The Prologue

'Trade Secrets' is that genre of information that is hard to define, classify and ascertain. Motivated by various aspects that it entails, researchers across the globe have attempted to highlight various aspects of trade secrets and to determine essential factors that lie beneath. There has been a considerable provocation towards a demand for a more 'codified and comprehensive' mechanism of protection and enforcement of the trade secrets. Some of the observationists have defined trade secrets from an IP perspective and some from the industrial view. Dissenting from one or the other, there are two demands at the same time: First being the suggestion to include trade secrets as a 'species' of IPR and to afford efficient protection within the IPR regime, and the second being a separate creation of 'sui generis' system for the protection of trade secrets.

It is not just the fact that this debate remains amongst the academicians only, but this propaganda has been tested at various levels of industry. Ranging from various research oriented institutes to IP industries, the question whether trade secrets per se deserve a protection within the IP regime or necessitate a separate comprehensive system of protection and enforcement; has led to a considerable event of discussion. Repeated clarifications reveal divergent opinions as to the parameters that may be introduced to justify the required protection and competency of IP regime to address the issue far better.

Specifically in India, comparative studies are done to match the levels of industrial progress and rate of development. Being a developing country, India is over-receptive and rapid conclusions are cited based on such comparative studies being conducted at various levels. This furthers the idea that is central to the propaganda. Whether this comparative study is really a useful tool to draw conclusions for the issues associated with trade-secrets remains a core objective of this research report.

Another pertinent question that comes for justification is that whether there is some sort of innovative ideas behind this mission or is just a follow-up of the thumb rule that is proposed by the western countries and is received and interpreted by the developing countries without any furthered thought whatsoever. Added to this is the issue that whether silence of TRIPs (being a sole international instrument for unified perception over intellectual property) allows for such a wide interpretation that newer species of intellectual property could be added to the protection blanket? This research report addressing the questions as highlighted above; is aimed to test the viability of protection to trade secrets on the one hand together with analyzing the perpetual effects of the two regimes that are agitated as adequate, efficient and comprehensive protection system.

The Research Design

Aims & Objectives:

The major aim of this research report is to understand 'trade secrets' from an IP perspective and to test the worthiness of its protection in whatever system of protection possible. Separate from this would be the objective to test separately, suitability of the IP regime & a hypothetical sui generis system of protection that may be proposed for the trade secrets. While drawing conclusion, consequent effects of such a protection is also annexed, to appreciate the utility of trade secrets.

Statement of the Problem:

Protection of trade secrets is at a nascent stage in India. Provided the industrial utility, trade secrets are essentially governed by *Contract Act, Principles of Inevitable Disclosure Doctrine, Judicial Precedents, Employment Contracts* and many others. Though trade secrets are '*potentially different*' from other IP subjects; whether this need of a comprehensive protection & enforcement mechanism becomes essential?

Research Questions:

- Whether 'trade secrets' calls for a protection system within the IP regime or requires more elaborate *'sui generis'* system of protection, considering its difference from other subjects of IP?
- Whether the significant move towards a codified system of 'trade secrets protection' as an intellectual property is an innovative idea or a wave of criticisms on various instruments of IP on account of their scope & ambit of protection?

Proposed Hypothesis:

Considering the utility and character of 'trade secrets' *inter alia*, the necessity of protection, it could be summarily maintained that they are considerably different from other forms of IP. Despite the fact that they are urged to be comprehensively protected, an objective criteria to decide the protection mechanism calls for a more serious thought.

Citation Method:

The researcher has followed uniform method of citation (OSCOLA, 2013)

Chapter 1: Understanding 'Trade Secrets from an IP Perspective

The uniqueness of trade secrets is that it fits into one or more parameters of intellectual property, competition, contract and innovation. This varied nature of trade secrets calls for a comprehensive interpretation from a holistic perspective. Any attempt towards the protection of such a genre of intellectual property should not be incentive based. Before proceeding to the essential characters of 'trade secrets' an outlook of intellectual property as a whole becomes essential. Intellectual property, in a legal sense, is something that can be owned and dealt with. Statutory forms of IP are declared to be property rights. In certain instances, assignment of these IP rights is governed by the statutory norms and where this is so, assignment requires no consideration.[1] Almost all forms of IP extend some private rights to its respective owner, while some forms of IP have been extended by the statute itself. While specific legislations are made available for the protection of various forms of IP, protection of the trade secrets varies from country to country. However, within the limits of this research report, trade secrets are considered from some important facets of intellectual property mechanism.

