



## CORPORATE ESPIONAGE - A VIEW WITH APPLICABILITY OF ALTERNATE DISPUTE RESOLUTION

AKSHAYAN K S, C.A. SATHIYA (Asst. Professor)\*

Student

Asst. Professor

akshayanks1999@gmail.com

sajay75@gmail.com

### Abstract:

Spying, having traces since the Monarch period or maybe even before that, plays a crucial role in times of war and the concept of economy. The presence of legal backup behind the art of spying is equally balanced with the illegality in it. Considering the security and the economic stability of a nation, spies are used, though such activities are illegal and the same nation also punishes any person involved in the activity of spying from another nation. With such a crucial situation, business and the market being the arms of the stabilized economy, also play with the spies in such a way that competition in the market benefits best the customer. The market getting globalized, on one hand, requires speedy remedy when there raises any issue of law or any illegal acts. The trending mechanism which was coined in the near past, but has its traces since the same period of the monarch stands as an alternative method to attain such requirement. Thus, with such an explicit practice of spies, the author here would like to throw light upon the legal terminology behind the statutes governing the activities of spying and the effectiveness of the Alternate Dispute Mechanism (ADR) upon the issues pertaining to such acts of corporate espionage present in the market. Though there are no special statutes for regulating corporate espionage or protecting trade secrets, the author shall deal with the traces of espionage laws present in other statutes which co-relate themselves to the mechanisms of ADR.

**Keywords:** spying, mediation, Privacy, espionage, corporate criminal liability

### INTRODUCTION:

“We cannot solve our problems with the same level of thinking that created them.” Quoted by Sir Albert Einstein very much suits itself into the box of human life. He being a scientist may have quoted it in the thought of his research, but the author would like to link it with the mentality of the six sensed specious “The Human Beings”. Since the evolution of humans, the difference in perspective of them also took their position which led to solving such differences in opinion either by clash or by compromise. Both require a neutral person in between the two disputed parties to solve it or to arrive at a conclusion. This involvement of the third party stands as the root cause for the evolution of the term Arbitration in the modern world which also has its footprint in history. Here comes the role of judicial dispute resolution in solving the dispute between the parties in comparison with the ADR. The court acts as a rule follower between the parties holding the law to be superior and executing its duty of providing justice to the parties where the role of the parties and their actual loss is less involved. This may raise a presumption that all matters irrespective of the nature of the offense are presented before the Court to end up with a solution, but the author is slightly declined upon the above presumption.

Here enters the concept of Alternate Dispute Resolution, where the court has the power to refer the cases for any ADR Mechanism based on the subject matter or the recent trend of adding upon an arbitration clause in any agreement such that the parties themselves intend to proceed with arbitration, mediation in the initial stage of any misunderstanding, such that it avoids the court proceedings. Now enters the conflict between courts and the arbitral tribunal. Here enters the willingness of the party and the question of choice to choose either the court proceeding or the

---

\* SASTRA DEEMED TO BE UNIVERSITY, Thirumalaisamudram, Thanjavur.



ADR proceeding to settle their dispute regarding any petty cases or serious offenses. The author has inclined towards the above point that the parties are free to decide upon the mode of settling the dispute at the time of entering the contract itself. Every statute has its limits in defining an illegal activity and frames the jurisdiction for it. Thus, not all matters can avoid court proceedings or skip ADR. The ADR mechanisms also have their own rules under the Arbitration and Conciliation Statute which is tied up with various statutes, but the research here would be particularly narrowed down to the path of the ADR mechanism in corporate laws.

But before entering the Corporate there are some simple terms to be known by which the governing law of ADR mechanism defines. Thus, here comes the normal format of a textbook containing the terms and their definitions in simple.

- 1) Arbitration - it is a procedure in which the parties agree to present their dispute to one or more arbitrators via. Agreement or mutual consent is where the arbitrators intend to make a binding decision upon the dispute, such that it helps the parties to solve their disputes in a faster mode.
- 2) Mediation - The World Intellectual Property Organization defines mediation as a procedure where a person called the mediator helps the parties to enter into a settlement. The key point is that this process of mediation is a non-binding procedure where it is controlled by the mindset and negotiations made by the parties.
- 3) Conciliation - It is a process where the person called the Conciliator adopts his method or involves himself between the arguments of the disputed parties and leads them to a settlement. It is different from the process of Mediation to the extent of the participation of the conciliator.

