

Inadequacy Of Legal Framework For Trade Secret Protection In India : A Legal Analysis Of Trade Secrets Bill, 2024

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ABSTRACT

The inadequacy of the legal framework for trade secret protection in India presents significant barrier to fostering innovation and ensuring competitive advantages in global markets. Unlike patents, which require public disclosure, trade secrets offer pathway for businesses to maintain competitive edge without revealing proprietary information. However, India's reliance on common law principles and contractual remedies falls short of the providing robust and comprehensive regime for trade secret protection. The proposed Trade Secrets Bill, 2024, aims to address these gaps by codifying structured legal framework that aligns with international standards and caters to India's unique economic and technological landscape.

This paper analyses challenges arising from absence of the statutory recognition for trade secrets in India, focusing on misappropriation risks and enforcement hurdles. It explores interplay between trade secrets and other intellectual property rights, comparative position of the India with jurisdictions like USA and UK, and pivotal role of the trade secrets in industries like pharmaceuticals and technology. By delving into provisions of the Trade Secrets Bill, 2024, this research highlights its potential to balance industry confidence, employee mobility, and technological advancement, while safeguarding interests of the MSMEs and startups. Case studies, judicial precedents, and international practices substantiate analysis, offering insights into how India can create robust ecosystem for trade secret protection and economic growth.

KEYWORDS: Trade Secrets, Trade Secrets Bill 2024, Intellectual Property Rights, Legal Framework, Misappropriation, India.

1. INTRODUCTION

Definition and Importance of the Trade Secrets

Trade secrets encompass information that derives economic value from being confidential and is subject to reasonable efforts to maintain its secrecy. This includes technical data, formulas, business strategies, and customer databases. Unlike patents, trade secrets do not require public disclosure, allowing businesses to safeguard proprietary knowledge indefinitely¹. Their protection is critical for maintaining competitive advantages, fostering innovation, and attracting foreign investments.

Judicial Definition for Trade secrets

In *Indian Farmers Fertilizer v. Commissioner of Central Excise, the Customs Excise and Gold Tribunal of Delhi*² provided the following definition of "trade secrets". A "trade secret" is a field of knowledge which is not usually well-known to the in the public domain, and it is beneficial to its holders economically, and it has to be reasonably kept secret with reasonable safeguards.

Role of the Trade Secrets in Fostering Innovation

Trade secrets enable businesses to capitalize on innovation without fear of the losing their competitive edge. Industries such as pharmaceuticals and technology rely heavily on trade secrets to protect research and development investments. For instance, secrecy surrounding proprietary drug formulas ensures that companies can recoup their investment in R&D, which often involves

¹ World Trade Organization, TRIPS Agreement (1994) art 39.

² *Indian Farmers Fertilizer v. Commissioner of Central Excise* 2007 5 (116) ECC 95.

significant financial and temporal resources³. Robust trade secret protection also facilitates technology transfer and collaborations by ensuring confidentiality during partnerships.

Brief History of the Trade Secret Protection

Trade secret protection has historical roots in medieval European guilds, where technical knowledge was confined within guild members⁴. Modern trade secret law evolved in 19th century through common law doctrines addressing breach of the confidence. The TRIPS Agreement marked significant milestone by mandating member states to provide legal protection for trade secrets. However, unlike jurisdictions such as USA, which enacted Defend Trade Secrets Act, India continues to rely on fragmented legal framework⁵.

Need for Robust Protection in India

India's economic landscape, characterized by burgeoning technology sector and startup ecosystem, underscores urgent need for robust trade secret protection. The lack of the statutory recognition exposes businesses to misappropriation risks, deterring foreign investments and hindering innovation⁶. Furthermore, absence of the criminal sanctions weakens deterrence, allowing misappropriation to thrive. Enacting comprehensive trade secret law, such as proposed Trade Secrets Bill, 2024, is essential for aligning with global standards, enhancing industry confidence, and driving economic growth⁷.

2. RESEARCH PROBLEM

The absence of the dedicated statute addressing trade secret protection in India creates precarious environment for businesses relying on proprietary knowledge. Trade secrets, which often encompass manufacturing processes, customer databases, and product formulas, remain unrecognized as distinct intellectual property under Indian law. The reliance on common law principles, such as breach of the confidence, and limited contractual remedies such as non-disclosure agreements (NDAs), fails to address complexities of the modern trade secret misappropriation⁸.

Indian businesses face significant challenges in proving misappropriation, as current frameworks do not explicitly define trade secrets or establish criteria for their protection. This lack of the clarity often leads to inconsistent judicial outcomes, leaving trade secret holders vulnerable⁹. Moreover, absence of the procedural safeguards in civil litigation exposes trade secrets during trials, discouraging businesses from pursuing legal remedies¹⁰. The inadequacy of the existing laws is further compounded by lack of the criminal sanctions for trade secret theft, provision available in countries like USA and UK¹¹.

The problem extends beyond domestic legal lacunae. India's status as signatory to TRIPS Agreement mandates provision of the legal protection for trade secrets under Article 39. However, implementation of the these obligations remains incomplete, as India has yet to enact specific legislation addressing these requirements¹². This gap has raised concerns during international trade negotiations and has been recurring issue in reports such as US Special 301¹³. Addressing this problem is vital not only for aligning with global standards but also for fostering ecosystem conducive to innovation and foreign investment.