A.] The Right to Exclude in IP

The right-to-exclude conception conditions how scholars approach IP rights. At one extreme, scholars unanimously agree that patent rights are property rights. Any unauthorized manufacture, use, or sale of an invention under patent infringes the patent,[2] no matter whether the person engaging in the infringement discovered the idea embodied in the invention by his own independent research or development. Because these rights seem rights to exclude, IP scholars assume they are property rights. IP scholars also assume that copyrights are property rights because they also incline toward such exclusion. Although federal copyright law does not bar subsequent authors from recreating independently works similar to those of earlier authors, it does generally confer on authors rights of exclusive control over the copying or distribution of their works of authorship.[3]

By contrast, in mainline IP law and scholarship, *trade secrets are assumed not to confer property rights* because they lack the necessary exclusion. A trade secret confers on its owner a right to prevent others from acquiring a secret by spying or by bribing his employees or licensees, but it does not entitle the owner to exclude others from using the substance of the secret if they discover it by their own independent research.[4] Because of that qualification, in the 1917 case *E.I. du Pont de Nemours Powder Co. v.*

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[1] 244 U.S. 100, 102 (1917)
[2] 35 U.S.C. S. 271(a) (2010)
[3] 7 U.S.C., S. 102, 106 (2010); *Feist Publications, Inc. v. Rural Tel. Service Co.*, 499 U.S. 340, 345-46 (1991)
[4] RESTATEMENT (FIRST) OF TORTS 757 & commentary a (1939)

Masland, Justice Oliver Wendell Holmes suggested that "The property may be denied" in a trade secret and favored a theory grounded in the confidential relation between a trade secret's claimant and his employee or other confidante.[5] Holmes was a proto-Realist. In his scholarly writings, Holmes maintained that a property owner is one who is "allowed to exclude all, and is accountable to no one."[6] Although practitioners and scholarly dissenters maintain that trade secrets constitute property rights,[7] among scholars, the mainline view follows Holmes. For example, Pamela Samuelson maintains that trade secrets are not property because the rights delineated by a trade secret are "not 'good against the world' … i.e., the exclusionary power is actually just a by-product of the relational power that the owner has against those in certain types of relationships with him."[8] A parallel debate recurs in law and scholarship about hot news. This field of law makes it actionable for a copier to appropriate without authorization information published by the gatherer, republish that information in his own writing or format, and then sell the republished information, during its commercial life, in a market in which the gatherer is publishing it for commercial gain.[9] When the Supreme Court endorsed this doctrine (in the 1918 case *International News Service v. Associated Press*), it was strikingly ambivalent about whether the right it was declaring counted as a property right. The dissenters were certain there could be no property in hot news. Justice Holmes (joined by Justice McKenna) rejected that possibility because *"Property depends on exclusion by law from interference, and a person is not excluded from using any combination of words merely because someone has used it before."* Justice Brandeis (another Realist fellow traveler) also insisted in dissent that *"An essential element of individual property is the legal right to exclude others from enjoying it."* Somewhat sheepishly, Justice Pitney (the author of the Court opinion) assumed that rival news-gathering agencies could not have "any remaining property interest as against the public in un-copyrighted news matter after the moment of its first publication." Nevertheless, he still insisted that "as between the rivals, it must be regarded as quasi property."[10] Yet the term "quasi property" seems oxymoronic. No wonder that most commentators conclude that Holmes and Brandeis had the better of the argument.[11]

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[5] 244 U.S. 100, 102 (1917)
[6] OLIVER WENDELL HOLMES, JR., THE COMMON LAW 246 (1881)
[7] Mark A. Lemley, *The Surprising Virtues of Treating Trade Secrets As IP Rights*, 61 STAN. L. REV. 311 (2009)
[8] Pamela Samuelson, *Privacy As Intellectual Property?*, 52 STAN. L. REV. 1125, 1153 n.1248 (2000); *accord* Robert G. Bone, *A New Look at Trade Secret Law: A Doctrine in Search of Justification*, 86 CAL. L. REV. 241, 241- 43 (1998)
[9] Nat'l Basketball Ass'n v. Motorola, Inc., 105 F.3d 841, 850-53 (2nd Cir. 1997)
[10] 248 U.S. 215, 236 (1918); *id* at 246 (Holmes, J., dissenting)
[11] Douglas G. Baird, *Common Law Intellectual Property and the Legacy of International News Service v. Associated Press*, 50 U. CHI. L. REV. 411, 414 (1983)

