The Scientific Temper
SEPTEMBER 2026 Vol. 17 (9): 6991-6994
ISSN: 0976-8653, E-ISSN: 2231-6396
DOI: 10.58414/SCIENTIFICTEMPER.2026.17.9.2563
A WEB OF SCIENCE JOURNAL

RESEARCH ARTICLE

Analyzing The Impact of a Codified Trade Secrets Act on Indian Business

SHREEPRIYA THAKKAR[1], RUCHI TIWARI[2]

[1]*PhD Scholar, Parul Institute of Law, Parul University, Vadodara, Gujarat, India. shree171@yahoo.co.in ORCID iD: 0009-0009-2100-7854*

[2]*Associate Professor, Parul Institute of Law, Parul University, Vadodara, Gujarat, India. ruchi.tiwari90558@paruluniversity.ac.in ORCID iD: 0000-0002-5883-6279*

***Corresponding author: shree171@yahoo.co.in**

ABSTRACT

A trade secret is confidential business information that has commercial value. Its owner keeps it secret and does not share it with anyone who is not authorised to receive it. Examples include a method of making a product, account records and business strategies. Like trademarks, copyrights, designs and patents, a trade secret is a creation of the human mind, so it also deserves legal protection.

In India, it is fairly easy for a business to take another business's confidential methods, recipes or strategies and use them as its own. This has become common because of growing unhealthy competition among small and medium enterprises (SMEs). Such practices encourage unfair trade and let some businesses exploit the work of others. This harms the growth of the country. In line with the Sustainable Development Goals, trade secrets should be protected as a form of intellectual property.

India has no single law on trade secrets, so courts deal with these cases in different ways. Some courts treat them under the Indian Contract Act, 1872, some apply principles of equity, and others treat them as a common law claim for breach of confidence. Trade secrets are also often confused with other forms of intellectual property, especially patents. Article 39.2 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) requires that secret information with commercial value be protected. This paper examines the effects of the Uniform Trade Secrets Act (UTSA) adopted in the USA and the effects of India not having a specific law.

Keywords: *Trade Secrets, Intellectual Property Rights, TRIPS, Uniform Trade Secrets Act (UTSA), Commercial Value*

INTRODUCTION

A trade secret is confidential information that has commercial value. The owner keeps it secret and does not share it with unauthorised persons. It may be a method of making a product, account data, a business strategy or any other information that must not be disclosed. In line with the Sustainable Development Goals, trade secrets should be protected as intellectual property (World Intellectual Property Organization [WIPO]).

Intellectual property laws protect creations of the human mind, such as inventions, literary and artistic works, designs, symbols, trade names and images. Trade secrets include methods, processes, formulas, technical information, know-how, business plans, budgets, engineering details and other business information. This information must be protected from unauthorised access and leaks.

When someone uses a trademark, copyright, patent or design without permission, intellectual

Received: 5th September, 2026 Accepted: 7th September, 2026 Published: 28th September, 2026

property law protects the owner, because these rights have commercial and economic value. Indian courts give all of these rights equal protection. Trade secrets, however, are treated differently. They are not formally recognised as intellectual property, even though they are products of human intellect and have commercial value (Agreement on Trade-Related Aspects of Intellectual Property Rights [TRIPS], 1994).

Courts treat trade secrets in different ways and often confuse them with patents or copyrights. Sometimes they are handled under the Indian Contract Act, 1872, through principles of equity, or as a common law action for breach of confidence (Indian Contract Act, 1872).

Today, trademarks, patents, designs and copyrights are widely known, especially among SMEs. Trade secrets, however, are becoming harder for SMEs to protect, because confidential information can leak in many ways. For example, an employee may work for a company for many years and then join a competitor. The employee may then share the old employer's confidential information with the new one. In this way, the trade secret is lost.

If India passed a separate trade secrets law, like the UTSA in the United States, awareness and protection of trade secrets would improve, just as they have for other forms of intellectual property. International standards for protecting trade secrets (also called "undisclosed information") were set by the TRIPS Agreement in 1995. Article 39 of TRIPS requires member countries to protect undisclosed information from use that goes against honest commercial practices. This includes unfair competition, breach of confidence and breach of contract (Agreement on Trade-Related Aspects of Intellectual Property Rights [TRIPS], 1994). This paper studies the effects of having a UTSA, as in the USA, and the effects of not having a specific law in India.

UNIFORM TRADE SECRETS ACT

What the UTSA Is

The Uniform Trade Secrets Act (UTSA) is a model law, not a federal statute. It was drafted by the National Conference of Commissioners on Uniform State Laws to better define the rights and remedies that existed for trade secrets under common law (Uniform Trade Secrets Act [UTSA], 1985). A model law is a ready-made draft that each US state can choose to adopt as its own law. Its aim was to replace the mixed and uncertain case law of different states with one common set of rules.