³ Indian Patents Act 1970, s 10(4).

⁴ Tanya Aplin, Trade Secrets Law (OUP 2021) 43.

⁵ Defend Trade Secrets Act 2016 (USA).

⁶ **Department for Promotion of Industry and Internal Trade** (DPIIT Report) on IPR Policy (2021).

⁷ Law Commission of the India, Report No. 289 on Trade Secrets and Economic Espionage (2024) 15.

⁸ US Special 301 Report (2015).

⁹ Chandni Raina, Trade Secret Protection in India: The Policy Debate (CWS, 2015) 3.

¹⁰ Ibid, 4.

¹¹ Unfair Competition Prevention and Trade Secret Protection Act (South Korea).

¹² Agreement on Trade-Related Aspects of the Intellectual Property Rights (TRIPS) 1994, Art 39.

¹³ US Special 301 Report (2014).

3. RESEARCH OBJECTIVES

The researcher has formulated following research objectives:

1. To compare India's approach with other jurisdictions like USA and UK with respect to trade protection.
2. To analyse current state of the trade secret protection in India.
3. To evaluate Trade Secrets Bill 2024, and its potential to address existing legal gaps.

4. RESEARCH QUESTIONS

The researcher has formulated following research questions:

1. What are gaps in India's current Legal framework for trade secret protection?
2. How does India's approach compare with international standards and practices?
3. Can Trade Secrets Bill, 2024, effectively address issues of the trade secret misappropriation?

5. RESEARCH METHODOLOGY

The doctrinal approach forms backbone of the this research, involving comprehensive examination of the primary and secondary legal sources. Statutes, judicial decisions, and international agreements, including TRIPS Agreement, serve as foundation for analysing India's current legal framework for trade secret protection¹⁴. This research also evaluates proposed Trade Secrets Bill, 2024 by comparing its provisions with existing laws and frameworks in jurisdictions such as USA and UK. The use of the doctrinal analysis ensures thorough understanding of the legal principles and their application to trade secrets. Also, analytical approach is adopted to evaluate practical implications of the India's existing trade secret protection mechanisms.

This methodology examines gaps in enforcement, procedural safeguards, and balance between trade secret protection and employee mobility. Comparative analysis with jurisdictions like USA highlights best practices and lessons for India¹⁵. The research employs case studies and judicial precedents to illustrate challenges faced by businesses in protecting trade secrets. By synthesizing doctrinal and analytical insights, study provides actionable recommendations for policymakers.

6. UNDERSTANDING TRADE SECRETS

Legal and Economic Definitions

A trade secret refers to confidential business information that provides enterprise with competitive advantage. Legally, it encompasses data, processes, formulas, or techniques that remain undisclosed and hold economic value because of their secrecy¹⁶. Article 39 of the TRIPS Agreement highlights that trade secrets are protected against unauthorized disclosure, provided information is not generally known, has commercial value, and reasonable steps have been taken to maintain its confidentiality¹⁷.

Economically, trade secrets represent intangible assets critical for innovation. Unlike patents, they do not require public disclosure and thus shield sensitive knowledge from competitors. This preservation of the exclusivity fosters innovation in industries like pharmaceuticals, where proprietary formulations hold immense market value¹⁸. The economic value of the trade secrets also lies in their ability to enhance operational efficiencies and maintain unique business strategies, crucial for competitive sustainability¹⁹.

Distinction Between Trade Secrets and Other Forms of the Intellectual Property

Trade secrets differ fundamentally from other intellectual property forms such as patents, copyrights, and trademarks. Unlike patents, which require public disclosure in exchange for protection, trade secrets demand strict confidentiality for their

¹⁴ Law Commission of the India, Report No. 289 on Trade Secrets and Economic Espionage (2024) 12.

¹⁵ Ibid.

¹⁶ World Trade Organization, TRIPS Agreement (1994) art 39.

¹⁷ Law Commission of the India, Report No. 289 on Trade Secrets and Economic Espionage (2024) 10.

¹⁸ Chandni Raina, Trade Secret Protection in India: The Policy Debate (CWS, 2015) 2.

¹⁹ Ibid.

protection²⁰. Additionally, while patents grant exclusive rights for fixed duration, trade secrets can theoretically exist indefinitely, provided secrecy is maintained²¹.

Copyrights protect original works of the authorship, while trademarks secure brand identity. Trade secrets, however, safeguard information with economic value that does not fit neatly into other IP categories. Unlike trademarks, which are registered rights, trade secrets do not necessitate registration, reducing administrative burdens²². Another significant difference is enforcement mechanism. Trade secrets rely on contractual agreements and breach of the confidence principles, whereas patents and trademarks benefit from statutory enforcement frameworks.

Criteria for Information to Qualify as Trade Secret

For information to qualify as trade secret, it must meet specific criteria. First, information should not be publicly known or easily accessible to individuals who commonly deal with such information²³. This requirement ensures exclusivity, cornerstone of the trade secret protection. Second, information must hold commercial value due to its confidentiality. For example, proprietary manufacturing technique provides business with competitive advantage, justifying its status as trade secret²⁴.