Now enters the objective of this research 'Corporate Espionage'. The Above discussions give some idea regarding the birth of ADR, but to continue further with less hindrance it is important to know the baseline for the term espionage. In a simple dictionary meaning espionage is just spying which has had its traces since early history. But the present society is unaware of the loss that espionage causes to the economy and such act when joined with the corporate field stands silent. This silence feeds the effect of corporate espionage to grow. Further discussions shall continue in an analysis of various statutes which silently try to eradicate espionage, the unpopular scam that failed to be noticed by society, and the practice of other nations to control espionage.

### **1. Laws Governing the Corporates**

Analysing the corporate environment from a normal man's perspective, the laws which govern a business right from its birth irrespective of its object, (the object can be either the financial sector, service company, product company, etc) are generally termed corporate. A few of them are the Companies Act of 2013, the Competition Act of 2002, the Chartered Accountants Act of 1949, the Indian Contract Act of 1872, Security Laws, etc.

The business is regulated by the statutes have its norms and morals to be followed by the market players to sustain healthy competition. To sustain the competition in the market every business put forth a new model or plan which stands as a benchmark for its growth and lays a foundation for the boost of its product in the market. Such products cross four stages in their life they are Introduction, Growth, Maturity, and Decline. The company through its initiatives makes the benchmark move at any of the stages and creates a thrust for the product and the company to reach the next stage. These benchmark steps get protected at the least scope. The laws which concentrate on regulating business focus less on the protection of business models and ideas. Thus, there are separate statutes that concentrate on the protection of business ideas, etc.

Similar to that of ideas, the business being a corporate person receive the same right as that of natural humans. One such is the right to privacy, but the same gets limited by the process of espionage made by competitors, the government, etc. The author would now travel to the path of espionage, what it means, the legality of such practice, and other common terms under espionage.

### **2. Scope of Espionage**

'Espionage' as said earlier generally means an act or art of spying on any rival places or their territory for an effective administration. The same when practiced by a country's government it stands for the security of the nation but the same practiced by a company stands for a threat to the market. Though the country has full power to spy on its citizen the laws of India is so strong that



there are also certain rules and procedures to be followed for performing such activity. A landmark view was observed by the court in the case of *People's Union of Civil Liberties (PUCL) V. Union of India*<sup>1</sup> where the court laid down the guidelines to be followed while the government engages in the activity of spying on its citizens. But there are no guidelines for a government to spy on other nations and it stands as an unwritten duty to be performed for the interest of the nation.

### 3. Legal Issues of Espionage

The major issue that arises here is the issue of corporate criminal liability. The loop that is present in the present situation is the question of procedures that precede when an act of espionage is committed as there is no special law that particularly governs espionage. Whether the intruder or the company which employed such person to intrude. Corporate criminal liability is a separate concept that deals with the scope of punishing the corporate for its wrongdoings, whereas here comes a part of such issue which is the act of espionage. The Author tries to establish the clarity hidden behind the walls of the Indian statutes governing corporate activity along with the above-stated issues and the laws regulating espionage in other countries

### 4. The Legality of Espionage

Though the correctness of espionage differs from perspective, it stands as a great threat to the market and its players. The author would like to turn the light upon the reason for it being a great threat such that it helps to analyze the applicability of ADR proceedings in the matter of Espionage issues.

#### 4.1 The Privacy

The Company is treated as a corporate person and also as an individual who has the right to privacy similar to that of a natural person. In the view of the Jurist Sir Salmond, a person is "any being whom the law regards as capable of rights and duties. Any being that is so capable is a person, whether a human or not, and no being that is not so capable is a person even though he is a man." Relying on his view any corporates who are juristic persons are covered under the fundamental rights that are guaranteed under the Indian Constitution.