When It Was Drafted and How States Adopted It

The UTSA was published in 1979 and amended in 1985, after which many states began adopting it. Today, 48 states and the District of Columbia have enacted it. Washington was the first to adopt it, in 1981, and Massachusetts was the last, in 2018. Before this, Massachusetts trade secrets law was based on the Restatement (First) of Torts § 757 (1939). New York is the only state with no statute, and North Carolina passed its own Trade Secrets Protection Act in 1981, which the Uniform Law Commission does not count as a formal UTSA adoption (Uniform Law Commission).

This shows that even in a federal country with many separate state laws, almost every state chose the same model. As a result, a business in the USA knows what a trade secret is and what remedies it has, in almost any state.

What the UTSA Provides

The UTSA gives clear rules on four main points.

First, it defines a trade secret. Under the UTSA, a trade secret is information, such as a formula, pattern, compilation, program, device, method, technique or process, that has independent economic value because it is not generally known to others, and that the owner takes reasonable steps to keep secret. The value may be actual or potential (Uniform Trade Secrets Act [UTSA], 1985).

Second, it defines misappropriation. Misappropriation means getting a trade secret by improper means, such as theft, bribery, misrepresentation, breach of a duty of secrecy or espionage. It also includes using or disclosing a trade secret without the owner's consent when the person knows it was obtained wrongly (Uniform Trade Secrets Act [UTSA], 1985).

Third, it sets out remedies. A court can grant an injunction to stop actual or threatened misappropriation. The owner can also claim damages for actual loss and for the unfair gain made by the wrongdoer, or a reasonable royalty. If the misappropriation is wilful and malicious, the court may award extra damages of up to twice the amount, and may also order the losing party to pay legal fees (Uniform Trade Secrets Act [UTSA], 1985).

Fourth, it sets procedural rules. A claim must be brought within three years of discovering the misappropriation, and courts must take steps to keep the trade secret confidential during the case (Uniform Trade Secrets Act [UTSA], 1985).

The Defend Trade Secrets Act, 2016

The UTSA works at the state level. In 2016, the USA added federal protection through the Defend Trade Secrets Act (DTSA). Trade secrets are now protected on two tracks at the same time: the federal DTSA and state law. The DTSA does not override state law, so owners often bring claims under both. The DTSA amended the Economic Espionage Act, 1996, and allows trade secret owners to

file civil cases directly in federal courts. It also allows a court, in extraordinary cases, to order the seizure of property to stop a trade secret from being spread, and it protects whistleblowers who disclose secrets to the government to report illegal activity (Defend Trade Secrets Act of 2016, 2016).

Lessons for India

The US experience shows that a clear statute gives businesses certainty. Owners know what counts as a trade secret, what steps they must take to protect it, and what remedies they can seek. India has no such law. Its courts still rely on contract law and breach of confidence. The Law Commission of India has already studied this gap in its Report No. 289 (2024) (Law Commission of India, 2024). A UTSA-style law in India could give SMEs the same clarity that American businesses have had for decades.

INDIAN SCENARIO IN TERMS OF TRADE SECRETS

As discussed above, Indian law does not deal with trade secrets in a specific way. Trade secret issues are mixed up with several laws, such as the Copyright Act, 1957, the Patents Act, 1970, the Indian Contract Act, 1872 and the Code of Criminal Procedure, 1973. Because there is no uniform trade secrets law, Indian courts treat these cases differently. In the USA, the UTSA gives uniform rules for trade secrets, just as other laws do for other forms of intellectual property (Uniform Law Commission). In India, the situation is complicated for both businesses and courts. If India passes a law like the UTSA, SMEs will understand the importance of protecting their trade secrets, which will help secure the future of their businesses. The current laws fail to deal with trade secret issues properly.

LEGAL AND JUDICIAL COMPLICATIONS

The position in the United States is very different. There, the UTSA provides a common legal base for trade secrets, similar to the laws on other forms of intellectual property. In India, the law is scattered across many statutes. This creates serious problems for businesses and makes court cases take much longer. Judges often have to rely on common law principles, such as breach of confidence and contractual duties, because there are no specific statutory rules on misappropriation. This uncertainty raises the cost of litigation and makes it hard for parties to predict the outcome.

Tarun Wadhwa v. Saregama India Limited & Ors. (2021 SCC OnLine Bom 400)

Application: The Bombay High Court examined the unclear line between copyright law and trade secrets or breach of confidence. The court explained when a creative idea stops being a confidential trade secret and becomes a copyright claim. This shows how differently courts treat trade secrets (Tarun Wadhwa v. Saregama India Ltd. & Ors., 2021).

