Legal Policy for Trade Secret Protection in BRICS Countries: From Confidentiality to Concord

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Abstract

The ascent of trade secrets heralded an unprecedented recognition of intellect and innovation. In the wake of technological onset, the trade secret assumed seminal significance in informational assets and intellectual capital. It has propelling potential to boost economic regeneration in BRICS countries under varying degrees of the normative regime and political climate. The innovation and competition go along within these regions; therefore, a robust trade secrecy regime is pivotal in propelling growth and development. The Paris Convention for the Protection of Industrial Property,1967, and Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement, 1995, have set the international parameters fortified by the Uniform Trade Secret Act of 1979 the United States to consolidate and unify the trade secret laws in the region. The relevance of trade secret protection under intellectual property law has assumed significance in the BRICS nation to prevent obviousness and infringement by charting out the sound legal mechanism and guard against the vulnerability of exposure. The paper critically analysis institutional, legal, and judicial dimensions of trade secrets laws of the BRICS Nations spread overdeveloped nations to developing economies. The range of remedies under trade secret disputes vindicated through the judicial organs of BRICS countries is an exciting engagement concerning regional trade and development. The comparisons and contrast of trade secret laws across BRICS countries is a fascinating discourse of innovation and competition besides setting robust parameters for justice and peace in the region.

Key Words: Trade Secret, Informational Assets, Infringement & Remedies, Institutional Mechanism, Innovation & Competition, Regional Trade, BRICS.

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I. Introduction

The trade secret law is full of polemical dimensions and based on obligations arising out of contract, employment, and fiduciary duty. The roots of these relations are ingrained in intellectual property rights, agreement, and labour laws, equity laws, and competition laws. The ontological status of trade secret legislation is contested[2] as 'trade secret cynicism,' which implies that that trade secret law lacks holistic discourse.[3] The historical evolution of trade secret codes across American, English, and BRICS nations represent varied experiences.[4] The common law jurisdictions like India South Africans follow two ideological foundations. The Indian law derives sustenance from the contract and equity,[5] whereas the South African rules adapted from the ancient Roman Lex Aquilia.[6] The United States trade secret protection is a structure on the proprietary account, and action protects English law trade secrets for abuse of trust under a multi stakeholding perception of trade secrecy.[7] The conceptual premise of trade secret law posses varied normative perception[8] from property to tangible goods and labour and invention.[9] The seminal significance of trade secrets has unleashed an unprecedented boom in litigation under seven factors namely digital technology, a mobile workforce, valuation of trade secrets, the uniform statutory basis, flexibility of trade secrecy, international threats to confidentiality and

[2] Bone R.G., *A New Look at Trade Secret Law: Doctrine in Search of Justification*. CALIFORNIA LAW REVIEW, Vol.86, 241 (1998).

[3] Claeys E.R., *Private Law Theory and Corrective Justice in Trade Secrecy, Journal of Tort Law*, Vol.4, 2 (2011).

[4] Risch M., *An Empirical Look at Trade Secret Law's Shift from Common to Statutory Law in S. Balganesh (ed.), Intellectual Property and the Common Law*, CAMBRIDGE UNIVERSITY PRESS, CAMBRIDGE, UK.(2012)

[5] Nomani M.Z.M., Rahman, F., *Intellection of Trade Secret and Innovation Lawsin India*, JOURNAL OF INTELLECTUAL PROPERTY RIGHTS, Vol. 16, No.4, 341-347 (2011)

[6] Knobel J.,*Wrongfulness of Trade Secret Misappropriation; and Trade Secrets As Objects Of Subjective Rights,ACTA JURIDICA*, 196 (2000)

[7] Bone R.G., *A New Look at Trade Secret Law: Doctrine in Search of Justification*. CALIFORNIA LAW REVIEW, Vol.86, 241 (1998).

[8] Claeys E.R., *The Use Requirement at Common Law and Under the Uniform Trade Secrets Act,*33 HAMLINE LAW REVIEW, 583(2010).

[9] Nomani, M.Z.M., Rahman, F., Innovativeness & Competitiveness under Trade Secret Laws in India. *Manupatra Intellectual Property Reports,* Vol. 2, No.1, 131-141 (2015).

comparative advantages of patent and trade secret protection.[10] The seven-factor syndrome of trade secrets continues as formidable trends in the intellectual property regime in BRICS countries.[11] It is under this backdrop the paper takes a juridical stance on the legal and institutional framework of trade secret laws in BRICS countries. The vibrancy of trade secrecy regime will herald trade and development in the BRICS region alongside the robust growth of the intellectual property regime in the post-TRIPS Agreement regime.

II. International Trade Secret Laws

This comparative jurisprudential study of trade secret premised on the *Paris Agreement*, 1967, and *TRIPS Agreement*, 1995, in drawing an international legal framework. Therefore, it is imperative to explore the ontological status of the global trade secret laws underpinned in the *Paris Convention*, 1967, and *TRIPS Agreement*, 1995.

A. **Paris Convention, 1967 & WIPO:** Article 1 of the Paris Convention, 1967 implies that the countries to this Convention protect industrial property utility models and trade names by restraint of unfair competition. The industrial property in the broadest sense of the term applies not only to industry and commerce but natural products of the agricultural and extractive industries. Article 10 bis of the *Paris Convention*, 1967 visualized the trade secret protection through the lens of distorting competition, asserting that the convention countries are bound to assure ban against competitive way of business. Any act of trade rivalry violative of ethical practices constitutes distorted competition. It creates confusion and often misleads the public regarding nature, characteristics, manufacturing, suitability, and the quantity of the goods. Thus the Article 1 and 10 bis of the *Paris Convention*, 1967 protected trade secret against unfair competition and administered by the *World Intellectual Property Organization (WIPO)*.

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[10] Almeling D.S., *Seven reasons why trade secrets are increasingly important. Berkeley Technology Law Journal*, Vol.27, No.2,1091-1117 (2012)

[11] Nomani M.Z.M., Raj A.A.,*Legal Implication Of 'Make In India' Initiative In The Context Of Intellectual Property & Fiscal Norm, Manupatra Intellectual Property Reports,*Vol.2, No.4, 83-100 (2016).