In the case of *Bennet Colemans Company V Union of India*<sup>2</sup>, the crucial question that played here is the question of the presence of fundamental rights especially in the presence of the term 'citizen' which does not cover the juristic person into its ambit for any corporate. But the view of the Supreme Court shattered light upon the relation between 'citizen' and 'person' as termed under the constitution and held that when the citizens are incorporating themselves into a company, any violation of the company will violate the rights of the shareholders who are citizens of the country. Therefore, companies are entitled to fundamental rights. The same judgment when practiced and viewed with the present topic, the act of espionage stands as a violator of the company.

But the point to be noted is that, though involvement in espionage in other companies is not legal, espionage by the management within its own company is justified by the law. The role of whistle-blowers plays a pivotal role who are let inside the company by the management to monitor internal activities and report any traces of illegal activities either to the top-level management which is known as internal whistle-blowers, or directly to the public which is known as external whistle-blowers. On the face of the discussion whistle-blowers are also a mode of spying used by the company or other person to monitor the functioning of the company. It is justified that the concept of internal whistle-blowers has strongly relied on the ground of the self-check policy practiced by companies. But the concept of monitoring the activities of a company by an external whistle-blower stands in question. The base object for their entry into the firm stands as the reason to spy. The activity of the firm is legal or illegal comes next, but the grounds on which the law permit and protects the external whistle-blowers along with the internal whistle-blowers in an act of spying stand in the loop which is still a serious question of privacy.

<sup>1</sup> People's Union of Civil Liberties (PUCL) V. Union of India, AIR 1997 SC 568

<sup>2</sup> Bennet Colemans Company V Union of India, AIR 1973 SC 106

Well now it is very clear that there are no specific or special laws to regulate espionage in particular, but the Indian legislations are far futuristic in such a way that though it has no special enactments has the means to regulate the act of espionage through various other statutes. The research upcoming shall deal with the ADR mechanisms used in dealing with espionage matters till now.

### 5. Traces of Espionage Regulations in Indian Statutes

Many statutes deal with espionage silently or explicitly, along with the Official Trade Secrets Act 1923 which particularly focuses on spying. But here are some statutes that silently deal against spying and the research here is of a way to throw light upon such legislations. They are:

#### 5.1 Indian Contracts Act of 1872-

The statute enacted by the then-British government focuses on laying down the basic foundation for all kinds of contractual relationships in India. With such a futuristic perspective the act deals with this concept of espionage though not directly but indirectly<sup>3</sup> by way of dealing with a contract of service under section 27 of the Indian Contract Act which specifically narrows down the path of agreement in restraint of trade to be void.

When any person enters into a contract of service it is implied that the person shall not involve in doing any business or activity that affects this particular business. These inbuilt particulars though go against section 27 it stands as an exception to restrictive covenants of the same provision<sup>4</sup>. These restrictions are drafted in the contract of service to protect the interest of the business and the trade secrets of the business.

For example, let us consider any business with no particular specification. A company 'A' participates as a player in the food and beverage industry. This particular company has a specific formula that makes the company stand unique in its market. The company while recruiting employees shall ensure that no person shall involve in publishing the secret formula of that particular product by entering into a contract. Moreover, the contract will also ensure that such a person must not use this knowledge of ingredients to run a separate business. This specific clause stands as an exception to section 27 of the Act which deals with the restriction of trade.

Thus, the act of spying not only involves selling or publishing sensitive information to the public or other competitors but also involves the usage of such information against the same company the best case for this would be the case related to *UNITED STATES OF AMERICA V. XIAORONG YOU aka SHANNON YOU and LIU XIANGCHEN*<sup>5</sup> popularly known as the *Coco-Cola* espionage case. The facts include that the defendant is the administrative assistant to the global marketing head of the Coca-Cola company. The post was of a strict non-disclosure agreement which was then violated by the defendant by indulging in activities of selling the sensitive information of the Coca-Cola Company to its competitor Pepsi. But Pepsi which ignored to receive such information had reported the matter of espionage to the Coca-Cola Company. The Court after a proper hearing had ordered imprisonment of 8 years.