B.] Dissemination of Information in IP Paradigm:

The first and foremost factor in determining any breach of confidence is proving that the information in question is the one that warrants protection. Justice O' Conor has said, "It is first necessary that the claimant should absolutely make it clear and certain what it was that alleged to be confidential which he sought to protect".[12] If a claimant does not identify the information in substantial detail, their actions may be struck out on the basis that it is speculative and an abuse of process. Again, information is a very broad term and therefore it is essential that its boundaries be laid down. It is therefore seen that the courts have been selective in deciding what constitutes confidential information. They have been specifically excluded information that is trivial in nature, immoral, vague, and information which is in the public domain. Justice Megarry said that he doubted, 'Whether equity would intervene unless the circumstances are of sufficient gravity; equity ought not to be invoked to protect trivial tittle lattle, however confidential.[13] In many cases, the information protected by breach of confidence is detailed and specific, while some are more general ideas and concepts like television series. Thus, information that is in the public domain, does not warrant any protection. The level of secrecy that has to be maintained for the trade secrets is quite different from the other forms of IP. It allows for a number of people to know about a secret without the information being considered to be part of the public domain. The status of information may however change. A corollary would imply that it would be possible for information that is in the public domain to become a secret. Lord Justice Shaw has stated that to revive the recollection of the matters which may be detrimental or prejudicial is not to be condoned because the facts are already known and linger in the memories of others.[14]The degree of publication required, before secrecy is lost, depends upon a range of factors. These would include the type of information in question, the domain in which the information was published, the degree of publication within that domain; the form in which information was published and the vigour with which the information is likely to be pursued within that domain.[15] Another factor that may be taken into consideration is the extent to which further publication would harm the claimant. In some cases, the requirement of harm and finding that the information is confidential, have operated as alternate grounds. Needless to say when the information is of confidential nature, certain questions may be raised with respect to their disclosure.

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[12] Thomas *v* Mould, [1968] QB, 913
[13] Coco *v* A N Clark (Engineers), [1969] RPC 41
[14] Schering Chemicals v. Falkman, [1982] 1 QB, 1
[15] Bently L & Sherman B, Intellectual Property Law, 1st Edn., (Oxford University Press, New York), 2001, p. 928-929

C.] The Contours of Innovation Law Defined

It has been alleged that to protect the vast repository of 'undisclosed information' and knowledge kept as trade secrets by their practitioners, India should consider a pro-active sui generis legislation as provided in Article 10*bis* of the Paris Convention and Article 39(2) and 39(3) of TRIPs Agreement, 1995. The demand has been towards a formal legislation on the lines of US Trade Secrets Act, 1970 that needs to be implemented in India. It is argued that such legislations would deter illegal transfer of trade secrets by people who had access to them as part of their employment duties. It is also commented that in the absence of such legislation it is perhaps the fact that India is lagging behind in the field of IPR.[16] In a move towards such comprehensive and codified law, Indian government has proposed the Draft Indian Innovation Act, 2008 that provides for a consolidated law on confidentiality in aid of protecting the confidential information, trade secrets and innovation.

Chapter 2: What is Worth of Protection? - Visions & Revisions

Trade secrets are rapidly becoming IP of choice due to their advantages in information economy. Machinery and mechanisms were the assets of the 'industrial age' that required the provisions of patent law to protect them.[17] In this perspective, US courts have held, *'the extent of a property right in a trade secret is determined by the extent to which the owner of the secret protects his interest from disclosure to others'*.[18] It is however accepted that trade secrets are different from other forms of IP. To argue, patents require that the inventions be novel, useful and non-obvious, trademarks protects only the printed word or image representing a product or service and copyrights protects only the manner of expression and not the content, idea, information or the concept being communicated.[19]As researchers argue, trade secrets may or may not be novel; meaning thereby that they may or may not meet the criteria of IP regime but still deserve protection because of their industrial utility.

