
CROSS-BORDER ENFORCEMENT OF TRADE SECRETS IN THE DIGITAL ECONOMY: CHALLENGES AND LEGAL INNOVATIONS

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ABSTRACT¹

After the advent of globalization world become more advanced in the context of technology, in the age of artificial intelligence things become more easier and fast when we talk about trade talks, companies doing their business deals, making agreements thought virtual mode which recognized by IT Act, 2000 apart from this when companies make their agreements the big question arises about confidentiality or data breach whether his confidential talks about trade secrets or about any subject matter would be protected this was a serious concern because intellectual property protection was a kind of intangible property² there protection not so easy to protect, we need more strengthen laws like India has patent law, copyright act, trademark act need to some changes in these laws. In current scenario we seen the high-profile case of trade secret where Elon Musk alleged open AI for revealing their AI related secrets, in this research paper we were thoroughly analyze the key aspect of trade secrets as well as what was there legal aspect in a modernize society.

¹ Tzul-I Lee, "Bording Secrecy: AN EMPIRICAL STUDY ON CROSS-BORDER TRADE SECRET MISAPPROPRIATION IN THE SEMICONDUCTOR SECTOR" Vol 39 *The Connecticut Journal of International Law* page 169 (2024).

² Preeti Deswal & Divya Girsu, "Trade Secrets in the 21st century: Legal Protections, Risks and Policy Challenges in a Globalized Digital Economy" *IJLMH* Page 1659 – 1670 (2025).

Introduction:

Trade secrets is a kind of intellectual property of a company or enterprise like coca cola has their own secret recipe for preparing soft drinks, company preserving their trade secrets whom no one can copying them and preparing same kind of drinks this will heavily impacted to the company and there sales would reduce for preserving them company takes help of IT Act, BNS it is sadly said that there is no specific statute for protecting the trade secrets. When organization doing any contract question arises about their data confidentiality because in India there is no any primary law who can deal with trade secrets, one trade secret loses his confidentiality it harshly impacted to the enterprise which reduce the competition in market. If somebody stolen the trade secrets of any company it can be considered as cyber wrong accused would suffer the consequences of this mall practice under IT Act, 2000 also under Indian Contract act 1872, where contract was done between parties to maintain the confidentiality of information but if someone breaching the contract they suffer consequences, In John Richard v. Chemical Process Equipment Pvt. Ltd³, where court held that if no confidentiality contract was done between parties so it considered as implied condition that parties maintain the information secret, In Zee Telefilms Ltd. v. Sundial Communication Pvt. Ltd(2003),⁴ court held that ideas and innovations considered as a confidential information if somebody disclose it which leads to breach of trust.

Legal Framework:

In modernize world it is necessary to make the laws according to the needs of society like information and technology act 2000, when we talks about protection of property it would be categorized into two broad categories intangible and non-intangible property, we have a laws for non-intangible property like TPA local land ceiling acts but we have not proper laws for intangible property if talks about trade secrets act there is necessary requirement for regulating the breach of trade secrets in cross border trade deals, at global level we have a world trade organization which regulate the unfair trade practices, countries of WTO signing a TRIPS agreement (Trade related aspect of intellectual property rights) those rules which made by trade organization it would be applicable to signing counties, India was one of his member recently US will imposing heavy sanctions on India which considered as unfair trade practice or we can say arbitrary action which taken by US. In US they have their own DTSA Act 2016 which regulates the breaching of trade secrets within countries or outside countries, various other

³ John Richard & Others v. Chemical Process Equipment Pvt. Ltd, AIR 1987 Del 372.

⁴ Zee Telefilms Ltd. & Film & shot v. Sundial Communication Pvt. Ltd Bom 2003.

countries like Australia, UK, Canada make their own local laws for trade secrecy. In India have trade mark act, copyright act, patent act but not specific statute for cross border trade secrets act, in the era of advancement we need to look smartly and make proper codified rules and regulations for trade secrets otherwise, defaulter escape from their liability if we were seen IT Act the main contention of government to make the law is to regulate the online transactions and provide equal importance to e contracts if somebody doing any cyber offence which would be punished under act but before the law it is typical to punish the offenders due to lack of codified laws and society will rapidly adopt the approach of digitalization like UPI etc.