Apart from this the present business is being globalized and has developed technology-wise. With such growth, the only statute that governs the Cyber world is 'The Information Technology Act of 2000' which also deals with disclosure or breach of confidentiality or privacy with respective punishments under section 72. The provision focuses on punishing any person who had acquired any

<sup>3</sup> Bhanu Dhingra & Nitika Sinha (S.S. Rana & Co. Advocates), Protecting Trade Secrets in India: Applicable Laws and Benefits, Mondaq, <https://www.mondaq.com/india/trade-secrets/1251022/protecting-trade-secrets-in-india-applicable-laws-and-benefits#:~:text=Indian%20courts%20have%20recognized%20trade,the%20firm's%20confidentiality%20while%20also>

<sup>4</sup> Vatsala Singh, Contract of Service and Restrictive Covenants, Mondaq, <https://www.mondaq.com/india/employee-rights-labour-relations/295626/contract-of-service-and-restrictive-covenants>

<sup>5</sup> Orrick-Trade Secrets Group, JDSUPRA, <https://www.jdsupra.com/legalnews/trial-of-ex-coca-cola-principal-7166135/> *United States v. Xiaorong You*, No. 2:19-CR-14 (E.D. Tenn. Apr. 19, 2021)



rights to access information or any other material published or leaked such information to other market players or the public.

### **5.2 Intellectual Property Laws-**

The traces of espionage act the most, in the field of Intellectual Property laws (herein after referred as the IP Laws). Every company in any case has some identity to get itself recognized among the competitors and such identities are protected under IP laws. These ideas include taste, smell, recipe, method of preparation, etc. The IP laws are clear since their evolution in regulating the process of license that is granted to other parties by the Intellectual property Rights holder. Such regulation is done by way of executing a contract known as the non-disclosure agreement. Such agreements focus on protecting the confidential information of the business. The same agreements also emphasize protecting trade secrets which is also a right of the company that is protected under the IP laws. For a secret to be classified as a trade secret the following requisites are mandatory, they are:

- Commercially valuable because it is secret,
- Be known only to a limited group of persons, and
- Be subject to reasonable steps taken by the rightful holder of the information to keep it secret, including the use of confidentiality agreements for business partners and employees.

Thus, any violation of a member in protecting it also leads to espionage along with infringement.

### **5.3 Securities Exchange Board of India-**

The Securities Exchange Board of India (SEBI) gives a detailed description of the concept of insider trading which is also considered an act of spying. The concept of insider trading involves two basic terms to be known one is the Un Published Price Sensitive Information (UPSI) and the second is the connected person. A connected person is any person who is directly or indirectly in possession of any UPSI of a company. The banker, near relatives, investors, etc shall also be deemed to be a connected person. The UPSI is a piece of information that is related to a company's financial structure, status, share, etc which is generally not available to the public.

The SEBI (Prohibition of Insider Trading) Regulations, 2015 explicitly prohibits an act of publishing a UPSI of a company. The same act of espionage is termed an act of insider trading in the view of SEBI. The SEBI Act, 1992 deals with the punishment of the insider where such person shall be liable to pay not less than ten lakh rupees and which shall extend to twenty-five crore or three times the profit made by such act, whichever is higher.

Though SEBI is a general term that deals with all securities markets, it also has its own regulatory and adjudicatory body. Apart from such adjudicatory body the most preferred way of settling the disputes was referred from the Bye-laws and the regulations of the stock exchange in hand with the Arbitration and the Conciliation Act of 1992 which contains provisions for the application of ADR in matters related to the stock exchange. The mode preferred by the stock exchange is the Investor Grievance Redressal Cell (IGRC) which is used to solve the queries and complaints raised by the investors.

The IGRC is one of the mechanisms, and the ombudsman stands as the other mechanism under the concept of ADR. An Ombudsman is a person appointed to hear and act upon the citizens' complaints about government services. In the present context, every company based on its business operation has a separate consumer redressal mechanism in the form of an Ombudsman which is popularly used to handle disputes apart from the court. The ombudsman generally has the power to call for the company and inspect the records. His award stands binding and if either party prefers an appeal, he is free to approach the court in other cases or the SEBI in issues related to the securities market.