B. **TRIPS Agreement,1995 & WTO**: On the other hand, Article 39 of the TRIPS *Agreement*,1995 established an international standard for the protection of concealed information of agricultural and pharmaceutical test data through the institutional mechanism of the World Trade Organization (WTO).[12] The *TRIPS Agreement*, 1995 uses the same phraseology of unfair competition for requisite protection of trade secrets. The natural and legal persons advised for the prevention of information assets from disclosure contrary to honest commercial practices. The members shall protect undisclosed data against disclosure and take reasonable steps to lawfully control information and keep it secret.[13] The approach laid out in the *TRIPS Agreement*, 1995, based on the assumption that legal protection against the unfair competition will necessarily lead to the security for undisclosed information. In buttressing this approach, the *TRIPS Agreement*, 1995, bodily lifted the prior-existing protection against unfair competition underpinned in the *Paris Convention*, 1967.[14] The synergistic model of trade protection laws under the institutional mechanism of the World Intellectual Property Organization and the World Trade Organization dispels the misgiving by charting a new set of definitions of the trade secret.[15] It qualifies to information that is not generally known and accessible and typically deals with information having commercial value. It is subject to reasonable steps by the rightful holder of the data to keep it secret through confidentiality agreements under contract and employment

[12] Nomani M.Z.M., Rahman F.,*WTO, India & Regional Trade Blocks. In Ahmad J. et al. (Ed.) WTO, India & Regionalism in World Trade,*NEW CENTURY PUBLICATIONS, NEW DELHI, 1-38 (2011).

[13] Fellmeth A.X., *Secrecy, Monopoly & Access To Pharmaceuticals In International Trade Law: Protection of Marketing Approval Data Under The Trips Agreement*,HARVARD INTERNATIONAL LAW JOURNAL, Vol.45, No.2, 443-502 (2004)

[14] Bravo G., *From Paris Convention to TRIPS: A Brief History,*J. CONTEMPORARY LEGAL ISSUES, Vol.12, 445-449(2001).

[15] Nomani M.Z.M.,*Synergy of Trade Secret Legislations, Competition Laws and Innovation Protection Statutes under Emerging Intellectual Property Rights Regime: A Comparative and Indo-U.S. Perspective. Protecting Intellectual Property in Life Sciences In Dominic Keating et al. (Ed.),* AMITY UNIVERSITY PRESS: NOIDA, 63-79 (2012).

laws.[16] Practically speaking, the proprietor typically only divulges the trade secret to a select number of clients and company.[17] Thus It may be difficult to understand how international trade secret regulations work. The TRIPS Agreement still mandates that WTO members establish a monistic intellectual property regime that includes the preservation of trade secrets and monopolistic practices.[18]

III. Trade Secret laws in Brazil

Before we dwell on the IP regime of Brazil, it seems appropriate to have a cursory look at the legal and judicial system of Brazil. Brazil inherited the legacy of Portuguese colonial law and the Roman civil law. The evolution of Brazilian trade secret code owes its origin to medieval German trade guilds.[19] By nature, the trade secret in Brazil is civil law with some criminal sanctions.

A. Constitution of Brazil, 1998: The Constitution of Brazil, 1998, establishes as a federative republic and indissoluble union of the states[20] constituting the legislative, executive, and judicial branches.[21] The judiciary consists of the Federal Supreme Court, National Council of Justice, Superior Tribunal of Justice, Federal Justice, Labor Justice; Electoral Justice; Military Justice; and State Justice.[22] Brazil does not follow the doctrine of precedent or *stare decisis*. However, the *Constitution of Brazil Amendment Act*, 2004, and 2006 envisage that the majority decisions of the Federal Supreme Court would have a binding effect on the entire judicial

[16] Melvin J.F. *Trade Secrets Throughout the World,* CLARK BOARDMAN CALLAGHAN, 2014.

[17] Maskus K.E., Intellectual Property Rights in the Global Economy, INSTITUTE FOR INTERNATIONAL ECONOMICS, (2000)

[18] Sandeen S.K.,*The Limits Of Trade Secret Law: Article 39 Of The TRIPS Agreement And The Uniform Trade Secrets Act On Which It Is Based. In R.C. Dreyfuss and K.J. Strandburg (eds.), The Law and Theory of Trade Secrecy: A Handbook of Contemporary Research,*EDWARD ELGAR, CHELTENHAM, UK (2011).

[19] Sherwood R.M., *Trade Secret Protection: Help for a Treacherous Journey*. WASHBURN LAW JOURNAL, Vol.48, 67, 73-74 (2008).

[20] Article 1, *Constitution of Brazil*, 1998.

[21] *Id* Article 2.

[22] *Id* Article 92.

organ besides safeguarding and review the Constitution.[23] The constitutional principle is known as *Súmulas Vinculantes* and clamped by enabling provisions of precedent by Law No. 11,417 of 2006 by Supreme Court.[24] The life-breath of the trade secret derived from Article 5(XIV) of the *Constitution of Brazil*, 1998. It ensures access to information and the confidentiality of the source in the performance of the professional activity, including trade secrets.[25]

B. Brazilian Industrial Property Law, 1996: It is under this backdrop the Brazilian trade secret laws governed by a slew of the ordinances and judicial precedents, most notably the *Brazilian Industrial Property Law No. 9279*, of May 14, 1996. Article 195(XI) of the *Brazilian Industrial Property Law*, 1996 envisages as under:

> whoever reveals, exploits, or uses, without authorization, knowledge, information, or confidential data used in industry, commerce, or services to which the person has had access through a contractual or employment relationship, even after the termination of the contract or relationship, commits the crime of unfair competition unless the information is public knowledge or obvious to someone with the required technical skills.[26]

Though Brazil is a civil law country. It adopted sporadic prosecutorial strategy in containing the unfair competition, especially the revealing, exploiting, and using trade secret knowledge and information by employers, partners, and officers of a company referred to in article 195(XI) of Law No. 9,279.[27] The disclosure of information by the government agency responsible for authorizing

[23] *Id* Article 102, *Constitution of Brazil Amendment Act*, 2004 & 2006.
[24] Article 103-A, Law No. 11,417 of 2006.
[25] Rosenn K.S.,*Brazil's New Constitution: An Exercise In Transient Constitutionalism For A Transitional Society*,*The Amerıcan Journal of Comparatıve Law,* Vol.38, No.4, 773-802 (1990).
[26] Article 195(XI), *Brazilian Industrial Property Law*, 1996
[27] Article 195(XI) of Law No. 9,279

the commercialization of the product in the public interest exempted under Article 195 (XIV).[28]

