable decision, when cases with similar facts arise. This doctrine alongwith other principles lead us to a path wherein we can assure the businesses and creators that protection of their trade secrets is something of value and that it shall gain importance sooner or later and that it must be given the due required attention and validity, to increase the credibility of owners and motivate others to innovate, as the system ensure it's protection and right profits in right hands.

Cases and contribution

In India, the only protection that trade secrets have received is through traditional judicial rulings and through provisions and aspects of equitable law, contracts law and torts. The absence of a legislation for trade secrets has always made rulings difficult but judicial pronouncements have always tried to develop and protect trade secrets and give remedy to breach of confidentiality.¹³

Indian courts and tribunals uphold trade secret protection, confidential information and business know-how. Action of misappropriation under common law can broadly protect trade secrets. Breach of obligation of confidence as well as third party accessing confidential information in an unauthorised manner can misappropriate trade secrets. This misappropriation can take place either by misappropriating information shared in confidence or taken by cheating or theft.

On analysing a number of cases and the way Indian courts identify issues related to trade secrets it can be concluded that there are three sets of instances in which proceedings may arise under this criteria:

1. Careless or deliberate transfer of an information to any unauthorised person by an employee who receives it in due course of employment.
2. When any unauthorised person incentivises such an employee for the particular information mentioned above

¹³ Astha Satapathy & Sweta Sagar, TRADE SECRETS: NEED FOR STATUTORY PROTECTION IN INDIA, Volume 4 (Annual) – July 2018, CCIPG, pp. 22

3. In case of a license the licensee is in breach of a condition, which is either expressed in the agreement or implied from the conduct, to maintain secrecy in respect of a particular know-how and fails to do so.

It is crystal clear that protection of trade secrets will be through common law for the betterment of businesses in India.

In *John Richard Brady V. Chemical Process Equipment Pvt Ltd*¹⁴, the defendants had got the drawings of the technical know-how of the plant that would have fodder production unit from the plaintiff for the specific limited purpose to provide a certain parts that would be required in the plant who abused the same entrusted to them under the express condition of strict confidentiality. The court thus invoked a wider equitable jurisdiction and awarded injunction even in the absence of the contract.

This particular case helps us in understanding that drawings, specifications, know-how specifications, technical information and so on are considered part of trade secret and confidential information by the Indian Courts. Further, the importance of confidential agreement has also been clearly laid in this case which brings out the need to specifically reserve regimes for such instances.

In *Diljeet Titus V. M Alfred A Adebare*¹⁵ it was held that in agreement with Duchess of Argyll the court must step forward to restrain of a breach of confidence clause independent of another side. While granting injunction the court directed that the defendants would not be entitled to make use of the material of the plaintiff to which they had access to in breach of confidentiality which in other words means the information as a result of their agreement relationship. The defendants that worked with the plaintiffs cannot use the agreements, due diligence reports, customer contact lists, and other such material that came into their knowledge or possession through the confidential relationship.

In the leading case of *Gopal Paper Mills Ltd v. Surendra K Ganeshdas Malhotra*¹⁶, the Calcutta High Court upheld that the restrictive clause was valid in an employment contract, that imposed constraints on the employee preventing him to misuse or reveal the shared confidential information

¹⁴ AIR 1987 Delhi 372

¹⁵ 2006 (32) PTC 609 (Del)

¹⁶ AIR 1962 Cal 61

and certain trade secrets that the employee acquired during the tenure of his employment. The court thus agreed that it provided for a remedy to the organisations from such third party disclosures of the confidential information and trade secrets in the form of injunction against the employee whether or not in the contract.

Current standpoint of the law

In 2008, the Ministry of Science and Technology through the Department of Science and Technology, published a draft legislation that was titled as 'National Innovation Act of, 2008' which would in part 'codify and consolidate the law of confidentiality in aid of protecting Confidential Information, trade secrets and Innovation.' This act contained a special chapter on Trade secrets. The regulation would be under Chapter VI, which was titled 'Confidentiality and Confidential Information and Remedies and Offences.'

The same was however not passed and could not be accepted pertaining to the following reasons:

1. The definition of 'Confidential Information' is unambiguous.
2. The draft while elaborating upon the incentives to investors, trading of innovations and commercial exploitation of the innovations, the innovator's perspective is somewhat ambiguous in as much as the protection of innovation is restricted to Misappropriation.¹⁷
3. The Act also explicitly excludes invention, in as much as stating that processes or products formulating the subject matter of IPRs would not fall under its umbrella.

Reasons

What they contended was that even though trade secrets are creation of human intellect and hence intellectual property, they are not a right.

The National Innovation Bill, 2008 chapter VI, mainly emphasised on three areas. The first was confidentiality, second being misappropriation and damages and injunction as the third part. According to this bill, it prescribes that there are two ways in which confidentiality can arise, which is either through contractual or through non-contractual obligations. However, obligations of equity shall be over and above the contractual obligations thus information could be revealed in those

¹⁷ Almeling, D. (2012). Seven Reasons Why Trade Secrets Are Increasingly Important. Berkeley Technology Law Journal, 27(2), 1091-1117. Retrieved June 19, 2020, from www.jstor.org/stable/24119482

cases. However, under non-contractual obligations, the consent alone itself is enough for the information to be revealed by the third party.¹⁸

The law provides for trial to be taken in-camera in certain cases in order to avoid the misappropriation of information, or orders may be issued to prevent certain people to witness the proceedings to not reveal the information gathered.