Legal Challenges:

There are various challenges which are suffered in cross border trade secrets deals:

1. **Jurisdictional Issue:** There is confusion while deciding the jurisdictional question because each has their own trade secret rules which leads to conflict of interest between parties.
2. **Lack of proper statutes:** In various nations like India has no specific laws for prevention of trade secrets for which court was relying upon the contract which done by parties about non-disclosure agreement.
3. **Damages:** Court was hardly found the what number of damages suffered by party's court was determine the amount of damage from the contract between parties if there is no written contract occurs between parties so court provide the amount of damages accordingly to the facts sometimes parties not satisfied with amount of compensation.
4. **Cyber threats:** Trade secrets would be stolen by cyber criminals; the information was grabbed from attacking on servers of companies and finds the loop hole in their secured system then easily steal the data from the server.
5. **Targeted to former employees:** Many competitors companies targeting to the employee of former companies to reduce their competition and increase their profit and acquired the market while disclose the trade secrets, the liability of this breach occurs on employee but its hardly finds that they disclosing the information to other companies.

Enforcement of Trade Secrets:

As we all know trade secrets was a concept of IP laws and for the enforcement of trade secrets

each nation have their own proper laws like America and China but when we talk about India it has no codified statute to prevent trade secrets, its totally depends upon judicial precedents they are tackling with the situation and also the contracts which done by parties according to their contractual obligations court interpret the clauses of contract which would regulated by Indian contract act 1872, India needs specific law which regulated cross border trade secret otherwise individual escape from his liability, India was signatory of WTO and signing TRIPS agreement for any cross border harm was occurred this could be regulated throw international treaties and laws which agreed between parties. Indian government were trying to preserve or secure the data of each individual that's why parliament pass the DPDP act but currently they are not enforced in territory, personal data protection is very typical task for govt to regulate them in the age of artificial intelligence because internet was a key tool to circulate the information thought various parts of the world it is hard to regulate them this is one of the reason act was not enforced providing security in virtual world this is one of the challenge. In coca cola case 2006, where administrator of coca cola sells the trade secret of coca cola to Pepsi co. in 1.5 million dollars then American agency arrest William after the investigation was done court punish for eight-year imprisonment to William, in this case we were seen that criminal liability also occurs if somebody dishonestly sell the credential information of company to third person for gaining undue advantage. In American Express Bank Ltd v. Priya Puri,⁵ in this case Delhi high court interpret the term trade secrets and ruled that customer information was not to be qualified as a trade secret, trade secret refers to any kind of information which is confidential for company as well if they breach company would adversely affect.

Conclusion:

Trade secrets was a kind of intellectual property there is no any kind of physical presence of that property there is crucial for the company which contains the information of company it should be necessary to preserve it, trade secret breaches sometimes done by employee or person who closely connected with a company, in the case of coca cola court strictly imposed the penalty on offenders they can suffer both criminal and civil liabilities, when company hire the employees they make an non-disclosure agreement that he can't disclosed the secret information of company with anybody else but sometimes relation between employer and employee not so good in that situation employee breach the agreement revealed the private information, sometimes while employee leaving the company and joining other one they

⁵ American Express Bank Ltd. v. Ms. Priya Puri (2006) SCC Del 368.

revealed the secrets. It is very necessary that India also make the laws for prevention of trade secrets or make amendments in previous IP laws, because trade was considered to be very crucial component for the economy if some country not make trade internationally that country considered as weak nation they can't survive in front of countries like USA, Russia, India is also fourth largest economy of the world making thousands of deals with other nations to set up their plant in India like Tesla so confidentiality was considered to be most crucial element for the business.