
PRESERVING THE FLAVOR: SAFEGUARDING INDIAN RECIPES UNDER THE PRESENT LEGAL REGIME

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ABSTRACT

Indian recipes, integral to the nation's culinary heritage, face significant challenges in terms of legal protection under existing intellectual property frameworks. Despite their cultural and commercial importance, recipes lack dedicated safeguards, leaving them vulnerable to exploitation and unauthorized disclosure. This paper explores the current legal landscape surrounding recipe protection in India and proposes strategies to address these gaps. By examining the limitations of patent, trademark, and copyright law, as well as the potential for trade secret protection, the paper highlights the urgent need for legislative reform to safeguard recipes and uphold the interests of creators. Drawing inspiration from international models, particularly the comprehensive trade secret legislation in the United States, the paper offers recommendations for enhancing recipe protection and preserving India's rich culinary heritage.

Keywords: Trade Secret, Recipe, Non- Disclosure Agreements

INTRODUCTION

Recipes in India hold a venerable position, intricately woven into the fabric of tradition, taste, and commerce. Across the diverse culinary landscape of the nation, recipes embody the essence of regional flavors, techniques, and cultural heritage. These culinary treasures not only define the identity of communities but also serve as a cornerstone of economic activity, driving the success of countless businesses. However, despite their profound significance, the realm of Indian recipes faces a glaring gap in protection under intellectual property law. This absence leaves these invaluable assets vulnerable to exploitation and unauthorized disclosure, posing significant challenges for businesses seeking to safeguard their culinary secrets and maintain a competitive edge in the market.

PROTECTION OF RECIPES IN INDIA

Dal Makhani and Butter Chicken are not just dishes; they symbolize the heart and soul of Indian cuisine, resonating with cultural significance and global appeal. Yet, a recent legal battle between Moti Mahal and Daryaganj in Delhi, notably under the case of *Rupa Gujral & Ors vs Daryaganj Hospitality Private Limited*¹, has cast a shadow over their origins. This dispute revolves around the alleged misattribution of these iconic recipes, with Moti Mahal accusing Daryaganj of falsely claiming credit for their invention. This legal showdown not only underscores the complexities surrounding recipe ownership but also raises pertinent questions about the adequacy of intellectual property protection in India's culinary landscape. As this debate unfolds, it sparks a critical reassessment of existing legal frameworks, emphasizing the urgent need to safeguard the rights of innovators and uphold the authenticity of treasured culinary creations.

The existing legal regime in India needs to adequately protect recipes due to limitations within patent, trademark, and copyright law.

1. In patent law, recipes must meet the novelty criteria outlined in Section 3 of the Patents Act, of 1970. Section 3 (e) specifies that a mere admixture resulting only in the aggregation of component properties or a process for producing such a substance may not qualify for patent protection.² Therefore, creators must demonstrate that their recipe

¹ Rupa Gujral & Ors vs Daryaganj Hospitality Private Limited CS(COMM) 26/2024

² Patents Act, 1970, § 3

represents a novel invention not commonly known to the public and one that serves a broader public interest. However, the challenge arises as the mere mixing of known substances may not meet the novelty standard. Additionally, patents are granted for a limited period, typically 20 years, after which the recipe or process may become accessible to the public, allowing competitors to enter the market and impact the original creator's sales and profits.

2. Under the Trade Marks Act of 1999, individuals can protect a mark under which they sell a product. However, this protection does not extend to preventing others from replicating the same recipe. For instance, a company like Domino's can restrict others from selling pizza under its brand name but cannot prevent others from creating and selling pizza under a different mark. Similarly, a person can get a trademark for the name of a dish name but others can sell the same dish under any other name. It is to be noted that a trademark can be obtained on non-conventional aspects of the business such as decor, cutlery but not the recipe itself. For instance, In a landmark case, *ITC v. Central Park Estates*³, the Delhi High Court ruled that "BUKHARA" qualifies as a well-known trademark. The renowned conglomerate ITC established the 'Bukhara' restaurant in the late 1970s and secured trademark registrations for the Bukhara logo and word marks in 1985. Notably, the restaurant boasts a distinctive decor, wooden menus, and a unique staff uniform. In the case, the defendant opened a restaurant named Balkh Bukhara, replicating several features of ITC's Bukhara. As a result of the court's decision, the defendant was restrained from using menu designs, uniforms, and cutlery resembling those of ITC's Bukhara.
3. Within the framework of the Copyrights Act of 1957, individuals can obtain protection for their recipes and receive acknowledgment for their creative work. For example, in the case of cookbooks, copyright laws safeguard the literary and artistic content, giving chefs exclusive rights over sales, distribution, and translations. However, tastes cannot be protected as trademarks due to the functionality principle, despite their importance in consumer association and culinary identity. Nevertheless, copyright protection does not grant the right to restrict others from making, selling, and profiting from the same