These mechanisms of ADR can be used only when there is any dispute between a client and a member of the stock exchange which has not been resolved to their satisfaction either party can

prefer an ADR proceeding<sup>6</sup>. In context to the present situation, the customers of the company can also be a client.

We have crossed various stages where ADR is dealt with the most but failed to notice the advantages of using the ADR mechanism in general. Thus, the author retraces back to the concept of the advantages of ADR so that it may help us to understand why ADR stands as a better option to deal with matters related to espionage.

#### 6. Advantages of ADR in Espionage

- Parties are at liberty to have neutrals of their choice, who are experts in the subject matter of the dispute thus, it would be the best way for an affected party to directly enter into the dispute and express his ideas.
- Parties decide the process of resolution of dispute like jurisdiction, application of the law, admissibility of evidence, place of meeting, etc.
- Parties are directly involved in the resolution of the dispute and can address their problems in a better manner.
- Parties have the autonomy to come up with innovative and collaborative solutions addressing the interests of both parties. This maximum benefit to both parties results in a win-win situation. But to the present context though a win-win situation stands of less use an amicable settlement favors the most.
- Confidentiality can be easily maintained, especially in cases where emotions and privacy is involved. (Confidentiality peaks in espionage-related issues)
- Application of the ADR mechanism in dealing with espionage issues is generally cost-effective in respect of litigation fees and other incidental expenses.
- ADR is generally very fast compared with Judicial Dispute Resolution.
- The entire ADR process is very flexible and informal and can be changed according to the requirement of the parties.
- The settlement agreement and award of the arbitrator are final, binding, and enforceable like a decree of the court.

On knowing the advantages behind the application of arbitration the article is now lead into the scope of mediation under the Companies Act, 2013. Yes, the Companies Act has its tribunals known as the National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT). Apart from this considering the numerous pending cases present behind the commercial courts and the tribunals the Act provides the scope of Mediation and Conciliation through section 442. With the provision as the foundation and Companies (Mediation and Conciliation) Rules, 2016<sup>7</sup> as the pillars the Act deals with issues related to statutory matters of the company.

In considering the rules, Rule 30 specifically narrows down the scope of mediation and conciliation to be referred only to particular matters but in a negative sense. The rule lays down the matters that are not to be referred to as mediation and conciliation. They are:

- Matters related to inspection, investigation
- Cases involving fraud, forgery, coercion
- Cases involving public interest
- Cases involving a non-compoundable offense

On viewing the above grounds, the issue of corporate espionage does not fall under any of the above criteria thus, we can conclude that matters related to corporate espionage can be referred to mediation or conciliation on the face of seeing the procedure from a normal man's perspective.

To further support the above normal man's perspective of referring the issue of corporate espionage to any of the ADR mechanisms the author would again cite a case of *Afcons Infrastructure Limited and Another V. Cherian Varkey Construction Company Pvt. Ltd. And*

<sup>6</sup> [https://www.nseindia.com/invest/content/about\\_arbitration.htm](https://www.nseindia.com/invest/content/about_arbitration.htm)

<sup>7</sup> Corporate Law Reporter the Daily Journal, [http://corporatelawreporter.com/companies\\_act/section-442-of-companies-act-2013-mediation-and-conciliation-penal/](http://corporatelawreporter.com/companies_act/section-442-of-companies-act-2013-mediation-and-conciliation-penal/)

*others*<sup>8</sup>. The case which stands as a landmark case for ADR to travel on its path with peace interprets section 89 of the Civil Procedure Code (CPC) and clarifies the actual intention present behind its insertion in the Code. The Court decodes the provision “where it appears to the court that there exist elements of settlement” and clarifies that there are some issues that cannot be referred to any ADR mechanisms and lay down the types of issues which at the court’s intention the matters can be sent to ADR mechanisms.

Among such differentiated classes of issues, the matters related to contract disputes and matters related to employer-employee disputes fall under the scope of settlement by ADR. Thus, when the same read to the present dispute of corporate espionage the act of espionage is an act of violating the contractual terms of the non-disclosure agreement and it is a matter of dispute between the employers (the management) and the employee. Thus, the author relying on this relation believes that the ADR mechanism stands as the best alternative to solve espionage issues in the corporate field.