C. **Brazilian Industrial Property Amendment Law, 2001:** The Brazilian Industrial Property *Amendment Law No.10.196* of February 14, 2001, enunciates that while deciding the trade secret dispute, the court will order the trial in private to avoid disclosure of the confidential information.[29] The remedies for the infringement based on concurrent civil and criminal resources.[30] The clause defined unfair competition as the unauthorised disclosure, exploitation, or use of knowledge or information. Brazilian Industrial Property Law No. 9279, 1996, in addition to these two clear restrictions. It further provides that:

> The injured party shall be assured the right to receive loss and damages in compensation for the loss caused by acts of infringement of industrial property rights and by acts of unfair competition not provided by this Law, which tend to prejudice one's reputation or business or to create confusion between commercial, industrial or service providing establishments, or between products and services offered in the course of trade (I P Law 9279, 1996).[31]

Besides the criminal action, the party entitled to civil remedies[32] and compensation,[33] goodwill, and reputation[34] provided under the *Code of Civil Procedure*, 1973. In a nutshell, *Brazilian Industrial Property Amendment Law,* 1996, and 2001 redress injury, infringement, and reputation by compensation and

[28] Jorda K.F. *Patent and Trade Secret Complementariness: An Unsuspected Synergy*, WASHBURN LAW JOURNAL, Vol.48, 1-32, (2008).
[29] Article 206, *Brazilian Industrial Property Amendment Law No.10.196* of February 14, 2001
[30] Article 195(XI) *Brazilian Industrial Property Amendment Law No.10.196* of February 14, 2001
[31] Brazil Industrial Property Law, Law No. 9.279, of May 14, 1996, as amended by Law 10.196 of February 14, 2001
[32] *Id* Article 207.
[33] *Id* Article 208.
[34] *Id* Article 209.

damage in the purview of unfair competition and trade secret laws.[35] The *Code of Civil Procedure*, 1973 and *Civil Code of Brazil,* 2002 protect trade secret in Brazil.

D. Codes of Civil Procedure, 1973 & 2002: The Code of Civil Procedure, 1973 states that a party is not obligated to testify about facts that, by status or profession, the person should keep secret.[36] It also forbids that parties and witnesses from showing the disclosure of secret in the court of law.[37] The court can issue search and seizure order[38] on the request of parties and gauging compelling reasons and justification.[39]on the basis of search and seizure order; the warrant specifies person and place.[40] The *Civil Code of Brazil,* 2002 testifies regarding facts which, by his status or profession, the person must keep secret.[41] It probes into the guilt of the person, who commits an illicit breach of confidentiality.[42] The person who practices an illicit act[43] and causes damage to other persons is obligated to repair the damage.[44] The employer or principal owes vicarious responsibility under *respondent superior* doctrine for the civil damages caused by his employees in the course of employment[45] and pays compensation on *quantum meriut* principles of measures of damages.[46] Since trade secrets governed by employment agreement and non-disclosure agreements under labour laws, it is important to refer to the *Brazilian Consolidation of Labour Laws,* 1943. Article 482 of the *Brazilian Consolidation of Labour Laws,* 1943, considers a violation of trade

[35] Nomani, M.Z.M., Ahmad Z., Rauf M. *Role of Trade Secret Protection Laws In The Development Of Indo-Brazilian Bilateral Trade & Investment.*INTERNATIONAL JOURNAL OF LAW, Vol.5, No.5,20-24 (2019).
[36] Article 347(II) *Brazil Code of Civil Procedure*, 1973
[37] *Id* Article 363(IV).
[38] *Id* Article 839.
[39] *Id* Article 840.
[40] *Id* Article 841.
[41] *Id* Article 229(I).
[42] *Id* Article 186.
[43] *Id* Article 187.
[44] *Id* Article 927.
[45] *Id* Article 932(III).
[46] *Id* Article 944.

secrets norms as an appropriate justification of termination of the job by the recruiter.

IV. TRADE SECRET LAWS IN RUSSIA

The Russian law uses the phrase of commercial secret (*kommercheskaia tayna)* as 'trade secret' and has been carefully thought out and coherent. Having a mixture of Russian IP law and civil code, the trade secret is quite explicit and logical in content because of the varied content of the 'production secret' and 'trade secret.' The corpus of the trade secret law consists of the *Criminal Code of the Russian Federation,* 1996; *Federal Law on Commercial Secrecy,* 2004 and *Civil Code*, 2011. These laws protect information from insiders to whom the secrets have entrusted, outsiders who obtain the secrets by improper means, and the government agencies that might receive and release the secrets. It relates to the information regarding production, technological, economic, and organizational, which is not generally known to the general public and mostly remains close accessed in the instituted regime of trade secrecy. Such information is the result of intellect and innovation of science and technology and the professional innovation having potential commercial value. The trade secrecy regime split into three categories laws such as *Civil Code of the Russian Federation*, 1996; *Labor Code of the Russian Federation*, 2002; and *Federal Law of the Russian Federation on Trade Secrets*, 2006.

A. Civil Code of the Russian Federation, 1996: The Civil Code defines "production secret" to mean production, technological, economic, organizational as information.[47] The production secret, like a trade secret, is not generally known to the general public. It does not have open access to the instituted regime of trade secrecy.[48] But definitely, such information is the product of intellectual labour and pain. In the areas of science and technology and the methods for carrying out any professional business, such pieces of information have real or potential commercial value [Article 1465].The Code cast general principles of

[47] Gavrilov E. *Commentaries on the Federal Law on Trade Secrets*, ZONA ZAKONA.RU,(2013)http://www.zona zakona.ru/law/comments/159/ (in Russian)
[48] Article 1465, *Civil Code of the Russian Federation*, 1996.

liability for infringement of trade secrets, which include disciplinary, civil, administrative, or criminal liability.[49]

The civil remedies and the award of monetary damages are the most popular and well sought after solutions for the trade secret infringement.[50] The Joint Resolution approves this principle in the Plenary Sessions of the Supreme Court of the Russian Federation No. 5 and the Supreme Arbitration Court of the Russian Federation. The ruling of the Court has invigorated new remedial actions under the *Russian Federation Civil Code Amendment,* 2009 as a salutary provision. It also laid down in an unmistakable term that the public and individual entities are liable alike for the infringement of trade secrets. The law comes heavily against the officials of public bodies, distinct entities, and third parties.