³ ITC v. Central Park Estates 2022 SCC OnLine Del 4132

recipe. This presents a limitation on the level of exclusivity that copyright law can provide for recipes.⁴

By examining these legal mechanisms, it becomes evident that they are inadequate for protecting recipes in India, as there is no provision exclusively designed for their protection. However, given the financial advantage associated with recipes and the emotional attachment of innovators or creators to their creations, it is imperative to establish safeguards for them. The existing legal frameworks fail to address the unique challenges posed by recipes, which often involve a combination of ingredients, processes, and culinary techniques. Without adequate protection, recipe creators are vulnerable to exploitation and unauthorized use of their intellectual property, which undermines their ability to benefit from their innovations and stifles further culinary creativity. Therefore, there is a pressing need for policymakers to recognize the importance of recipes and develop tailored mechanisms to ensure their protection, thereby fostering innovation and preserving the cultural heritage of Indian cuisine.

TRADE SECRETS OF RECIPES

A trade secret is “information, including a formula, pattern, compilation, program device, method, technique, or process that: (i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use, and (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.”⁵ When it comes to recipes, many chefs and individuals aspire to establish their culinary creations as unique and attributed to their names on a global scale. However, the reluctance to employ methods like patents or copyrights arises from concerns such as extensive information disclosure. Recipes are deeply personal, involving creativity, passion, and the desire for acknowledgment. The hesitancy to disclose intricate details through patent or copyright mechanisms stems from the simplicity of basic ingredients, where uniqueness lies in specific processes or quantities that define taste or appearance. Traditional protection methods may not be suitable, as they could lead to issues such as the recipe not meeting novelty criteria, public availability through publication, or limited protection durations.

⁴ *Protection of cuisine under Intellectual Property Law*. Available at: <http://op.niscpr.res.in/index.php/JIPR/article/viewFile/59568/465480918>

⁵ Uniform Trade Secrets Act, 1979, § 1

For creators, recipes hold sentimental and financial value and may find their way into restaurants, attracting a significant audience and becoming commercially profitable. To maintain exclusivity, founders often treat their recipes as trade secrets, similar to major corporations like Coca-Cola or Krispy Kreme Doughnuts. Notably, when inquiring about the secret behind a dish from a renowned food vendor, one often encounters the response that it involves a secret ingredient or a special blend of spices, keeping the true details undisclosed. However, this secrecy is perceived as vulnerable due to the absence of legal protection, making it easily accessible to others.

Identifying the true originator or creator of a recipe often proves challenging, resulting in a lack of proper credit and acknowledgment for the rightful innovator. An illustrative instance is observed in Delhi, where both Daryaganj and Moti Mahal assert to be the pioneers of butter chicken. The absence of clarity on the actual creator engenders confusion among the public, impeding the ability to garner profits and necessitating a persistent focus on advertising to establish originality. This ambiguity in attribution creates hurdles for the genuine originator in receiving the recognition they rightfully deserve. With a clear understanding of the true creator, businesses may find it easier to build a distinct identity, hampering their potential to capitalize on the unique appeal of their recipes. The ongoing challenge of establishing and maintaining authenticity further underscores the importance of addressing issues related to recognizing and acknowledging recipe creators.

TRADE SECRET PROTECTION

Given the limited legal protection for recipes, trade secrets emerge as a valuable avenue for safeguarding them. Several strategies can be employed to prevent the unauthorized transfer of recipes:

1. **Secure Storage:** Place the recipe in a highly secure environment, utilizing advanced protection measures to limit access.
2. **Restricted Knowledge:** Limit the number of individuals privy to the recipe, ensuring that only a select few know its intricate details.
3. **Departmental Division:** Divide the process of creating the recipe among different departments, ensuring that no single department possesses complete knowledge of the

entire recipe.

4. **Public Declaration as Trade Secret:** Publicly declare the recipe as a trade secret, emphasizing its confidential nature. In *Bombay Dyeing and Manufacturing Co Ltd v Mehar Karan Singh*⁶, the High Court of Bombay outlined criteria for information to qualify as a trade secret, emphasizing the importance of its secrecy. The assessment includes evaluating the external and internal knowledge of the information and scrutinizing the measures adopted by the employer to safeguard its confidentiality. For information to be considered a trade secret, it must be used in trade or business with restricted dissemination. Notably, information accessed by individuals due to their relationship with the owner may imply an inherent obligation of confidentiality, even without an explicit contractual provision. To establish this, it must be demonstrated that the information was not available to others and that the implied obligation aligns with the circumstances surrounding the communication. These conditions, coupled with the other criteria, determine the eligibility of information as a trade secret.