Considering the above visions, one author has noted that some properties are not intellectual in their nature but are just 'usufructs'. He defines usufructs as a right to use an asset, continue using the asset, and to be free from attempts to divert one's efforts to extract benefits from the assets.[20] In such a dialogue, there comes the

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[16] Sreenivasulu N S et al., *TRIPs complaint intellectual property regime in India: Implications of TRIPs in modifying the cantors & canons of our system*, Manupatra Intellectual Property Reports, 3 (2) (2007), A-79, 80

[17] Jorda Karl F., The role and value of trade secrets in IP management strategies, 35th PIPA Congress (Toyoma, Japan), 2004, p.2

[18] Ruckhelhaus v. Monsanto, 476 US 986

[19] Cornish & Lovelin, Intellectual Property: Patents, Copyrights, Trademarks & Allied Rights, 5th edn, (Sweet & Maxwell, Avenue Road, London), 2003, p. 332-342

[20] Eric R. Clayes, *Intellectual usufructs: Usufructuary paradigms at Common Law,* George Mason University of Law & Economics Research Paper Series, Intellectual Property & Common Law, 11-32

divergence on protection of trade secrets. It has to be clarified, before attempts are being made that such an alleged protection would give a right to exclude others from using the secret or a right to prevent others from accessing the secret. If we consider a trade secret to be a form of property, then that property belongs to the industry and not to a real self. However, IP regime recognizes the very person behind the invention, literary work or a trademark etc. The agenda loses its significance when one notes that in most of the cases of trade secret misuse, the parties were relational, either in a licensing agreement or in an employer-employee relationship.[21] It thus prompts that trade secrets are not available in general but have an industrial limitation. In such a paradox, *in rem* and *in personam* operations of trade secrets law should be objectively understood. In most of the cases also, breach of confidentiality has been alleged to be a violation of trade secrets.[22] However, it still remains unclear as to what was argued to be a secret.

This brings us to the forefront, looking into what is worth of protection? If we look through an IP perspective, trade secrets fall short in fulfilling the requirements of the regime, and if test a sui generis system, we still account for the protectable subject matter. In both the situations, trade secrets are essentially observed to be a mere practice of confidentiality and breach of which is actionable under the law of contract. It is also to be tested that whether any 'confidential information' would become a trade secret or it requires some industrial utility which demands the essential foreclosure.[23]

Chapter 3: A Pilot Study to Enforcement & Protection Systems- India & Overseas

In general, Article 10bis of Paris Convention provides for prohibition of unfair trade practices but does not specifically talk about 'trade secrets'. The term 'any act of competition contrary to honest practices in industrial and commercial practices' is of very wide import and could not be said to talk about trade secrets. Article 39(2) of TRIPs lays down the essentials of undisclosed information but avoids using the nomenclature 'trade secrets'. Article 39(3) also talks about prevention of confidential information from unfair use but is limited only to pharmaceutical products and is not therefore a general provision of law. Section 1 of Uniform Trade Secrets Act, 1970 has attempted to accord a meaning to the term 'trade secrets' coupled with a significant development leading to the enactment of Economic Espionage Act, 1996

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[21] Robert G. Bone, *A New Look at Trade Secret Law: A Doctrine in Search of Justification*, 86 CAL. L. REV. 241, 241- 43 (1998)

[22] Sandhya Organic Chemicals v. United Phosphorus Ltd., AIR 1997 Guj 177; Gopal Paper Mills Ltd v. Surendra K Ganeshdas Malhotra, AIR 1962 Cal 61; Niranjan Shanker Golikari v. Century Spinning & Manufacturing Co Ltd, (1967) 2 SCR 378; AIR 1967 SC 1098

[23] Sangal Tanushree, *Unfurling the Proposed National Innovation Act*, Manupatra Intellectual Property Reports, 3 (3) (2008) A-47

which punishes misappropriation of secret information of an industry. However, the 'relational' premise as has been argued before in this paper remains dominating in both these enactments and that a clear perusal could not be ascertained. It is to be noted that these legislations are nothing more than a privileged protection to 'trade secrets' apart from actionable claims as in the law of contract.[24] In a sudden wake of confusion between 'confidential information' and 'trade secrets', authors have started putting several reasons as to why India should adopt a proper law on trade secrets. The restatement of torts[25] in US has also defined trade secrets as:

A trade secret may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers.

The most comprehensive legislation in India considering the confidentiality of information is the draft Indian Innovation Act, 2008 that provides for higher level of protection to secret information.[26] Even if the said draft is alleged to be in conformity with the international standards of TRIPs and other legislations, the confidentiality in the said Act is dependent on an industrial relationship between the parties and is not independent in operation.[27] However, breach of confidentiality has already been appreciated and highlighted by courts in India.[28]

Chapter 4: Problems & Perspectives

Karl F. Jorda, in one of the research studies has studied the complementariness of patents and trade secrets. As per the study, trade secrets have certain special attributes but whether those attributes answer the questions of IP regime has been left unaddressed.[29] The study also concludes that utilizing both routes for an extended sort of protection would be practicable and profitable but had the concepts been interwoven, the author must have suggested for the inclusion of trade secrets in the IP regime. Other authors have also commented patents and trade secrets to be complementary to each other and that their protection systems are different

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[24] Some employment contracts provide for *Non-compete clauses, confidentiality clauses and No-Disclosure agreements* that principally prevent the employees from disclosing 'material' information to the outsiders.