The misappropriation of trade secrets is actionable under other civil law statute mitigation of losses and damages. In a claim of compensation, the significant hiccups are the burden of proof of trade secrecy and the infringement actions.[51] The owner of a trade secret always vindicates restitution and recompense and injunction and deceleration for infringement.[52] Some Russian legal scholars have highlighted a grey area that violation of the rights of the owner of a trade secret would not necessarily mean complete disclosure of the trade secret. There is a possibility of loss but not the breach of secrecy per se. The trade secret will remain a trade secret, *albeit* the financial casualties inflicted on the owner of the intellectual property.

B. Labor Code of the Russian Federation, 2002: The Russian Federation Law on Trade *Secrets*, 2006 imposes general liability of employees upon willful infringement of a trade secret or reckless disregard of secrecy protection [Article 14.2]. The specific responsibility of willful violation of a trade secret of an employee includes a warning, reprimand, or dismissal under Article 192 of *Labor Code of the Russian Federation*, 2002. The nature and quantum of Liability of an employee for the

[49] *Id* Article 14.
[50] *Id* Article 1472.
[51] Rylskaya M.,*Liability for Violating the Rights of the Owner of a Trade Secret*, TRANSPORTNOE DELO ROSSII, No. 12, at 106,(2011) http://elibrary.ru/item.asp?id=19052220 (in Russian).
[52] Article 1252, *Civil Code of the Russian Federation*, 1996.

damage caused to an employer include restitution and cost. The financial liability of employees for trade secret infringement is limited to non-received income and loss of profit. The quantum of damages extends to the actual loss of the employer's property, including the property of third parties. Thus the employee is responsible for the real damage inflicted on the employer and for the damage caused by damage restitution to other parties.[53]

The Russian labor law is not flexible enough to ensure adequate protection, which foreign investors may expect because it is limited to direct actual damages incurred [Sirota, 2013]. The extent of the financial liability of employees is not infinite but limited to their average monthly wage. Article 242 of the *Labor Code of the Russian Federation*, 2002, uses the term full responsibility of an employee, which is understood to be his liability to compensate for the caused damage at full scale as per his financial soundness. It is also subject to the reasonableness test of other federal laws. The Plenary Session of the Supreme Court of the Russian Federation on the Application of the Labor Code of the Russian Federation Resolution No. 2 of Mar. 17, 2004, resolves for the termination of an employee for the infringement of commercial secrets, trade secrets, and other types of mystery protected by law.[54]

C. **Russian Federation Law on Trade Secrets, 2006:** The Russian Federation Law on Trade *Secrets*, 2006 applies to information comprising production secrets under the regime of trade secrecy.[55] Legally speaking, the concepts of "production secret" and "trade secret" are not the same and performs separate functions in the production and sales of the business. The trade secret can be considered as a gene, whereas the production secret is species of in the trade secrecy cycle.[56] The legislative endeavor aimed at preserving secrecy and the source of the trade Secrets Law. The trade secret should identify the information and access procedures of the data. The legal redressal of violation of both

[53] Article 238, *Labor Code of the Russian Federation*, 2002.
[54] *Labor Code of the Russian Federation Resolution No*. 72 of Mar. 17, 2004.
[55] Article 3(1), *Russian Federation Law on Trade Secrets*, 2006.
[56] Betrov D.M.,*Trade Secrets and Production Secrets: New Aspects of Legislation*, VESTNIK URFO,No. 2, at 13(2011), http://elibrary.ru/item.asp?id=17321314 (in Russian).

types of the secret has to be clarified *ab initio.* Failing which the court of law will not be a comfortable position to protect the intellectual property rights *vis-a-vis* award of compensation and damages. An unjust enrichment lawsuit against the defendant requires claiming of the misappropriated trade secrets.The court generally dismisses the claim on the ground that the plaintiff had not instituted a secrecy regime against third parties, and the impugned trade secrets are generally known. In light of the decided case by the district court in one of the Russian provinces in 2011, one may safely conclude that the *animus* and *corpus* of trade secret ownership are *sine quo non* for resolution of intellectual property dispute.[57] At the same time, it should not mean that the freedom of declaration of kind of trade secret is at the sweet will of the plaintiff.

The Russian statutory and case law discerns that the court applies intelligible criteria to see a trade secret is trade secret, other secret or production secret. The Civil Code and Trade Secrets Law taken together lays down broader principles of liability for protection of trade secret and prevention of infringement. Thus the violation of trade secret rights attracts disciplinary, punitive, and criminal action under the civil law as well as criminal law of Russian federation.[58]

V. Trade Secret Laws In India

The trade secrets law in India spread to contract, competition, innovation, and intellectual property laws.[59] It also shares the territories of common law doctrines of trust, equity, tort, and criminal law. The varied nature of trade secret based on intellection and innovation, non-disclosure agreements, non-compete clauses, and *reverse engineering*.[60] There is no specific law in India

[57] Zinkovsky M., *If an Employee Misappropriated Production Secrets (Know-How): The Five Most Pressing Issues*, TRUDOVYE SPORY, No. 12, 40–50, (2011)http://mazinkovsky.ru/sekrety-proizvodstva (in Russian).

[58] Article 14, Criminal Law of Russian Federation

[59] Nomani M.Z.M., *Components and Contours of Trade Secret and Innovation Management Laws: Some Parahelion Limitations for Intellectual Property Rights. Intellectual Property Rights in India, In O. N. Tiwari (Ed.),* RADHA PUBLICATIONS, NEW DELHI,126-137 (2013).

[60] Nomani M.Z.M., Ahmed Z., Faiyaz T., Khan S.A., Lone A.A.,*Legal and Judicial Policy for Trade Secret Protection in India*JOURNAL OF XI'AN UNIVERSITY OF

that protects Trade Secrets and Confidential Information. The Delhi High Court has dwelt on the contours of the trade secret in *American Express Bank Ltd. v. Priya Puri*.[61] The court succinctly defined trade secret to mean as formulae, technical know-how or a method of business, and information assets. Indian courts have adopted the doctrine of precedent under Article 141 of the *Constitution of India*,1950, and followed the common law system. Therefore, it is not surprising the courts have frequently resorted to principles of equity, the action of breach of confidence, and contractual obligations provided under colonial law of *Indian Contract Act* 1872 to protect the trade secret.