Third, owner of the information must take reasonable steps to ensure its secrecy. This includes implementing robust confidentiality agreements, restricting access to sensitive data, and deploying secure technological safeguards. In landmark case of the *Saltman Engineering Co Ltd v Campbell Engineering Co Ltd*, court emphasized importance of the ensuring information is inherently confidential and reasonably protected from public disclosure²⁵.

7. TRADE SECRETS UNDER TRIPS

7.1 Overview of the Article 39 of the TRIPS Agreement

The TRIPS Agreement, under Article 39, provides framework for trade secret protection. Article 39.2 mandates member states to protect undisclosed information that is secret, commercially valuable, and subject to reasonable efforts to maintain its confidentiality²⁶. This provision aims to safeguard businesses from unfair practices like unauthorized acquisition, disclosure, or use of the confidential information.

Article 39.3 further extends protection to data submitted for regulatory purposes, particularly in pharmaceutical and agricultural sectors. This provision prohibits unfair commercial use of the such data, emphasizing global importance of the trade secrets in fostering innovation and protecting investments in research and development²⁷.

7.2 India's Obligations Under TRIPS

As WTO member, India is obligated to comply with TRIPS requirements, including trade secret protection under Article 39. However, India has chosen to rely on common law principles and contractual remedies instead of the enacting specific legislation. This approach aligns with TRIPS Agreement's flexibility, which permits member states to determine their mechanisms for trade secret protection²⁸.

Despite this flexibility, India's existing framework falls short in providing effective remedies against trade secret misappropriation. The absence of the statutory recognition for trade secrets creates inconsistencies in enforcement, particularly in cases involving third-party disclosures. Furthermore, reliance on contractual agreements limits scope of the protection to pre-existing relationships, leaving businesses vulnerable to breaches outside contractual arrangements²⁹.

²⁰ Tanya Aplin, Trade Secrets Law (OUP 2021) 17.

²¹ *Saltman Engineering Co Ltd v Campbell Engineering Co Ltd* [1963] 3 All ER 413 (HL).

²² Indian Contract Act 1872, ss 27, 73.

²³ World Trade Organization, TRIPS Agreement (1994) art 39.2.

²⁴ Law Commission of the India, Report No. 289 on Trade Secrets and Economic Espionage (2024) 12.

²⁵ *American Express Bank Ltd v Priya Puri* [2006] 3 LLJ 540 (Del).

²⁶ US Defend Trade Secrets Act 2016.

²⁷ Indian Contract Act 1872, s 27.

²⁸ Law Commission of the India, Report No. 289 on Trade Secrets and Economic Espionage (2024) 15.

²⁹ TRIPS Agreement (1994), art 39.3.

8. CURRENT LEGAL PROVISIONS GOVERNING TRADE SECRETS IN INDIA

In India, there is no uniform legislation protecting trade secrets and confidential information.. Indian courts have recognized trade secret protection based on equity principles and common law remedies for breach of confidence and breach of trust. It is protected by numerous, disparate provisions of various statutes, which includes

(1) INDIAN CONTRACT ACT

Section 27 of the Indian Contract Act This section provides for remedies and also restrict any person from disclosing any information which he acquires at the time of employment or through contract. It is based on principle equity i.e. common breach of confidence between the parties which results in the breakdown of contractual obligations.. But in this provision there is only civil remedy and no criminal remedies. According to this section any information must be highly confidential to be constituted as Trade Secret.

(2) INFORMATION TECHNOLOGY ACT

In the case of the Information and technology act, the information shall be limited to electronic records only and Sec 72 of the IT Act provides for such protection.

“Section 72 of the Information Technology” Provides **Penalty for Breach of confidentiality and privacy.** In the case that a person obtains or accesses private information, books, registers, information documents, or additional data with no consent of its owner, and that first individual unveil or discloses such data; Then such person shall be liable to penalty which may extend to five lakh rupees

Section 43A the Information Technology Act, provides for compensation where any entity handling any personal sensitive information causes wrongful loss or wrongful gain to any person.

(3) SECURITIES AND EXCHANGE BOARD OF INDIA (PROHIBITION OF INSIDER TRADING) REGULATIONS, 1992

It does not explicitly provide protection to trade secrets. Provisions of these regulations renders that the use or disclosure of any confidential information in the public domain by an insider, such persons shall be prosecuted under Securities and Exchange Board of India Act, 1992

(4) INDIAN PENAL CODE AND BHARTIYA NYAYA SANHITA

- Section 405-409 of the **Indian Penal Code, 1860** deals with the cases when there is a Criminal Breach of trust. A person is said to commit a criminal breach of trust if he or she dishonestly misappropriates or converts for his or her own use any property that has been entrusted to him or her, or dishonestly uses or disposes such property in violation of a contract (express or implied) or applicable law, or permits any other person to do so. Therefore, at the outset, the dishonest intention of the infringer or accused in misappropriating, converting, using or disposing of the property must be established by the complainant.
- Corresponding to IPC, Liability for Criminal breach of trust is provided under section 316 of the Bhartiya Nyaya Sanhita, 2023

8.1 Analysis of the Compliance Gaps in Indian Legal Framework

India’s legal framework reveals significant gaps in meeting TRIPS obligations. Unlike jurisdictions like USA, which have enacted Defend Trade Secrets Act (2016), India lacks comprehensive statute defining and protecting trade secrets. This absence undermines businesses' ability to enforce their rights effectively³⁰.