[25] Restatement (First) of Torts, 1939

[26] Chapter VI, Indian Innovation Act, 2008; S.10, 11

[27] Id., S.12 on injunctions for disclosure of confidential information.

[28] *Diljeet Titus v Alfred Adevare & Ors* [130 (2006) DLT 330, 2006 (32) PTC 609 Del] protected the works done by the defendant in the plaintiff's law firm as an employee of the firm for the benefit of clients of the plaintiff under their contract of service.

[29] Karl F. Jorda, *Patents & Trade Secret Complementariness- An unsuspected synergy,* Washburn Law Journal, Vol. 48

altogether. Moving on the said premise, a demand for a comprehensive and codified system of protection to trade is not unjustifiable but the fact as to what distinguishes trade secret from a confidential information needs an objective criteria for a proper analysis and interpretation. Trade secrets are argued to be protected just because of their industrial utility despite the fact that a breach of this onerous duty is redressible by provisions of Indian Contract Act, 1872 and an Injunction under the Specific Relief Act, 1963.[30] However, Competition Act, 2002 also addresses such anti-competitive practices.[31] The fact that trade secret is 'confidential information' that subsequently gains the said character of secrets when an action against unlawful disclosure or breach of confidentiality is brought to courts.[32] In such a situation, separate law for trade secrets will over-burden the mechanisms already in place. Modifications to certain enactments such as Contract Act and Specific Relief Act would be an innovative step in having recourse to the issue.

Another difficulty in having a system of protection is the serious question of 'subject matter' for protection. While some authors prefer trade secrets as a specific genre altogether, they fail to highlight 'what is a trade secret'[33] and as to what distinguishes a trade secret from the plethora of industrial information gathered during employment.[34] The *sine qua non* being unclear will tantamount to a parallel demand with some modifications. Another perspective to Draft Indian Innovation Act, 2008 reveals the fact that such a protection of confidentiality is limited to the purposes of the said Act.[35] In such a reprise, whether the Act is a significant move towards a 'comprehensive & codified' system is doubtful.

Essential differences amongst the trade secrets and various other modes in the IP regime depicts that the demand of their inclusion in IP falls flat. Some regard them as alternatives while some regard trade secrets as improved forms of IP.[36] Hence, such a demand is to be rationally supported with an objective criterion regarding the 'subject matter' of such a protection.

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[30] S. 37-41 of Specific Relief Act, 1963 & S.73 of Indian Contract Act, 1872

[31] S. 3 of Indian Competition Act, 2002 provides for anti-competitive agreements

[32] 'Confidential Information' in *Draft Innovation Act: Breaking the Shackles of Indian Innovation*; http://indialawjournal.com/volume3/issue_1/article_by_anirudh.html (Last accessed Nov. 30, 2012 at 11:24 AM)

[33] Despite the fact that various legislations have attempted to define a trade secret such as Uniform Trade Secrets Act of USA, trade secret as a genre has not gained special characteristics. ***For the purposes of arguments, author considers trade secrets as privileged facts of an industry.***

[34] Nisvan Erkal, *On the Interaction between Patent & Trade Secret Policy*, Department of Economics, University of Melbourne, October 2004, p. 14

[35] Preamble and S. 8 to National Innovation Act, 2008 available at http://www.dst.gov.in/draftinnovationlaw.pdf (Last accessed on Nov. 30 at 11:47 AM)

[36] See Burlington Home Shopping Pvt Ltd v. Rajnish Chibber [61 (1995) DLT 6]; American Express Bank Ltd v. Priya Puri [III LLJ 540 (Del)]

Chapter 5; Concluding Remarks

In light of the discussions made, authorities cited and arguments advanced in the foregoing parts of the paper, following points are notably important as far as addressing the issue of protection of trade secrets is concerned:

1. A prompt classification of various forms of trade secrets becomes essential in order to move towards a comprehensive and codified system of protection. This would not only segregate 'confidential information' from trade secrets but would also bring clarity to the objectives set out for this protection system.

2. Trade secrets should not be confused with other forms of IP. In an attempt towards such interpretation, would lose the industrial utility attached to trade secrets and will amount to an incomprehensive protection mechanism. It is far clear from various instruments and research reports that trade secrets and IP are distinctly different and as such they should not be clubbed together.