A. Trade Secrets under Contract Law: The protection of Trade Secret governed under Common Law remedy of restraint of trade under Section 27 of the *Indian Contract Act* 1872. It enunciates that 'every agreement by which anyone restrained from exercising a lawful profession, trade or business of any kind, is to that extent void.' The saving clause lays down a specific exception to the agreement not to carry on the business of which generally includes the sale of good-will and passing of partnership interest. These exceptions are pertinent concerning trade secret law. A 148 years old code is still applicable despite the fact the trade in India has developed by no leaps and bounds. Realizing this reality, the *Law Commission of India* in 1958, *i.e.,* 62 years back, recommended the addition of '… except in so far as the restraint is reasonable having regard to the interest of the parties to the agreements and of the public' to Section 27. The recommendation creates grounds for reasonable restraint on the right to carry on trade and promotion of trade secret law in India. The judicial policy for trade secrets revolves around the interpretation of non-disclosure agreements (NDAs), Non-Compete Clauses, and Restraint under Contract law in a holistic manner. In *Brahmaputra Tea Co v E. Scarth*[62] examined that restrain of the servant

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[61] *American Express Bank Ltd. v. Priya Puri,* (2006) IIILLJ 540 Del

[62] *Brahmaputra Tea Co v E. Scarth,* (1885) ILR 11 Cal 545.

from competing for five years after the period of service. The Calcutta high court, the court observed:

> Contracts by which persons are restrained from competing after the term of their agreement is over, with their former employers within reasonable limits, are well known in English law. The omission to make any such contract an exception to the general prohibition contained in Section 27 indicates that it was not intended to give them legal effect in this country.

The principles were approved by the Supreme Court in *Niranjan Shanker Golikari v. Century Spinning & Manufacturing Co. Ltd.*[63] to the effect that the company shall maintain the secrecy of all the technical information corresponding to secrecy arrangements from employees.

B. Remedies For Trade Secret Violations: Justice Shelat held that a master is not entitled to restrain his servant after the termination of employment from offering competition, but he is entitled to reasonable protection against exploitation of trade secrets. The *Zee Telefilms Ltd. v. Sundial Communications Pvt. Ltd.*[64] clarified that obligation of trust is not limited to the original recipient but also extends to those persons who received the information with knowledge in confidence. In *American Express Bank Ltd*. v. *Priya Puri*, the Delhi High Court held that the details of customers do not constitute trade secrets, nor they are intellectual property because the entire object behind its secrecy is its utility. Hence, a trade secret has to be utilitarian in nature. In *Homag India Pvt. Ltd. v.Ulfath Ali Khan*,[65] the Karnataka High Court, ruled that the post-service restraint in maintaining the confidentiality and also carrying on any other business for a limited period is permissible under the exception to Section 27 of the Contract Act. Indian Contract law subscribes to breach of contract and confidence by restitution, damages,

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[63] *Niranjan Shanker Golikari v. Century Spinning & Manufacturing Co. Ltd.*1967 AIR 1098, 1967 SCR (2) 378.

[64] *Zee Telefilms Ltd. v. Sundial Communications Pvt. Ltd*, 2003 (5) Bom CR 404, 2003 (3) MhLj 695, 2003 (27) PTC 457 Bom.

[65] *Homag India Pvt. Ltd. v. Mr. Ulfath Ali Khan,2012*; M.F.A.No.1682/2010 C/W M.F.A.No.1683/2010 (CPC).

and injunction. An action in trade secret would follow that there is confidential information under a fiduciary relationship with the potential threat of disclosure to public knowledge. Sir Robert Megarry in *Thomas Marshall* v. *Gunile*[66] weighed the balance of convenience by active consideration of the disastrous impact and real truth for injunctive relief and damages on the market value of the confidential information. Thus the notion of confidentiality necessitates that the trade secrets are protected forever to be a secret.

C. **Trade Secrets & Innovation Law:** India drafted a `Sui Generis' system in the draft National *Innovation Act,* 2008 for trade secrets protection in compliance with the *Paris Convention,* 1967 and *TRIPS Agreement*,1995.[67] The draft *National Innovation Act,* 2008, to boost research and innovation. The draft Act proposed a three-pronged approach of an Innovation support system by the public, private or public-private partnership, a National Integrated Science and Technology Plan and codification and consolidation of trade secret and innovation laws It is analogous the TRIPs Agreement 'Trade Secrets' is referred to as 'Undisclosed information' hence Section 2(3) of the *Indian Innovation Bill,* 2008, which defines "Confidential Information" as:

> Confidential Information means information, including a formula, pattern, compilation, program device, method, technique or process, that: (a) is secret, in that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within circles that generally deal with the kind of information in question; (b) has commercial value because it is secret and (c) has been subject to responsible steps under the circumstances by the person lawfully in control of the information, to keep it secret.

[66] *Thomas Marshall* v. *Gunile*, 1978 IRLR 174; [High Court of Chancery Division].

[67] Nomani M.Z.M.,*Environment Agriculture and Challenges of Bio-Piracy: A Blue Print of Indian Sui Generis Legal Order*, INDIAN JOURNAL OF ENVIRONMENTAL LAW, Vol. 1, No. 2, 3-22 (2000).

The trade secret and confidential information have been outlined in a new Chapter that envisions maintaining confidentiality. According to the draught statute, these provisions are based on contractual agreements, terms and conditions, government recommendations, as well as any rights arising from inequity and sustained by mandatory damages and preventive measures. It imposes the onerous responsibility for confidentiality in a contractually carved out terms and conditions. The rights and obligations neatly spelled to maintain a high degree of confidentiality of information assets and prevention of misappropriation of trade secrets. The confidentiality dimensions encompass from non-contractual to equitable relationships for due maintenance of trade secret rights under the intellectual property and innovation laws of India.

D. Codification of Indian Trade Secret Laws: Indian Trade Secrets protection regime spread over to one and a half-century by reeling under a nascent stage. The sophistication of intellectual property laws poorly illuminated the trade secret regime. In the wake of global codification drive and TRIPS compliance,no special legislation codifying the principles of trade secret law is visible. India's *National IPR Policy*, 2016[68] ensures a practical legal and legislative framework for the protection of IPRs, identification of future policy development, and security of trade secrets.[69] In the *International IP Index*, 2017 released by the U.S Chamber of Commerce, India was ranked 43 out of 45 countries in terms of the IP regime existing in the said countries. Therefore, the United States Trade Representative (USTR), 2017, in "Special 301" Report placed India on the Priority Watch List on the ground of outdated and insufficient trade secrets legal framework. It is high time that the Parliament should introduce supplementary provisions in *Competition Act,* 2002, and allow draft *National Innovation Act,* 2008 to the statute book.[70] The *Indian Penal Code,* 1860, may suitably amend

[68] Nomani M.Z.M., *Legal Dynamics of India's Science Technology & Innovation Policy 2013 & Intellectual Property Policy 2016,* MANUPATRA INTELLECTUAL PROPERTY REPORTS, Vol. 3, No. 2, 19-25 (2017).