Judicial precedents, such as *American Express Bank Ltd v Priya Puri*, have recognized trade secret protection under common law principles. However, these judgments often depend on specific facts of the each case, leading to inconsistent outcomes.

³⁰ Department for Promotion of Industry and Internal Trade (DPIIT Report) on IPR Policy (2021).

Additionally, procedural challenges, such as risk of the exposing trade secrets during litigation, deter businesses from pursuing legal remedies. The lack of the confidentiality safeguards in court proceedings further exacerbates this issue.

India's reliance on Indian Contract Act, 1872, and Specific Relief Act, 1963, for trade secret protection is inadequate. These statutes do not provide clear definitions or robust enforcement mechanisms for trade secrets. Moreover, absence of the criminal sanctions for trade secret theft reduces deterrent effect, allowing misappropriation to thrive without significant consequences.

The proposed Trade Secrets Bill, 2024, seeks to address these gaps by codifying trade secret protection in line with TRIPS requirements. The bill introduces statutory definitions, civil remedies, and confidentiality safeguards, creating more comprehensive legal framework. By aligning with global standards, bill aims to foster innovation, attract foreign investments, and strengthen India's position in global economy.

9. PATENT REQUIREMENTS VS. TRADE SECRETS PROTECTION

9.1 Detailed Comparison of the Patenting and Trade Secret Protection

Patents and trade secrets serve as two distinct tools for intellectual property protection. Patents require public disclosure of the invention to secure exclusive rights, which are time-bound, typically lasting 20 years from filing date³¹. Conversely, trade secrets protect confidential information without any formal registration, provided secrecy is maintained³².

The scope of the patents is broader in terms of the enforceable rights, as they prevent others from using or replicating invention, even independently³³. Trade secrets, however, do not grant exclusivity against independent discovery or reverse engineering³⁴. Another key difference lies in cost and procedural complexities. Patent registration demands significant financial investment and adherence to procedural formalities, including detailed specifications³⁵. Trade secret protection relies on internal safeguards like non-disclosure agreements and technological measures, which are often more cost-effective³⁶.

The temporal scope also differs. Patents expire after fixed period, whereas trade secrets can be protected indefinitely, provided secrecy is not compromised³⁷. However, this longevity comes with inherent risks, as trade secrets can be lost through misappropriation or accidental disclosure.

9.2 Case Study Analysis of the Industries Where Trade Secrets Are Preferable

The pharmaceutical industry often highlights choice between patents and trade secrets. Drug formulations are typically patented due to need for exclusivity during regulatory approval process. However, manufacturing processes, which may offer cost advantages, are often kept as trade secrets to prevent disclosure to competitors³⁸.

The software industry provides another example. Algorithms, which are difficult to reverse engineer, are often protected as trade secrets, avoiding need for public disclosure under patent law. This approach is evident in companies like Google, which guards its search algorithms as trade secrets while patenting complementary technologies³⁹.

In food and beverage sector, recipes like Coca-Cola's formula remain iconic examples of the trade secrets. The indefinite protection achievable through secrecy outweighs time-limited exclusivity of the patents, particularly when information is not easily replicable⁴⁰.

³¹ Indian Patents Act 1970, s. 53.

³² World Trade Organization, TRIPS Agreement (1994) art 39.

³³ Tanya Aplin, Trade Secrets Law (OUP 2021) 22.

³⁴ *Saltman Engineering Co Ltd v Campbell Engineering Co Ltd* [1963] 3 All ER 413 (HL).

³⁵ Chandni Raina, Trade Secret Protection in India: The Policy Debate (CWS, 2015) 5.

³⁶ *Ibid.*

³⁷ Law Commission of the India, Report No. 289 on Trade Secrets and Economic Espionage (2024) 10.

³⁸ TRIPS Agreement (1994), art 39.3.

³⁹ **Department for Promotion of Industry and Internal Trade** (DPIIT Report) on IPR Policy (2021).

⁴⁰ Coca-Cola Company, Trade Secret Protection Statement (2019).

10. COMPARATIVE ANALYSIS OF TRADE SECRETS: USA, UK, AND INDIA

10.1 USA: Defend Trade Secrets Act (2016) and Economic Espionage Act (1996)

The United States provides robust statutory protection for trade secrets. The Defend Trade Secrets Act (DTSA) allows trade secret holders to seek federal remedies for misappropriation. The act emphasizes civil remedies, including injunctions and damages, and introduces concept of the ex parte seizure orders to prevent further dissemination of the stolen trade secrets⁴¹.

The Economic Espionage Act (EEA) criminalizes theft of the trade secrets, particularly in cases involving foreign entities. The act includes severe penalties, including imprisonment, to deter economic espionage⁴². Conviction of the theft of trade secrets under the Economic Espionage Act can result in a fine of up to \$250,000 for an individual (up to \$5 million for corporations), imprisonment up to ten years, or both. If the crime is committed for the benefit of any foreign government, instrumentality, or agent, the penalties increase to fines of \$500,000 (up to \$10 million for an organization), imprisonment up to 15 years, or both. Together, DTSA and EEA create dual framework addressing both civil and criminal aspects of the trade secret protection, ensuring comprehensive enforcement mechanisms⁴³.

