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DISCLOSURE WITHOUT PROTECTION: A CRITICAL STUDY OF IDEA MISAPPROPRIATION PRIOR TO IPR REGISTRATION

~ Tanisha Chauhan

ABSTRACT

Commercial ventures seldom begin with a registered right. They begin with an idea, and that idea must be disclosed to investors, collaborators, manufacturers and prospective licensees long before any statutory protection can be secured. This produces a structural paradox: the very act that renders an idea commercially viable also exposes it to misappropriation, while intellectual property law, in its orthodox form, declines to protect ideas as such. This blog examines the legal position governing the pre-registration window and argues that it is secured by a fragile patchwork of equitable and contractual doctrines rather than by any coherent statutory scheme.

THE IDEA-EXPRESSION DICHOTOMY

Copyright protects expression, not ideas. In *R.G. Anand v. Delux Films*, the Supreme Court of India affirmed that there is no copyright in an idea, subject matter, theme or plot; protection attaches only to the form in which it is expressed.¹ Section 13 of the Copyright Act, 1957 likewise confers protection upon original works, not upon the conceptions that underlie them.² Patent law is no more generous during this period. An invention must be novel, and a premature disclosure, whether by publication or by communication to another person, may anticipate the invention and defeat a subsequent application.³ The pre-registration innovator is therefore caught between two risks: silence forfeits commercial opportunity, while disclosure may forfeit legal protection.

BREACH OF CONFIDENCE AS THE PRINCIPAL REMEDY

In the absence of a statutory right, courts have turned to the equitable doctrine of breach of confidence. The English formulation in *Saltman Engineering*, later refined in *Coco v. A.N.*

¹*R.G. Anand v. Delux Films*, (1978) 4 S.C.C. 118 (India).

²Copyright Act, 1957, § 13, No. 14, Acts of Parliament, 1957 (India).

³Patents Act, 1970, §§ 29–34, No. 39, Acts of Parliament, 1970 (India).

Clark, requires that the information possess the necessary quality of confidence, that it be imparted in circumstances importing an obligation of confidence, and that it be used without authorisation to the detriment of the confider.⁴ Indian courts have embraced this reasoning. In *John Richard Brady v. Chemical Process Equipments P. Ltd.*, the Delhi High Court restrained the use of confidential technical information relating to a fodder-drying machine.⁵

Of greater significance for pure concepts are *Anil Gupta v. Kunal Dasgupta* and *Zee Telefilms Ltd. v. Sundial Communications Pvt. Ltd.*, in which the High Courts of Delhi and Bombay held that an idea, once developed into a concrete and original form and disclosed in confidence, may be protected against unauthorised exploitation.⁶ These decisions are salutary, yet they leave the doctrine contingent. The claimant bears the burden of proving a confidential relationship, the originality of the concept and its elaboration beyond a mere notion; once the information enters the public domain, the obligation lapses. Moreover, India has no dedicated trade secret statute, notwithstanding Article 39 of the TRIPS Agreement, which obliges Members to protect undisclosed information against dishonest commercial practices.⁷ Remedies are consequently fashioned case by case, with attendant unpredictability for commercial actors.

CONTRACTUAL SAFEGUARDS AND THEIR LIMITS

Contract therefore assumes primacy. A carefully drafted non-disclosure agreement defines the confidential information, restricts its permitted use and supplies a measure of damages under Section 73 of the Indian Contract Act, 1872. Its enforceability is nonetheless bounded by Section 27, which voids agreements in restraint of trade; overbroad post-termination restrictions are thus vulnerable, although negative covenants operating during the subsistence of the relationship have been upheld.⁸ Comparative jurisprudence is instructive. In *Desny v. Wilder*, the California Supreme Court recognised an implied-in-fact contract where an idea is submitted on the understanding that payment will follow its use.⁹ Indian law has no settled analogue, leaving the disclosing party without recourse where no express agreement exists.

A graver difficulty is practical rather than doctrinal. Start-ups and independent inventors rarely command the bargaining power to compel a prospective investor or corporate counterparty to execute a non-disclosure agreement, and many institutional investors refuse to do so as a matter

⁴*Saltman Eng'g Co. v. Campbell Eng'g Co.*, (1948) 65 R.P.C. 203 (Eng. C.A.); *Coco v. A.N. Clark (Eng'rs) Ltd.*, [1969] R.P.C. 41 (Ch.).

⁵*John Richard Brady v. Chem. Process Equipments P. Ltd.*, A.I.R. 1987 Delhi 372 (India).

⁶*Anil Gupta v. Kunal Dasgupta*, 2002 (25) P.T.C. 1 (Del.) (India); *Zee Telefilms Ltd. v. Sundial Commc'ns Pvt. Ltd.*, 2003 (27) P.T.C. 457 (Bom.) (India).

⁷Agreement on Trade-Related Aspects of Intellectual Property Rights art. 39, Apr. 15, 1994, 1869 U.N.T.S. 299.

⁸Indian Contract Act, 1872, §§ 27, 73, No. 9, Acts of Parliament, 1872 (India); *Niranjan Shankar Golikari v. Century Spinning & Mfg. Co.*, A.I.R. 1967 S.C. 1098 (India).

⁹*Desny v. Wilder*, 299 P.2d 257 (Cal. 1956).

of policy. The law presumes parity of negotiation in precisely those transactions where none exists.

A CRITICAL APPRAISAL AND THE WAY FORWARD

The present framework places the burden of self-protection upon the party least equipped to bear it. Three measures merit consideration. First, innovators should adopt tiered disclosure, revealing only what is necessary at each stage of a transaction and withholding enabling detail until commitments are secured. Second, a provisional specification may be filed to establish an early priority date without publicly disclosing the complete invention.¹⁰ Third, and most fundamentally, legislative reform is overdue. The Law Commission of India has recommended a statutory framework for the protection of trade secrets, which would furnish certainty, codify remedies and align domestic law with international commitments.¹¹

Until such reform materialises, disclosure in India remains an act of calculated risk. An idea is not property in the eyes of the law, yet it is the foundation of commercial value. Bridging that gap, through principled judicial development and decisive legislative intervention, is essential if the law is to reward innovation rather than the opportunism of those who receive it.

¹⁰Patents Act, 1970, § 9, No. 39, Acts of Parliament, 1970 (India).

¹¹Law Comm'n of India, Report No. 289, Trade Secrets and Economic Espionage (2024).