Further, there are certain exceptions provided for misappropriation. Injunction in such cases shall only be granted if the misappropriation does not fall under the exception. In cases where there is a misjudgement while granting of injunction, it will be the liability of the complainant against the defendant to compensate unto that extent. In another case damages shall be provided if there exists misuse of the confidential information without under a contract that would state the amount, the court would be at the liberty to rule upon the requisite amount. In the cases where the intention of the misuser of information is proved, strict action shall be taken as the damages would be thrice the amount as prescribed in the Act. In cases of act done done in good faith, however, the act provided for legal immunity.

An analysis of this Act revealed that the definition and meaning of confidential information is directly taken from the TRIPS Agreement.¹⁹ This, on one hand, is advantageous as it is on par with the international standard while on the other hand it's scope becomes restrictive and lacks originality. It does not even lay down the provisions as to on what basis and how this power is to be utilised by the Government. However, the problem with the legislation that might still remain will be as to how trade secrets will actually function.²⁰

This bill thus, till date remains the only effort of the government to actually advocate a specific law for trade secrets and has paved the way for future legislations that might come along the way to shape this area and a ray of scope for need of such a legislation.

Municipal Law

Although as discussed earlier India does not have any specific trade secrets law, however, Indian courts have at various instances upheld trade secrets and the need for their protection under various

¹⁸ Patil, Gouramma, Critical Analysis of 'The National Innovation (Draft) Act, 2008' (March 26, 2013). Available at SSRN: <https://ssrn.com/abstract=2239718> or <http://dx.doi.org/10.2139/ssrn.2239718>

¹⁹ Madhurika Durge, The Need for an Innovative Law for Innovation Laws, <https://blog.ipleaders.in/the-need-for-an-innovative-law-for-innovation-laws/>

²⁰ Schultz, M.F and D. Lippoldt 'Approaches to Protection of Undisclosed Information(Trade Secrets): Background Paper', (2014) OECD Trade Policy Papers, No 162 <www.oecd-ilibrary.org/trade/approaches-to-protection-of-undisclosed-information-trade-secrets_5jz9z43w0jnw-en> accessed 28 November 2020

statutes, like that of contract law, copyright law, The Information Technology Act, 2000 and most notably the principles of equity and at times the common law action of breach of confidence.

Indian Contract Act, 1872

Section 27 of The Act says that every agreement by which any person is restrained from carrying on any lawful occupation is void.

However if written contract is not made, a trade secret becomes completely unprotected, thus pointing out the need for a separate legislation.²¹

Right to Information Act, 2005

Section 8(1)(d) of The Act says that there exists no obligation unless there is a larger public interest involved on the part of businesses to provide such information to any citizen relating to commercial confidence, that they consider as a part of trade secrets or intellectual property and has importance to them. Anyway, the policies of a company and the business tactics as to how do they generate profits is never revealed, and they cannot be compelled to do the same as well.²²

Information Technology Act, 2000

Section 65 of the Act provides for the punishment for tampering with the documents including stealing, destroying or altering any information. Section 72 provides for attraction of liability in those cases wherein unauthorised person has any sort of access that he/she is not supposed to have. However, trade secrets are not just what is written or stored. They are the techniques or expertise that someone gains by means of their hard work, interest and intellect. It has been observe that in a number of cases it is something that they might know and even be using but might not write it down or in any form store or preserve. The current provisions and available remedies do not take into consideration a number of important factors like that of intention, public interest, contractual obligations, etc.

Thus very prominent to note that trade secrets do not get the due attention and recognition in terms of legal provisions that they should actually have. A portion of it is identified and the courts are making an attempt to protect it but the same would always be less and vague until there is a strict

²¹ Verma, S. (2002). LEGAL PROTECTION OF TRADE SECRETS AND CONFIDENTIAL INFORMATION. *Journal of the Indian Law Institute*, 44(3), 336-353. Retrieved June 19, 2020, from www.jstor.org/stable/43951824

²² Reddy T., P. (2018). The 'Other IP Right': Is It Time to Codify the Indian Law on Protection of Confidential Information? *Journal of National Law University Delhi*, 5(1), 1-21. <https://doi.org/10.1177/2277401718787951>

regulation of this developing area of intellectual property. The same is possible only and only when a separate specific legislation is brought in force. The first step for the same would be to identify such legislations in other countries and then develop one for India.