10.2 UK: Common Law Approach and EU Trade Secrets Directive

The UK traditionally relied on common law doctrines, such as breach of the confidence, to protect trade secrets. Under this framework, remedies were primarily contractual, requiring evidence of the explicit or implied duty of the confidentiality⁴⁴. However, adoption of the EU Trade Secrets Directive in 2018 harmonized trade secret laws across member states, including UK before Brexit.

The directive establishes uniform definitions of the trade secrets and misappropriation, introducing minimum standards for protection. Key provisions include interim measures, such as injunctions and preservation of the confidentiality during litigation. Despite Brexit, UK has retained many elements of the directive, strengthening its legal framework for trade secret protection⁴⁵. Alongside the Trade Secrets Regulation, the United Kingdom passed a new law the National Security Act, 2023 provisions this Act specifically addresses trade secret misappropriation.

The Act makes any unauthorised attempts to obtain, copy, record or retain a trade secret or disclose or provide access to a trade secret shall be a criminal offence for or on behalf of a 'foreign power'. The offence carrying a maximum penalty is 14 years imprisonment and/or a fine.

10.3 India: Current Reliance on Common Law and Contractual Remedies

India lacks specific legislation for trade secret protection, relying instead on common law principles and contractual arrangements. The Indian Contract Act, 1872, provides remedies for breach of the confidentiality through agreements like non-disclosure and non-compete clauses⁴⁶. Courts have recognized doctrine of the breach of the confidence in cases such as *American Express Bank Ltd v Priya Puri*, emphasizing protection of the proprietary information shared in trust⁴⁷.

However, this reliance on common law creates inconsistencies in enforcement. The absence of the statutory definitions and criminal sanctions limits scope of the protection, leaving businesses vulnerable to misappropriation. Furthermore, procedural challenges, including risk of the exposing trade secrets during litigation, deter businesses from seeking judicial remedies⁴⁸.

⁴¹ Defend Trade Secrets Act 2016 (USA), s 1836.

⁴² Economic Espionage Act 1996 (USA), s. 1831.

⁴³ Law Commission of the India, Report No. 289 on Trade Secrets and Economic Espionage (2024) 12.

⁴⁴ *Coco v AN Clark (Engineers) Ltd* [1969] RPC 41 (Ch D).

⁴⁵ EU Directive 2016/943 on Trade Secrets.

⁴⁶ Indian Contract Act 1872, ss 27, 73.

⁴⁷ *American Express Bank Ltd v Priya Puri* [2006] 3 LLJ 540 (Del).

⁴⁸ Chandni Raina, Trade Secret Protection in India: The Policy Debate (CWS, 2015) 8.

10.4 Lessons for India from International Practices

India can draw valuable lessons from USA and UK to strengthen its trade secret protection framework. Adopting statutory definitions, as seen in DTSA, can provide clarity and consistency in enforcement. Introducing criminal sanctions, akin to EEA, would deter misappropriation and signal India's commitment to protecting intellectual property⁴⁹.

The UK's incorporation of the confidentiality safeguards during litigation offers another lesson. Ensuring preservation of the trade secrets in court proceedings can address procedural challenges and encourage businesses to pursue legal remedies. India's proposed Trade Secrets Bill, 2024, represents step in this direction, aiming to codify trade secret protection in line with global standards⁵⁰.

11. CHALLENGES IN TRADE SECRETS PROTECTION IN INDIA

a) Lack of the Statutory Recognition

India lacks dedicated statute for trade secret protection, relying instead on common law principles and contractual remedies. This absence creates ambiguity in defining trade secrets and scope of their protection. Unlike patents or trademarks, trade secrets are not recognized as intellectual property under Indian law, leaving their protection fragmented and inconsistent⁵¹. The Indian Contract Act, 1872, provides some relief through confidentiality agreements, but these are inadequate for addressing complex issues like third-party misappropriation or reverse engineering⁵².

The lack of the statutory recognition also hinders compliance with India's international obligations under TRIPS Agreement, which mandates protection for undisclosed information. Without codified laws, businesses are left to navigate patchwork of the common law doctrines, often resulting in unpredictable judicial outcomes⁵³. This gap significantly impacts industries reliant on proprietary information, discouraging innovation and foreign investment.

b) Procedural and Evidentiary Challenges in Civil and Criminal Remedies

The Indian legal system poses significant procedural challenges in enforcing trade secret protection. Civil remedies, primarily sought under breach of the confidence or contract claims, often involve lengthy litigation, during which trade secrets risk exposure in court proceedings. The absence of the robust procedural safeguards, such as confidentiality orders, exacerbates this issue⁵⁴.