Even legal protection for recipes can be provided under the following provisions:

- A. **Non-disclosure contracts** serve as crucial instruments in safeguarding the confidentiality of recipe preparation processes, involving key contributors such as chefs, vendors, and cleaners. Section 27 of the Indian Contracts Act of 1872⁷ specifically addresses such agreements, binding parties involved to maintain the secrecy of proprietary information both during their employment tenure and beyond. A pertinent legal precedent, *John Richard Brady & Ors v Chemical Process Equipment P Ltd & Anr*⁸, emphasizes the protection of trade secrets based on equitable principles, highlighting the obligation of individuals to refrain from exploiting confidential information for unfair advantage.
- B. Complementing **non-disclosure agreements**, non-compete agreements are designed for employees, compelling them to refrain from engaging in activities that may compete with their former employer upon leaving the organization. This strategic measure is

⁶ *Bombay Dyeing and Manufacturing Co Ltd v Mehar Karan Singh* (2010 (112) BomLR 375)

⁷ Indian Contracts Act, 1872, § 27

⁸ *Richard Brady & Ors v Chemical Process Equipment P Ltd & Anr* AIR 1987 Delhi 372

enacted to shield the employer from potential information transfer that could be detrimental to the business.

- C. In the event of a breach, an aggrieved party can seek an **injunction order** from the court, effectively halting any activities that involve the dissemination of trade secrets or violation of contractual obligations. This legal remedy underscores the gravity of protecting sensitive information and serves as a deterrent against unauthorized disclosures.
- D. A **comprehensive trade secret policy** is another integral component, providing clear guidelines for employees to adhere to to maintain the confidentiality of proprietary information. Such a policy outlines the expectations and consequences, fostering a culture of awareness and responsibility among employees.

Together, these legal instruments and policies create a robust framework for protecting valuable recipes and trade secrets, ensuring that confidential information remains secure and the interests of the business are safeguarded.

SUGGESTIONS

To fortify recipe protection in India, it is imperative to introduce trade secret legislation that explicitly recognizes recipes, techniques, and culinary processes as proprietary information. Such legislation would establish clear criteria for protection, delineate rights and obligations, and institute robust enforcement mechanisms to prevent unauthorized use or disclosure. Drawing inspiration from the United States' comprehensive trade secret laws, including Defend Trade Secrets Acts⁹ and Uniform Trade Secrets Act¹⁰, India can establish legal avenues for chefs and recipe creators to seek damages or injunctive relief in cases of misappropriation. Additionally, integrating traditional customary practices into the legal framework would acknowledge the cultural significance of recipes within indigenous communities, further reinforcing their preservation and protection. Moreover, raising awareness among chefs, restaurateurs, and food entrepreneurs about the importance of recipe protection through regular employee training sessions would play a pivotal role. Educating employees about the

⁹ *Defend Trade Secrets Act of 2016*. Available at: <https://www.congress.gov/114/plaws/publ153/PLAW-114publ153.pdf>.

¹⁰ *Uniform Trade Secrets Act*. Available at: <http://euro.ecom.cmu.edu/program/law/08-732/TradeSecrets/utsa.pdf>

significance of confidentiality and regularly reminding them about the sensitive nature of recipe-related information can mitigate the risk of dissemination. By adopting these measures, India can promote innovation, stimulate investment, and safeguard its diverse culinary heritage in an evolving gastronomic landscape.

CONCLUSION

The preservation of Indian recipes is vital not only for maintaining cultural identity but also for fostering innovation and economic growth in the culinary industry. However, the existing legal regime falls short of providing adequate protection for these invaluable assets. To address this challenge, policymakers must prioritize the introduction of trade secret legislation explicitly recognizing recipes as proprietary information. By establishing clear criteria for protection, delineating rights and obligations, and instituting robust enforcement mechanisms, India can empower chefs and recipe creators to safeguard their creations and prevent unauthorized use or disclosure. Additionally, integrating traditional customary practices into the legal framework would further enhance the preservation and protection of recipes within indigenous communities. Furthermore, raising awareness among stakeholders about the importance of recipe protection through regular employee training sessions is crucial. Through these concerted efforts, India can promote culinary innovation, stimulate investment, and ensure the enduring legacy of its diverse culinary heritage.