American Express Bank Ltd. v. Priya Puri (2006 (3) CHN 44)

Application: The court separated trade secrets from ordinary business data. It noted that businesses often mistake ordinary information for protectable intellectual property. It held that trade secret claims must be decided under Section 27 of the Indian Contract Act, 1872, which deals with reasonable restrictions (American Express Bank Ltd. v. Priya Puri, 2006).

ECONOMIC IMPACT AND VULNERABILITY

Because there is no codified law, entrepreneurs are less aware of trade secrets and do not plan ahead to protect them. SMEs suffer the most. Many SMEs rely on their own processes, customer lists or technical know-how to stay ahead of competitors, so this information is highly at risk. Without legal protection, competitors can easily leak, steal or copy it. This encourages unhealthy competition, where businesses succeed simply by copying the methods and processes of others. It also discourages innovation, because businesses have less reason to spend time and money creating valuable secret information.

CONCLUSION

Different courts in India treat trade secrets in different ways, and this harms the country's economic growth. The Patents Act protects an inventor's rights in a new invention, but the inventor must publicly disclose it. A trade secret, by contrast, is undisclosed information, and protecting it costs less. In India, trade secrets are often confused with patents. They are also confused with copyright. The Copyright Act protects authors of literary and artistic works. For example, copyright protects the software used to manage a database, while a trade secret is the information stored in that database. As a result, trade secrets do not get the same treatment as other forms of intellectual property.

Trade secrets should therefore be recognised as a form of intellectual property and protected in the same way. As discussed earlier, a trade secret is undisclosed information that its owner must keep secret. Sometimes business owners fail to take the right steps to protect it. A well-drafted UTSA in India could set out the steps owners must take, and it would greatly benefit SMEs.

A dedicated trade secrets law is therefore critical for India. It should clearly define a trade secret, explain what counts as misappropriation, and provide consistent remedies such as injunctions and damages. With such a law, SMEs would have a clear legal path to justice. They would also understand the importance of protecting their trade secrets. This would secure the future of their businesses and support India's goals of innovation and economic growth. The current patchwork of laws does not deal with trade secret issues properly or efficiently, so legal reform is urgently needed.

Second, the comparison is limited to the United States. Other legal systems that protect trade secrets, such as the European Union, the United Kingdom and Japan, have not been studied. A wider comparison could offer other useful models for India.

Third, only a small number of Indian cases have been examined. Many trade secret disputes in India are settled privately or decided at the lower court level and are not reported. The cases discussed may therefore not show the full picture of how Indian courts deal with trade secrets.

Fourth, the law in this area is still developing. The Law Commission of India has recommended a specific law on trade secrets, but it has not yet been passed. India has also replaced its main criminal laws with new codes. Future changes may affect the conclusions of this paper.

Fifth, the paper focuses mainly on SMEs. It does not examine in detail the position of large companies, or the rights of employees to change jobs and use their general skills and knowledge. These issues need further study to design a law that is fair to both employers and employees.

ACKNOWLEDGMENT

The authors express their sincere gratitude to Parul Institute of Law, Parul University, Vadodara, Gujarat, for providing the academic environment, resources and support needed to carry out this research.

The authors are thankful to the faculty members and colleagues of Parul Institute of Law for their valuable guidance, suggestions and encouragement at every stage of this work. The authors also thank the library staff for their help in accessing books, journals, reports and online legal databases.

LIMITATIONS OF THE RESEARCH

This paper has some limitations, which should be kept in mind while reading its findings.

First, this is a doctrinal study. It is based on statutes, court decisions, reports and other published sources. It does not include empirical data, such as surveys or interviews with SMEs, business owners, lawyers or judges. The effects of trade secret leaks on Indian businesses are therefore discussed in general terms and have not been measured.

The authors acknowledge the work of the scholars, law commissions and international organisations whose publications have been referred to in this paper.

Finally, the authors are deeply grateful to their families and friends for their constant support, patience and motivation throughout the course of this research.

Conflict of interest: None

Source of support: None

REFERENCES

American Express Bank Ltd. v. Priya Puri, (2006) 3 CHN 44 (India).

Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299, 33 I.L.M. 1197.

Defend Trade Secrets Act of 2016, Pub. L. No. 114-153, 130 Stat. 376 (codified at 18 U.S.C. §§ 1836–1839).

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

Law Commission of India. (2024). Report No. 289: Trade secrets and economic espionage.

Tarun Wadhwa v. Saregama India Ltd. & Ors., 2021 SCC OnLine Bom 400 (India).

Uniform Law Commission. (n.d.). Trade Secrets Act: Enactment status.

Uniform Trade Secrets Act with 1985 Amendments. (1985). National Conference of Commissioners on Uniform State Laws.

World Intellectual Property Organization. (Trade secrets. https://www.wipo.int/en/web/trade-secrets.