[69] Para 3.8.4, *National IPR Policy*, 2016.

[70] Nomani, M.Z.M., Ahmad Z., Rauf M. *Role of Trade Secret Protection Laws In The Development Of Indo-Brazilian Bilateral Trade & Investment.* INTERNATIONAL JOURNAL OF LAW, Vol.5, No.5,20-24 (2019).

to contain provisions on the misappropriation of a trade secret under counterfeiting of goods and services and criminal breach of trust.[71] Provisions on Confidential Information and Trade Secrets should be included in the main corporate legislation, the Companies Act, 2013, as well. In addition to protecting confidential information, India needs a statutory legislation on this topic to control how it is used and transferred in the context of the country's globalised economy, the entrance of multinational firms, and foreign direct investment.[72]

VI. Trade Secret laws in China

Trade secrets defined in China as technical or operational information that is not known to the public and carry immense economic value and practical applicability. It is subject to confidentiality, and the owner of a trade secret is supposed to take adequate measures for the secrecy regime. The Chinese trade secrets law contains a multiplicity of statutes ranging from civil law, criminal law, contract law, labor law, and company law.[73]

A. Civil Procedure Law: The Civil Procedure Law, 1991, lays down the procedure for the trade secrets in civil proceedings.[74] Article 66 envisages that evidence shall be presented in court and cross-examined by the parties concerned. But evidence that involves State secrets, trade secrets, and personal privacy shall be kept confidential. The evidence of the breach of trade secret confidentiality exempted from presentation in an open court session. Article 91 explores the possibility of the resolution of trade dispute through conciliation proceeding under the *Civil Procedure Law*, 1991. The provision lays down that 'if no agreement reached through conciliation or if either

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[71] Nomani M.Z.M.,*Application of Trade Secret Law in Plant Variety Protection in India,* MANUPATRA INTELLECTUAL PROPERTY REPORTS, Vol. 2, No.1, 41-156 (2018)

[72] Nomani M.Z.M., Raj A.A., *Legal Implication Of 'Make In India' Initiative In The Context Of Intellectual Property & Fiscal Norm,* MANUPATRA INTELLECTUAL PROPERTY REPORTS,Vol.2, No.4, 83-100 (2016).

[73] Chow D.C.K., Navigating the Minefield of Trade Secrets Protection in China. *Vanderbilt Journal of Transnational Law*, Vol. 48(2014).

[74] Arts. 66 & 120, *Civil Procedure Law*, 1991

party backs out of the settlement agreement before the conciliation statement, the people's court shall render a judgment without delay.' Article 120 prescribes that as a general principle, the civil cases except for those that involve State secrets or personal privacy or are subject to litigation under the law.[75]

B. Chinese Criminal Law, 1997: The Chinese Criminal Law, 1997 considers misappropriation of trade secrets by illegal acquisition, disclosure of secret, breach of confidentiality, and revelation by a third party a crime. There is a two-tier mechanism of 'serious losses' and 'exceptionally serious' losses due to infringement of trade secret.[76] The misappropriation, which causes serious losses to a trade secret owner, will be punished by imprisonment of three to seven years and a fine. It protects 'commercial secrets' having practical technical and managerial information which is unknown by the public and eventually brings economic profits to 'the person who enjoys the rights' of a commercial secret.[77] The Supreme People's Court has interpreted the terms of "serious" or "exceptionally serious'[78] contained under Article 219 of the *Chinese Criminal Law*, 1997 by setting its equivalence to losses over 500,000 yuan (about US$80,000) are "serious losses," while losses over 2,500,000 yuan are "exceptionally serious losses.[79] The police have enormous power, including the ability to seize any relevant evidence for the criminal prosecution and enforcement of the trade secret besides using it as evidence in administrative or civil litigation. [80]

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[75] Zheng, H.R. 1986. China's New Civil Law. THE AMERICAN JOURNAL OF COMPARATIVE LAW, Vol. 34, No 4, 669-704 (1995)

[76] Dobinson I., *The Criminal Law of the People's Republic of China (1997): Real Change or Rhetoric*, PACIFIC RIM LAW & POLICY JOURNAL, Vol.11, No.1, 1-62 (2002)

[77] Article 219, *Chinese Criminal Law*, 1997

[78] Dingjian C., *China's major reform in criminal law, COLUMBIA JOURNAL OF ASIAN LAW,* Vol.*11, 213*–18, (1997).

[79] Caixia S.,*The Establishment and Implementation of the Substantial Interpretation of Criminal Law,*CHINESE JOURNAL OF LAW, *2* 2007.

[80] Bai B.J., Da G.,*Strategies for Trade Secrets Protection in China*, NORTHWESTERN JOURNAL OF TECHNOLOGY & INTELLECTUAL PROPERTY, Vol.9, No.7, 351-364 (2011).

C. **Anti-Unfair Competition Law (AUCL), 1993:** The Chinese Anti-Unfair Competition *Law (AUCL)*, 1993, is a trade specific legislation.[81] It defines a trade secret to mean 'technical and operational information which is not known to the public, which is capable of bringing economic benefits to the owner of rights, which has practical applicability and which the owner of rights has taken measures to keep secret.[82]' The four ingredients of trade secret have been interpreted by Chinese courts to cover third-party liability for trade secret infringement. However, Chinese law sets a higher standard of burden of proof in the event of a breach. The trade secret owner can request enforcement intellectual property right under trade secret by the Administration for Industry and Commerce (AIC) to order the infringing party to stop the infringing acts, the return of stolen materials and information, destruction of any goods made with the trade secret, confiscation of the infringer's illegal income, revocation of the infringer's operating business license, and, the imposition of a fine of RMB10, 000 to RMB200, 000.[83] The AIC cannot award compensation, but administrative penalties being exorbitant act as a deterrent.