International Law

The infamous Paris Convention deals with measures about how there should not exist unfair competition and how acts of competition that go against the honest and ethical practices in several industrial or commercial matters are nothing but acts of such unfair competition that cannot be permitted. The Competitive Act, 2000 governs the anti-competitive agreements for application of this phenomenon in India. For the purpose of this act anti-competitive agreement refers to an agreement that can cause certain adverse effects on the healthy competition in India and includes practices like that of controlling the geographical area, determining prices, number of customers, controlling the supply, etc.²³

Such anti-competitive practices in some way or other include revealing or obtaining of trade secrets. For example, if there is determination of prices for a particular product in an industry, different firms or manufactures will come together into agreements for purpose of which they might have to discuss and disclose strategies or techniques each of them uses in order to reach the common consensus for price. Here, trade secrets can be misused or abused as there is nothing that would stop recipient of such information for using it to personal benefit. This prima-facie is contrary to the concept itself of trade secrets as it loses its value once even a single unauthorised person knows about it. This contradicts the concept of fair competition as well.²⁴

The step forward

The squeezing need for an enactment as for trade secrets in India is obvious and undeniable. The Indian law could advantageously be founded on rules that are taken off English Law and English courts or the Federal Trade Secrets Law of USA under the Uniform Trade Secrets Act, 1990, the Restatement (Third) Unfair and the legal backings of the equivalent. For codified law in India should initially characterise and define the word 'trade secrets' with the scope thereto. Protection ought to expand data that is in mass and blends of such data. Singular components of trade secrets

²³ 'International Trade Secrets Association Letter' (IPO, 7 November 2017) <<http://www.ipo.org/wp-content/uploads/2017/11/2017-11-7-International-Trade-Secrets-Association-Letter-Final.pdf>> accessed 7 January 2021

²⁴ Sengar, D. (2011). PROTECTION OF TRADE SECRETS AND UNDISCLOSED INFORMATION: LAW AND LITIGATION. Journal of the Indian Law Institute, 53(2), 254-274. Retrieved June 19, 2020, from www.jstor.org/stable/43953505

may not be of any use regardless of whether ensured. Accordingly data in blend to other data ought to be protected.

To ensure that the information isn't in open space, industry level of general information and data's capacity can be taken as factors as it would differ from business to business and industry to industry. It is fundamental for the codified law to take the tort of misappropriation into thought which is typically dedicated through inappropriate methods or breach of confidence. Concerning the misdeed of misappropriation, the Spoliation doctrine when says that obliteration or fundamentally adjusting proof or neglecting to save property of another's utilisation as proof in forthcoming or sensibly predictable suit the sort that permits the court to construe misappropriation from the respondent's destruction of evidence should be perceived.

A body gaining practical experience in choosing cases identified with trade secrets as in different cases identified with IPR ought to be set up to lead procedures. Additionally, revelation of the trade secret ought to be dealt with and revealing such a trade mysterious in lieu of the procedures ought to be dealt with. The Uniform Trade Secrets Acts, 1990 of USA propounds the doctrine or relocation wherein if the reason for action is in clash with the trade secrets misappropriation then it is dislodged or seized. Third party liability likewise ought to be arranged due to off-shoring and re-appropriating. In giving such responsibility standards of organisation and vicarious risk ought to likewise should be carefully considered. Exceptions securing trade secrets ought to be set down considering the special cases by the common law courts.

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Conclusion

The influence and significance of trade secrets has increased greatly in the industrial economy in the past few years due to manifold reasons. In the past few decades, the changes in technology have been rapid. The pace of this change has momentous implications on the economies, both local and global. This technological progress has impacted the realm of intellectual property rights as the evolution has surpassed the existing laws enacted to grant protection to inventions and innovations. In many ways, trade-secret theft is a foreseeable outgrowth of expanding international markets. At present, India lacks any codified law for safeguarding Trade Secrets. From the cases discussed it can be clearly seen that in India trade secrets have been protected using common law principles. These Common Law principles, though of practical value, have lost their connotation in the face of fast developing economy. There is an urgent need for statutory protection of Trade Secrets in the form a proper policy framework to facilitate regulation of protection instead of depending only on

Common Law Principles. There are innumerable companies in various disciplines who prefer affording protection to Trade Secrets as a form of Intellectual Property. Due to no policy framework, a lot of companies retract from investing in the country, owing to which India stands to lose out on major Foreign Direct Investment that in turn affects the progress of the economy. Protection of trade secrets has become imperative and one of the most exigent tasks for the Indian Government. Foreign investors have to be infested with confidence and assurance of safeguarding of their trade secrets so that they can conduct business with our country. The Courts have mainly referred to Section 27 of the Indian Contract Act in most of the cases. Reliefs claimed in these cases are majorly enforcement of non-disclosure agreements between the employee and the employer. From what can be derived by the trend in adjudication, the courts have been very averse when it comes to enforcing covenants which put post-employment restrains on the employee. Such cases have put the courts into dilemma on multiple occasions. The courts have seen these cases as a clash of two interests, the right to livelihood of the employee versus right to make profit of the employer, to which there is no uniform rule that can be followed.

A concrete legislation for protection of trade secrets in India is the need of the hour in order to give a sense of security among the foreign investors and encourage them regarding their trade secrets which will further help boost the Indian economy. Indian legislators can resort to the provisions of UTSA or EEA to come up with a robust policy framework.

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