Evidentiary challenges further complicate enforcement. Proving misappropriation requires demonstrating confidential nature of the information and its unauthorized use. This burden of the proof is particularly difficult when misappropriator claims independent creation or reverse engineering. Indian courts, while recognizing trade secret claims, often lack clear guidelines for evaluating evidence, leading to inconsistent judgments⁵⁵. The absence of the criminal sanctions also reduces deterrence, allowing misappropriation to occur with minimal consequences.

c) Ineffectiveness of the NDAs and Confidentiality Agreements in Practice

Non-disclosure agreements (NDAs) and confidentiality clauses are commonly used tools for trade secret protection in India. However, their effectiveness is limited by poor drafting and lack of the enforcement mechanisms. Many NDAs fail to specify scope of the confidential information or include provisions addressing post-employment obligations, making them vulnerable to legal challenges⁵⁶.

⁴⁹ Defend Trade Secrets Act 2016 (USA), s 1836.

⁵⁰ Law Commission of the India, Report No. 289 on Trade Secrets and Economic Espionage (2024) 15.

⁵¹ Indian Contract Act 1872, s. 27.

⁵² *Coco v AN Clark (Engineers) Ltd* [1969] RPC 41 (Ch D).

⁵³ TRIPS Agreement (1994), art 39.2.

⁵⁴ Chandni Raina, Trade Secret Protection in India: The Policy Debate (CWS, 2015) 5.

⁵⁵ *Ibid.*

⁵⁶ *American Express Bank Ltd v Priya Puri* [2006] 3 LLJ 540 (Del).

Even when well-drafted, NDAs rely heavily on judicial system for enforcement. Courts often prioritize employee mobility over employer rights, striking down restrictive covenants as unreasonable restraints of the trade. In *American Express Bank Ltd v Priya Puri*, Delhi High Court refused to enforce broad confidentiality clause, emphasizing need for balancing employee freedom with trade secret protection⁵⁷. Such judgments undermine reliability of the NDAs as protective measure.

d) Impact on MSMEs and Startups

Micro, small, and medium enterprises (MSMEs) and startups face unique challenges in protecting trade secrets. These entities often lack resources to implement robust confidentiality measures or pursue lengthy legal battles. The absence of the statutory support further exacerbates their vulnerability, leaving them exposed to misappropriation by larger competitors or employees⁵⁸.

Startups in technology-driven sectors are particularly affected, as they rely heavily on proprietary information for competitive advantage. Without adequate protection, their ability to attract investors or collaborate with larger firms is significantly hampered. This creates chilling effect on innovation, particularly in emerging industries like artificial intelligence and biotechnology, where intellectual capital is paramount⁵⁹.

12. MISAPPROPRIATION OF TRADE SECRETS IN INDIA

12.1 Definition and Scope of the Misappropriation

Misappropriation refers to unauthorized acquisition, use, or disclosure of the trade secrets. In India, misappropriation claims are typically grounded in breach of the confidence or contract. However, absence of the statutory definitions creates ambiguity, making it difficult to distinguish legitimate competitive practices from unlawful conduct⁶⁰.

Internationally, misappropriation encompasses actions such as theft, espionage, or breach of the contractual obligations. Under TRIPS Agreement, misappropriation is addressed as unfair trade practice, requiring member states to provide legal remedies. India's reliance on common law principles fails to fully capture breadth of the this concept, leaving gaps in enforcement⁶¹.

12.2 Judicial Trends in India

Indian courts have addressed trade secret misappropriation in several cases, often relying on equitable principles. In *Burlington Home Shopping Pvt Ltd v Rajnish Chibber*, Delhi High Court recognized confidentiality of the customer databases, granting injunction against their unauthorized use⁶². Similarly, in *John Richard Brady v Chemical Process Equipments Pvt Ltd*, court upheld employer's right to protect proprietary designs shared during employment⁶³.

Despite these precedents, judicial trends reveal inconsistencies in addressing trade secret claims. Courts often require explicit evidence of the confidentiality, placing burden of the proof on trade secret holders. This evidentiary standard, coupled with procedural delays, undermines efficacy of the judicial remedies.

12.3 Issues of the Enforcement and Remedies

Enforcement of the trade secret protection in India is fraught with challenges. Civil remedies, such as injunctions and damages, are often insufficient to deter misappropriation. The lack of the criminal sanctions further weakens enforcement, as offenders face minimal consequences for their actions⁶⁴.

Remedies are also limited by absence of the procedural safeguards. Unlike jurisdictions like USA, which provide for ex-parte seizure orders under Defend Trade Secrets Act, Indian law lacks mechanisms to prevent further dissemination of the stolen trade secrets during litigation. This gap leaves trade secret holders vulnerable to irreparable harm⁶⁵.

⁵⁷ Ibid.

⁵⁸ Law Commission of the India, Report No. 289 on Trade Secrets and Economic Espionage (2024) 10.

⁵⁹ Department for Promotion of Industry and Internal Trade (DPIIT Report) on IPR Policy (2021).

⁶⁰ TRIPS Agreement (1994), art 39.2.

⁶¹ Chandni Raina, Trade Secret Protection in India: The Policy Debate (CWS, 2015) 8.

⁶² *Burlington Home Shopping Pvt Ltd v Rajnish Chibber* [1995] PTC 278 (Del).

⁶³ *John Richard Brady v Chemical Process Equipments Pvt Ltd* [1987] AIR 276.

⁶⁴ Economic Espionage Act 1996 (USA).