D. **Anti-Unfair Competition Law Amendment Law (AUCL), 2019:** The Chinese Anti-*Unfair Competition Law (AUCL)*, 1993, has undergone massive amendments and conferred substantial benefits to Trade Secret owners under *Anti-Unfair Competition Law Amendment Law (AUCL),* 2019. The salient features of the amending law encompass Broadening definition of the trade secret, enlargement of infringing activities,[84] fixing of liable for infringement[85], and reversal of the burden of proof.[86] The definition of trade secrets expanded beyond "technical information" and

[81] Chai Y., *The New Anti-Unfair Competition Law of the People's Republic of China* (2018).
[82] Article 10, *Chinese Anti-Unfair Competition Law (AUCL)*, 1993.
[83] *Id* Article 15.
[84] *Id* Article 9.
[85] *Id* Article 17 & 21.
[86] *Id* Article 32.

"operational information" to "other business information to foster trade secrecy regime. It created space for the "computer trespassing " in addition to theft, coercion, fraud, and bribery in the category of indirect infringement.[87] The Chinese courts have interpreted the new definition to encompass all "trade information" by any procedure and system of the companies within precincts of Article 9 of the *Chinese Anti-Unfair Competition Law (AUCL)*, 2019. The persistence of liability treaded beyond the "business operators" to non-business operators, including former employees and individuals and entities' liability for trade secret infringement. The new set of enhanced obligations made at par with patent infringement by increasing the cap on statutory damages from RMB 3 million to 5 million (approximately USD 740,000).it also introduced punitive damages in the amount of up to five times the regular damage award. The administrative liabilities and penalties prescribed the confiscation of illegal gains and increased the cap on administrative fines from RMB 3 million to 5 million through the Administration for Industry and Commerce. The *Chinese Anti-Unfair Competition Law (AUCL)*, 2019, brought radical changes for a vibrant trade secrecy regime in China.

E. Chinese Contract Law, 1999: The Chinese Contract Law, 1999, protects trade secrets under contractual negotiation and non-disclosure agreement. It provides compensatory damages in the anticipatory and executory contract.[88] The liability for the disclosure and improper use of trade secrets contained under Article 43 envisages as under:

> A party may not disclose or improperly use any trade secret, which it became aware of in the course of negotiating a contract, regardless of whether a contract is formed. If the party disclosed

[87] Tao Q., Geng H., *A Study On The Application Of The General Clause Of The Anti-Unfair Competition Law In China In The Age Of The Internet. In Fairness, Morality and Ordre Public in Intellectual Property,* EDWARD ELGAR PUBLISHING (2020).

[88] Matheson J.H., *Convergence, Culture and Contract Law in China, MINNESOTA JOURNAL OF INTERNATIONAL LAW*, Vol.15, No.2, 329-382 (2006).

or improperly used such trade secret, thereby causing loss to the other party, it shall be liable for damages.

The *Chinese Contract Law,* 1999 also regulates technological know-how and technology transfer by licensing agreement for competition and development. [89]

F. *Chinese Labor Law,* 1995: The *Chinese Labor Law,* 1995, under the contract of employment[90] entails that for the confidentiality agreement with employer's trade secrets.[91] Such a deal shall terminate on breach of the contract by the parties, which include confidentiality breach under the employer's trade secrets and other intellectual property on employees.[92] The violations of labor contract and abuse of the confidentiality agreement leading to losses to the employer to be compensated by damages.[93] The *Chinese Company Law*, 2006 prohibits disclosure of the company's secrets by directors, supervisors, and senior managers during employment. [94] The corporate governance law cast liability on the directors or managers by payment of damages and compensation.[95]

VII. Trade Secret laws in South Africa

South Africa protects under the common law system like India, without any specific legislation. It protects information as a duty of confidence by a non-disclosure agreement. The disclosure of such information amounts to a breach of confidence and an injunction by the courts. Unlike other forms of intellectual property such as patents, copyrights, and trademarks, trade secrets are often a do-it-yourself form of protection.[96]

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[89] Article 343, *Chinese Contract Law,* 1999.
[90] Cooney S., *China's Labour Law, Compliance and Flaws In Implementing Institutions,* JOURNAL OF INDUSTRIAL RELATIONS, Vol.49*,* No.5, 673-686 (2007).
[91] Article 22, *Chinese Labor Law,* 1995.
[92] *Id* Article 23.
[93] *Id* Article 102.
[94] Tomasic, R., *Company Law and Limits of the Rule of Law in China*. AUSTRALIAN JOURNAL OF CORPORATE LAW, Vol.4,470-487 1995).
[95] Article 150, *Chinese Company Law*, 2006.
[96] Jorda K.F. *Patent and Trade Secret Complementariness: An Unsuspected Synergy*, WASHBURN LAW JOURNAL, Vol.48, 1-32 (2008).

A. **General Delictual & Contractual Principles:** There is no registration with a government or regulatory authority, and the basis of protection relies on your ability to keep the information confidential. The South African trade secrets law based on the application of general delictual and contractual principles. The delictual wrongfulness of trade secret misappropriation constituted by an infringement of the right to the trade secret. The patrimonial loss caused by both intentional and negligent infringement of trade secrets should be actionable under the *actio legis aquiliae*. The wrongful trade secret infringements beyond unlawful competition and fiduciary relationships prevented by an interdict. The misappropriation of trade secrets is *prima facie* wrongful under the laws of South Africa.[97] The trade secret protection in South African law besides common law system of governance *Trade-Related Aspects of Intellectual Property Rights Agreement*, 1995 compliant being a signatory nation. Since the South African courts follow the doctrine of precedent, it recognized the confidential information through the case law such as *Schultz v. Butt*,[98] *Strike Productions (Pty) Ltd v. Bon View Trading (Pty) Ltd,[99] and Meter Systems Holdings Ltd v. Venter(1993).*[100] By way of an exception, the court ruled that in the post-termination of employment, the publication of trade secrets may not be considered wrongful in the public interest.