3. Since protection is at a very nascent stage in India, a 'comprehensive legislation' would be a misnomer. The Draft National Innovation Act, 2008 seeks to protect the confidential information in Science & Technology and does not cover the whole gamut of industrial activity. In such a scenario, a move towards a codified and comprehensive system requires serious thought and careful analysis based on parameters of industrial utility, and that too sector wise.

4. The demand for a *sui generis* should also be forwarded with specific requirements and distinctions. Trade secrets are often confused with confidential information and such information is protected and enforced by various legislations in India. In such a scenario, a sui generis system may lead to duplication of law and will amount to greater confusions. The subject matter of protection should be carefully identified and should be analysed pragmatically.

5. Whatsoever be the necessity, a demand should not be forwarded merely because developed countries have taken a forward step but should be coupled with specific needs of various levels of industries.

To conclude, it could be said that an attempt towards a codified and comprehensive system seems practical and profitable but the same should be segregated from existing forms of IP protection as trade secrets do not sufficiently satisfy the requirements of IP legislations.

Chapter 6: Annotated Bibliography

1. Md. Zafar Mahfooz Nomani & Faizanur Rahman, ***Intellection of Trade Secrets and Innovation Laws in India***, Journal of IPR, Vol. 16, July 2011.

- The authors in this research have based their studies on an incentive based approach to trade secrets. They have also analysed the impact of innovation law on trade secrets in the context of innovation policy and laws in India. While asserting a demand for a codified system, they cite the development in various western countries. They assert inclusion of trade secrets in IP regime.

2. Abhik Guha Roy, ***Protection of Intellectual Property in the Form of Trade Secrets,*** Journal of IPR, Vol. 11, May 2006.

- The author in this article has commented on various possible remedies that a trade secret owner may resort to, in cases of breach of confidentiality. Tracing through the characteristics of trade secrets, their protection systems overseas, spectrums of application and position in India, the author concludes that India is in a desperate need of a legislation protecting the trade secrets. It is notable that author has attempted to strike at a balance between IP and Trade secrets and has not suggested for inclusion of trade secrets in IP paradigm.

3. Nisvan Erkal, ***On the Interaction between Patent & Trade Secret Policy***, University of Melbourne, October 2004

- The author finds trade secrets and patents as alternatives to each other and affording protection to the innovators at two different levels altogether. He classifies the aims and objectives of two protection systems and argues for a more serious thought to trade secrets protection. His research is a significant move towards ascertaining the 'subject matter' of a trade secret protection policy.

4. Karl F. Jorda, ***Patent & Trade Secret Complementariness: An unsuspected Synergy***, Washburn Law Journal, Vol. 48

- The author has based arguments on the existing deep-seated misconceptions about trade secrets and the patents/trade secrets interface. While discussing about various attributes of both patents and trade secrets, the author notices the relevant differences between trade secrets and other forms of IP, specifically patents.

5. Eric R. Clayes, **Intellectual usufructs: Usufructuary paradigms at Common Law,** George Mason University of Law & Economics Research Paper Series, Intellectual Property & Common Law, 11-32

- The author has discussed about various notions of property according to various jurists and analyses justifiability of trade secrets as a property in which he suggests that trade secrets are not a form of property.

6. Brijendra Singh, Shalini Aggrawal & Karishma Rai, ***Need for a Separate Trade Secret Act with Required Law,*** The Practical Lawyer, 2011 (PL) June 44

- The authors in this article, citing various legislations of western countries have analysed various possible interpretations of the term 'trade secrets'. They conclude with a high demand for a separate trade secret Act in India. However, it is interesting to note that they have not also commented upon the horizons of trade secrets and have forwarded their conclusions without any pragmatic analysis.

7. Abhinav Kumar, Pramit Mohanty & Rashmi Nandakumar, ***Legal Protection of Trade Secrets: Towards a Codified Regime,*** Journal of IPR, Vol. 11, Nov. 2006.

- The authors place an obligation on India to conform to the provisions of TRIPs, disregarding the fact that countries are free to legislate according to their interests and concerns. There is nothing called as 'pre-emptory duty' in international law. Basing their arguments on lessons from western countries, the authors have suggested evolving a codified regime for the trade secrets. It is again interesting that they have not attempted to categorise the subject matter of protection is a practical sense and have just carried forward the idea upon which USA has based its legislations concerning protection of trade secrets.