13. LEGAL REFORMS: NEED & INITIATIVES

13.1 Importance of the Sui Generis Legislation for Trade Secrets

The absence of the comprehensive legal framework underscores need for sui generis legislation tailored to India's unique economic and technological landscape. Such legislation would provide statutory definitions, establish criteria for trade secret protection, and introduce civil and criminal remedies. It would also align India's legal framework with its TRIPS obligations, enhancing its international standing and fostering conducive environment for innovation⁶⁶.

A dedicated statute could address procedural challenges by introducing confidentiality safeguards, such as in-camera proceedings or confidentiality clubs. It could also provide for interim relief measures, ensuring prompt protection against misappropriation. These reforms would significantly strengthen India's trade secret regime, offering robust protection to businesses of the all sizes⁶⁷.

13.2 Recommendations from Law Commission of the India

The Law Commission of the India, in its Report No. 289, has emphasized need for specialized law on trade secrets. The report highlights inadequacy of the existing remedies and recommends adopting framework based on unfair competition principles, rather than proprietary notions of the trade secrets⁶⁸.

IPR think tanks have also called for legislative reforms, advocating for provisions that balance trade secret protection with employee mobility. Their recommendations include limiting post-employment restraints and explicitly recognizing independent creation and reverse engineering as legitimate defences. These suggestions aim to create balanced framework that protects trade secrets without stifling innovation⁶⁹.

13.3 Role of the Trade Secrets Bill, 2024, in Bridging Legal Gaps

The proposed Trade Secrets Bill, 2024, represents significant step towards addressing India's trade secret protection challenges. The bill introduces statutory definitions, establishes misappropriation as distinct cause of the action, and provides for both civil and criminal remedies. It also incorporates procedural safeguards, such as confidentiality orders and interim relief measures, to address enforcement challenges⁷⁰.

By codifying trade secret protection, bill aims to create predictable and consistent legal framework, fostering industry confidence and attracting foreign investments. Its alignment with international standards ensures compliance with TRIPS obligations, enhancing India's competitiveness in global economy⁷¹.

14. ANALYSIS OF TRADE SECRETS 2024 BILL: PROS AND CONS AND THE ISSUES ADDRESSED

Introduction to Bill

The Trade Secrets Bill 2024 represents landmark initiative by Indian government to address glaring gap in legal framework for trade secret protection. Drafted by **Law Commission of the India**, Bill is outcome of the extensive consultations with key stakeholders, including industry experts, academics, and legal professionals. The initiative aligns with recommendations set forth in Law Commission's Report No. 289 on Trade Secrets and Economic Espionage, which emphasized need for standalone statute to safeguard undisclosed information critical to businesses⁷².

This draft legislation comes a time when India faces increasing scrutiny for its insufficient trade secret laws, as highlighted in international reports like US Special 301. The Bill seeks to provide structured framework for protecting trade secrets, recognizing

⁶⁵ Defend Trade Secrets Act 2016 (USA), s. 1836.

⁶⁶ Law Commission of the India, Report No. 289 on Trade Secrets and Economic Espionage (2024) 15.

⁶⁷ Ibid.

⁶⁸ **Department for Promotion of Industry and Internal Trade** (DPIIT Report) on IPR Policy (2021).

⁶⁹ Law Commission of the India, Report No. 289 on Trade Secrets and Economic Espionage (2024) 18.

⁷⁰ Trade Secrets Bill 2024 (India), draft provisions.

⁷¹ Ibid.

⁷² Law Commission of the India, Report No. 289 on Trade Secrets and Economic Espionage (2024).

them as vital form of the intellectual property that fosters innovation, attracts foreign investment, and promotes fair competition. It aims to strike balance between safeguarding proprietary knowledge and ensuring employee mobility and independent innovation. The Bill also attempts to align India with its international obligations under Article 39 of the TRIPS Agreement, while tailoring provisions to India's unique socio-economic landscape⁷³.

14.1 Issues Addressed in Bill

The Trade Secrets Bill 2024 seeks to address several critical issues that have long plagued India's trade secret protection regime. The issues addressed in Bill are as follows:

1. **Lack of the Definition and Scope:** The Bill provides clear definition of the trade secrets, emphasizing secrecy, commercial value, and reasonable protection measures. This resolves ambiguity in Indian law, where trade secrets were not explicitly recognized or defined⁷⁴.
2. **Inadequate Remedies for Misappropriation:** The Bill introduces both civil and criminal remedies for trade secret misappropriation, addressing concerns about lack of the enforceable legal mechanisms under existing laws. It provides for injunctions, damages, and criminal sanctions to deter unauthorized use and disclosure of the trade secrets⁷⁵.
3. **Procedural Safeguards in Litigation:** A key issue addressed by Bill is procedural challenge of the protecting trade secrets during litigation. The Bill proposes confidentiality clubs, restricted access to sensitive information, and non-disclosure orders to ensure that trade secrets are not exposed in course of the legal proceedings⁷⁶.
4. **Alignment with International Standards:** The Bill incorporates provisions to bring India closer to global practices, such as Defend Trade Secrets Act in USA and Trade Secrets Directive in EU. This alignment is crucial for boosting investor confidence and facilitating cross-border technology transfer⁷⁷.
5. **Protecting Industry-Specific Needs:** Recognizing diverse needs of the industries like pharmaceuticals, technology, and manufacturing, Bill includes provisions to safeguard trade secrets critical to these sectors. It also addresses concerns raised by MSMEs about affordability and accessibility of the legal protection⁷⁸.