### 7. Non-Binding and voluntary procedure

The key to be raised since the journey started is the binding nature of these mechanisms at the stage of dispute resolution. A normal man due to various other exposures has a blind thought that the order of court stands binding. The fact to be highlighted is that the mechanisms dealt with under the Arbitration and Conciliation Act, of 1996 also stand binding. Yes, those orders are also executed equally to that of a court order. But here comes the process of mediation which is already explained above at the beginning of this discussion which stands as a unique nature of non-binding nature of it. This gives the possibility of questioning the need for conducting such a procedure because various statutes by own deal with provisions relating to referring the matter to mediation. One such is the Companies Act which deals with mediation specifically under section 442. The scope of mediation is established clearly by the process of conducting mediation. It is just a stage where there arises a win-win situation and the success of such a process lies in the hands of the parties, it is their wish to proceed with such step or approach the court.

### 8. Practices by the United States in dealing with Espionage

The United States has a special statute to govern espionage in the corporate field. The codified state legislation that involves governing the espionage is Uniform Trade Secrets Act of 1979. The intention behind the legislation in enacting such an Act is evident from the provisions of the statute. The Act focuses on both punishments and compensatory damages.

Apart from the state legislation, the Federal Legislation covers two separate Acts namely, the Trade Secrets Act and the Economic Espionage Act of 1996 which focuses on prohibiting employees to disclose confidential information and punish if any information is stolen for the benefit of the foreign entity.

Continuing our research with some unpopular cases of popular companies may give a good understanding of the impact of espionage and the iron hands imposed by the government with suitable legislation. First is the case of *Gillette V. Steven Louis Davis*<sup>9</sup> where the facts of the case are that Steven Louis Davis a sub-contractor for Gillette from Washington was authorized to access information related to the drawings of the new model of the blade, wire, and other information. With such authorization, Steven was involved in the act of mailing the information to Bic Corp., American Safety Razor Co., and Warner-Lambert Co. According to his statement, the reason for such an act of espionage was due to his disgruntled working conditions. The US court on viewing the investigation ordered 2-year imprisonment.

Reading the case, the face of it may raise an impression of a minor cause, but in this case, the respondent admitted that his act of espionage caused a loss of 1.5 million dollars to the company

<sup>8</sup> Afcons Infrastructure Limited and Another V. Cherian Varkey Construction Company Pvt. Ltd. And others (2010) 8 SCC 24

<sup>9</sup> Weld Royal, Too Much Trust?, Industry Week, <https://www.industryweek.com/leadership/companies-executives/article/21955126/too-much-trust> - United States v. Steven Louis Davis, (M.D. Tenn. 1997)

which also has a ripple effect on the economy. Thus, we can conclude that espionage is not a case of small cause but has a huge impact on the stability of the economy.

#### 9. Judicial Interpretation by Other Nations

China being one of the leading market players in the world economy prohibits espionage through its special statute<sup>10</sup> known as the Counter Espionage Law of the People's Republic of China. The Chinese Law is very clear about the definition of a trade secret such that any information which is unknown to the public and provides economic benefit to the owner and has a practical utility shall be considered a trade secret and Article 4 of the Act defines the act of espionage with a wider scope of placing the clause "other espionage activities" even after properly defining the spying. Thus, the nation, in general, under Article 53 claims criminal responsibility against the person and imposes fines and other punishments in accordance with the law.

The United Kingdom which had no sunset in its empire in the past was way ahead in implementing and protecting its secrets from opponents by legislating a separate statute namely the Official Secrets Act 1911 which criminalized<sup>11</sup> the act of disclosing any information that would be useful for an enemy. The Act clearly defines the terms trade secret as any information which has a financial impact or monetary value among the business, any information that has an economic impact upon the nation's economy if leaked, etc. Since India was under the rule of the British during the enactment, the same law is prevalent here which particularly criminalizes the act of spying under section 3<sup>12</sup> of the Official Secrets Act 1923.