B. **Restraint Clause & Non-Disclosure Agreement:** The misappropriation of trade secrets controlled by non-disclosure agreement under the restraint of trade clauses and enforced in *Reddy v. Siemens Telecommunications*.[101]Such restraint of trade agreement clause forbids from breach of confidential information during his

[97] Neethling J., Rutherford B.R.,*Competition*, *inThe Laws Of South Africa,* in L.T.C. Harms & J.A. Faris eds., 2d ed., 2, 195, 267 (2003).
[98] *Schultz v Butt (327/84) [1986] ZASCA 47.*
[99] *Strike Productions (Pty) Ltd v Bon View Trading 131 (Pty) Ltd and Others (10/21704) [2011] ZAGPJHC 1 (20 January 2011).*
[100] *Meter Systems Holdings v Venter* 1993 (1) SA 409 (W).
[101] *Reddy v Siemens Telecommunications (Pty) Ltd (251/06) [2006] ZASCA 135*

employment.[102] In *Wespro (Cape Town) v. Stephenson*,[103] ruled that any employee who breaches fiduciary duty will quit employment under the term of his job.[104] The enforcement of restraint of trade agreements and confidentiality clauses is subject to constitutional propriety and fundamental freedom contained under Articles 8 and 36 of the *South African Constitution*, 1996 besides judicial policy of reasonableness, public policy, and interest as laid down in *Basson v. Chilwan*.[105]

C. **Unlawful Competition & Rival Interest:** The recognition and determination of illegal competition and competing interest governed by the Roman law principle under *aquilian action doctrine*. The belief was followed under *Premier Hangers CC v. Ployoak (Pty) Ltd*[106] (1997) to forbid the competition involving wrongful interference, injury, and damages. the Supreme Court of South Africa in *Dun and Bradstreet (Pty) Ltd v. S.A. Merchants Combined Credit Bureau (Cape) Ltd*, 1968 held as under:

[w]here a trader has by the exercise of his skill and labour compiled information which he distributes to his clients upon a confidential basis, . . . a rival trader who is not a client but in some manner obtains this information and, well knowing its true nature and the basis upon which it was distributed, uses it in his competing business, commits a wrongful act vis-à-vis the latter and will be liable to him in damages. In an appropriate case, the plaintiff trader would also be entitled to claim an interdict [injunction] against the continuation of such wrongful conduct.[107]

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[102] Kerr A.J., *The Principles of The Law of Contract*. BUTTERWORTH-HEINEMANN, (1998).
[103] *Wespro* (*Cape Town*) *v Stephenson*. Steyn AM. (1995) 16 ILJ 452 (IC).
[104] Grogan J. *Collective Labour Law,*JUTA AND COMPANY LTD.(2007).
[105] *Basson v Chilwan and Others (332/1991) [1993] ZASCA 61; 1993 (3) SA 742 (AD).*
[106] *Premier Hangers CC v* Polyoak (*Pty*) *Ltd* (522/94) 1996.
[107] *Dun and Bradstreet (Pty) Ltd v. S.A. Merchants Combined Credit Bureau (Cape) Ltd*, 1968 *1968*(1) *SA*. 209(C).

The *Prok Africa (Pty) Ltd. v. NTH (Pty) Ltd* (1980) followed the above ruling wherein the Witwatersrand Local Division held as under:

> [T]he fraudulent use of confidential information is a species of unlawful competition or unlawful interference with the trade of another which our laws will not countenance. The trader's remedy is Aquilian. In principle, there is no reason for limiting the scope of this type of action by conferring it only upon the owner of the confidential information. The wrong upon which the remedy lies is not an invasion of rights of property. The injustice is the unlawful infringement of a competitor's right to be protected from illegal competition. If A is in lawful possession of the confidential information of B and such property was obtained by A to further his business interests, it would be a wrong committed against A for C, a trade rival of A, to get that information by dishonest means from A to use it the to the detriment of the business of A. That it might also be a wrong committed against B is another matter. Once there is dishonest conduct of the type just posited, and loss or damage suffered thereby to the person against whom the wrong has been committed, the requisites for Aquilian liability are present. [108]

Thus the application of the Roman law principle under *aquilian action* doctrine deduces that unlawful competition and trade rivalry redressed by injunction, damages, and equitable remedies on independent evidentiary thresholds.

D. **Interdict and Aquilian action:** The South African trade secrets law offers a variety of remedies, most notably injunction (interdict) and *Aquilian action*. An injunction requires the manifestation of "well-founded apprehension" about the commission of unlawful conduct. An *Aquilian action* requires proof of damages and causation for the breach of fiduciary responsibility and contractual term in civil law and tort. In *Waste Products Utilization (Pty) Ltd v. Wilkes* (2003),[109] ordered that an allegation of a breach against a former employee would involve a determination as to whether the information involved is a trade secret or other confidential information. If the

[108] *Prok Africa (Pty) Ltd. v. NTH (Pty) Ltd* (1980) *1980* (3) SA 687 (W).
[109] *Waste Products Utilization (Pty) Ltd v. Wilkes* (2003) 2003 (2) SA 515 (W).

information is indeed a trade secret, the former employer may seek an injunction and damages. In *Strike Productions (Pty) Ltd v. Bon View Trading 131 (Pty) Ltd* (2011),[110] the court ruled that the evidence of vested and contingent interest in confidential information must be compelling. It is condition precedent for an injunction and award of damages. Therefore, the claimant needs to prove vested and contingent interest in violation of confidential information and fiduciary relationship.

VIII. Conclusion & Summation

The intellectual property regime in trade secrets protection is undergoing constant refinement and renovation under BRICS countries. The international intellectual property laws have attained maturity and sophistication, but the pace and development of legislative reform in BRICS countries is slow. The trade and development of these countries are formidable in the world. Still, the trade secret protection is reeling under a nascent stage over to one and half-century legislative history. The competitiveness and innovation always go along with; therefore, the need for the vibrant regime of the trade secret is the need of hour no special legislation codifying the principles of trade secret law is visible. The onset of the TRIPS Agreement and WTO ordains consolidation and unification of trade secret laws to usher new heights in liberalization privatization and globalization among the BRICS countries. The United States, as the giant trading country, expects that all trading partners provide robust protection for trade secrets and enforce trade secrets laws. The strengthening of the trade secret regimes needs a concerted effort in the light of two studies of the *Organization for Economic Co-operation and Development (OECD)* in 2014. The first OECD study surveyed legal and institutional mechanisms for the legal protection of trade secrets available in a randomized sample of countries across all continents. In line with the OECD guidline, the *Asia-Pacific Economic Cooperation's (APEC)* adopted the 'Best Practices in Trade Secret Protection and Enforcement against Misappropriation in 2016.' It serves as the benchmark of the secret trade piracy, civil and criminal liability, enforcement and institutional mechanism, and efficacy of non-

[110] *Strike Productions (Pty) Ltd v. Bon View Trading 131 (Pty) Ltd* (2011) (10/21704) [*2011*] ZAGPJHC 1.

disclosure agreements to be replicated in member countries. Therefore in varying cultural-specific and political climate of the BRICS countries, new scales of trade of secret protection laws and policies are of utmost necessity in the contemporary scenario.