#### 10. Judicial Interpretation of Espionage Laws in India

In India, as discussed above the Official Secrets Act, of 1923 particularly punishes imprisonment for 14 years who commit the act of spying in any of the security/military forces. The same provision gives an open perspective with words "and in other cases to three years" which also includes an act of spying to be punishable in any field. The same statute under section 9 and section 10 penalizes the act of harbouring spies or attempting to spy with imprisonment of 3 years or a fine or both. In dealing with the corporate world Section 15 of the Act is the only proviso that is placed in order to protect the corporates or to punish the person of a corporate who involve in spying. In identifying the presence of protection clauses given to the companies the object of this research is streamlined along with the above research of involving any ADR mechanism to solve the Espionage issues. Espionage being of criminal nature cannot be a ground for rejecting the use of the ADR mechanism in solving espionage issues because history is not silent and there are many circumstances where the court has referred cases of criminal nature to an out-of-court settlement. In general, only compoundable offence are referred to ADR mechanism but the Hon'ble Supreme Court by its unique stand in the case of *Saju V. State of Kerala*<sup>13</sup> where the Hon'ble Supreme Court of India quashed a rape case against the accused on the ground that the matter had been settled between the accused and the victim. The Court invoking its power under Article 142 of the constitution of India quashed the criminal proceedings against the accused. Similarly, in the case of *Prashant Bharathiya V. State of Delhi*,<sup>14</sup> the Hon'ble Supreme Court quashed the criminal proceedings admitting the settlement made through mediation.

#### 11. Review of Literature

<sup>10</sup> China Law Translate, <https://www.chinalawtranslate.com/en/counter-espionage-law-2023/>

<sup>11</sup> <https://www.gov.uk/government/publications/national-security-bill-factsheets/espionage-etc-national-security-bill-factsheet#:~:text=The%20offence%20of%20obtaining%20or%20disclosing%20trade%20secrets%20criminalise%20espionage,technology%20developed%20in%20the%20UK.>

<sup>12</sup> Official Secrets Act, 1923 - <https://www.indiacode.nic.in/bitstream/123456789/2379/1/A1923-19.pdf>

<sup>13</sup> *Saju V. State of Kerala*, CrI A No. 1740/2020

<sup>14</sup> *Prashant Bharathiya V. State of Delhi*, 2021 SCCOnLine SC 3018





Marjorie Chan the author of an article (2002)<sup>15</sup> focuses on the fact on which the rise of espionage lay its foundation. The question of the line to be drawn in identifying the extent of controlling security measures such that the line does not get placed too far which increases the possibility of development of antitrust among the employees is discussed in depth. The author is strongly inclined towards the fact that the increasing market competition had led to the development of espionage and had also implicated the same as the research question and had substantiated it by referring to various live examples such as the four pillars case. In the article, the perception of Lewicki et al.(1998) was referred by the author to strongly conclude his view of the co-existence of trust and anti-trust in a market environment. The author's view on espionage is a bit different than the line to differentiate the extent of measure that a company can take to control espionage is so thin with fading character because the existence of trust and anti-trust has functional values and it is dependent upon the market environment.

### CONCLUSION

Now coming to the final part of this research which again gives the crux of this research in a single line and the applicability of the ADR mechanism in Espionage related issues in a brief. The conclusion would be incomplete without referring to the landmark case about Corporate Criminal Liability because it is discussed above that the act of espionage falls under both criminal and civil acts thus the role of this case of *Standard Chartered Bank and Other V. Directorate of Enforcement*<sup>16</sup> held by the Hon'ble Supreme Court plays an important role at this stage of concluding. The case with all its clear interpretation ruled that companies are also liable under criminal law as an entity separate and distinct from those who are conducting its affair. This made the stand on punishing the companies which engage in espionage activities due to the nature of the offense.

The above research which is concentrated more on corporate espionage also falls under Corporate Criminal Liability. But the same issue is made up of various sub-issues such as the contractual obligation, violation of contractual terms, employer-employee issue, etc. Thus, the researcher/ author hereby ends up his idea on the application of ADR in espionage matters with a statement that ADR which is a still growing settlement mechanism stands as the best alternative to the court proceedings in espionage matters and the application of ADR mechanism in matters related to corporate espionage stands the best due its confidentiality and the cost-effective mode. As it is the beginning stage of espionage being identified in the corporate world, the government is also duty-bound to enact a specific law to regulate trade secrets and ensure their protection from it being espionage.

### ACKNOWLEDGEMENT

I, AKSHAYAN K S final year B.Com.; LL. B (Hons.) of SASTRA University Thirumalaisamudram, Thanjavur and I Mrs. C. A. SATHIYA Asst. Professor from SASTRA Deemed To Be University Thirumalaisamuram, Thanjavur acknowledge that this paper is the outcome of my research and analysis and that is free from plagiarism.

We do hereby declare that the above-mentioned facts are true to the best of my knowledge and we are thankful to our university (SASTRA Deemed To Be University) in supporting to complete this research.

### REFERENCES

1. People's Union of Civil Liberties (PUCL) V. Union of India, AIR 1997 SC 568
2. Bennet Colemans Company V Union of India, AIR 1973 SC 106
3. Bhanu Dhingra & Nitika Sinha (S.S. Rana & Co. Advocates), Protecting Trade Secrets in India: Applicable Laws and Benefits, Mondaq, <https://www.mondaq.com/india/trade-secrets/1251022/protecting-trade-secrets-in-india-applicable-laws-and->

<sup>15</sup> Journal of Business Ethics, pg 45 – 48, 2003, Kluwer Academic Publishers.

<sup>16</sup> Standard Chartered Bank and Other V. Directorate of Enforcement, (2005) 4 SCC 53



benefits#: - :text=Indian%20courts%20have%20recognized%20trade, the%20firm's%20confidentiality%20while%20also

4. Vatsala Singh, Contract of Service and Restrictive Covenants, Mondaq, <https://www.mondaq.com/india/employee-rights-labour-relations/295626/contract-of-service-and-restrictive-covenants>

5. Orrick-Trade Secrets Group, JDSUPRA, <https://www.jdsupra.com/legalnews/trial-of-ex-coca-cola-principal-7166135/> *United States v. Xiaorong You*, No. 2:19-CR-14 (E.D. Tenn. Apr. 19, 2021)

6. [https://www.nseindia.com/invest/content/about\\_arbitration.htm](https://www.nseindia.com/invest/content/about_arbitration.htm)

7. Corporate Law Reporter the Daily Journal,

[http://corporatelawreporter.com/companies\\_act/section-442-of-companies-act-2013-mediation-and-conciliation-penal/](http://corporatelawreporter.com/companies_act/section-442-of-companies-act-2013-mediation-and-conciliation-penal/)

8. *Afcons Infrastructure Limited and Another V. Cherian Varkey Construction Company Pvt. Ltd. And others* (2010) 8 SCC 24

9. Weld Royal, Too Much Trust?, Industry Week,

<https://www.industryweek.com/leadership/companies-executives/article/21955126/too-much-trust> - *United States v. Steven Louis Davis*, (M.D. Tenn. 1997)

10. China Law Translate, <https://www.chinalawtranslate.com/en/counter-espionage-law-2023/>

11. <https://www.gov.uk/government/publications/national-security-bill-factsheets/espionage-etc-national-security-bill-factsheet#:~:text=The%20offence%20of%20obtaining%20or%20disclosing%20trade%20secrets%20criminalises%20espionage,technology%20developed%20in%20the%20UK.>

12. Official Secrets Act, 1923 - <https://www.indiacode.nic.in/bitstream/123456789/2379/1/A1923-19.pdf>

13. *Saju V. State of Kerala*, Crl A No. 1740/2020

14. *Prashant Bharathiya V. State of Delhi*, 2021 SCCOnLine SC 3018

15. *Journal of Business Ethics*, pg 45 - 48, 2003, Kluwer Academic Publishers.

16. *Standard Chartered Bank and Other V. Directorate of Enforcement*, (2005) 4 SCC 53