14.2 Highlights of the Bill

The key features of the Bill are as follows:

1. **Comprehensive Definition of the Trade Secrets:** The Bill Provides Comprehensive definition for Trade secrets under section 2(f) as any confidential information that has commercial value due to its secrecy and is subject to reasonable protective measures. This definition aligns with international standards while considering Indian context⁷⁹. The draft bill further provides an exhaustive list of ways in which trade secrets can be obtained lawfully under section 4 namely:
 - Information obtained by independent discovery or creation
 - Information acquired by observation, reverse engineering, disassembly,
 - Through any other practices that are in conformity with honest commercial practices; or
 - In pursuance of a law, by a contract, or as permitted by law.
2. **Broad Scope of the Protection:** The proposed bill defines the term misappropriation under section 2(d) and covers wide range of the activities that constitute misappropriation, including unauthorized acquisition, disclosure, and use of the trade secrets. It also addresses indirect misappropriation by third parties who knowingly benefit from stolen trade

⁷³ TRIPS Agreement (1994), Art 39.

⁷⁴ Law Commission of the India, Report No. 289 (2024) 12.

⁷⁵ Chandni Raina, Trade Secret Protection in India: The Policy Debate (CWS, 2015) 3.

⁷⁶ Defend Trade Secrets Act 2016 (USA).

⁷⁷ European Union, Directive 2016/943 on Protection of the Trade Secrets.

⁷⁸ US Special 301 Report (2015).

⁷⁹ Trade Secrets Bill 2024, draft provisions.

secrets⁸⁰. Further, The bill clearly stated what does not amount to misappropriation or is lawful acquisition or use; for instance, independent discovery, reverse engineering or anything that is a result of an honest commercial practice will not amount to misappropriation. The bill also provides the provisions for disclosure, usage, contractual and licensing rights to the holder of the Trade secrets under section 3 of the proposed bill.

3. Exceptions to Misappropriation of Trade secrets : The Bill recommended that the legislation must allow for the exceptions to the misappropriation so as to ensure proper balancing interests appropriation so as to ensure a proper balance of competing interests.

a) whistle-blowers Protection:

The Bill incorporated the provisions for protection of whistle-blowers under section 5(a), which is essential for encouraging individuals to report misconduct or illegal activities without fear of retaliation or legal repercussions. The Commission believes that illegal activities should not be shielded under the guise of trade secrets, and non-disclosure agreements should not be used to deter reporting on such activities.

b) Compulsory licensing and Government Use:

Compulsory licensing provisions are introduced in the Bill under section 6, to allow the central government to order the disclosure of trade secrets to third parties or the government in critical situations such as national emergencies, extreme urgencies of vital public interest, including health emergencies, and national security. This is similar to the provision contained in Section 100 of the Indian Patents Act, 1970.

4. Robust Remedies: The Bill, emphasizes the necessity of providing effective remedies for the misappropriation of trade secrets, which includes both civil and criminal remedies. Civil remedies are stated under section 7 of the Bill, this include injunctions, damages, and accounts of the profits, while any criminal actions related to trade secret misappropriation are to be addressed under existing laws, such as the Indian Penal Code, 1860, the Bhartiya Nyaya Sanhita, 2023 and the Information Technology Act, 2000.

5. Procedural Innovations: A key issue addressed by Bill is procedural challenge of the protecting trade secrets during litigation. The Bill provides provisions for confidentiality of proceedings under **section 9**. The introduction of the confidentiality clubs and in-camera proceedings ensures that sensitive information is protected during litigation. This addresses long-standing issue of the trade secret exposure in courtrooms, which has deterred businesses from pursuing legal action⁸¹.

6. Flexibility for MSMEs and Startups: The Bill includes provisions for expedited proceedings and reduced costs for MSMEs and startups, recognizing their resource constraints and vulnerability to trade secret theft. This ensures that smaller entities have equal access to protection under law⁸².

14.3 Deficiencies in Bill

Despite its strengths, Trade Secrets Bill 2024 is not without its limitations. The deficiencies of the Bill are as follows:

1. Overemphasis on Civil Remedies: While Bill introduces criminal sanctions, its emphasis on civil remedies may not provide sufficient deterrent, especially in cases of the large-scale industrial espionage. Countries like USA impose stringent criminal penalties, which India could consider adopting more robustly⁸³.

⁸⁰ Ibid.

⁸¹ Department for Promotion of Industry and Internal Trade (DPIIT Report) on IPR Policy (2021).

⁸² Trade Secrets Bill 2024, draft provisions

⁸³ South Korean Act on Protection of the Industrial Technology.

2. **Ambiguity in Enforcement Mechanisms:** The Bill lacks detailed provisions on how enforcement agencies will implement its provisions. For instance, it does not specify how courts will ensure compliance with non-disclosure orders or monitor execution of the confidentiality measures⁸⁴.
3. **Limited Focus on Technology-Driven Misappropriation:** The Bill does not adequately address challenges arising from technology-driven misappropriation, such as cyberattacks and data breaches. These are critical issues in digital age and require specific safeguards and penalties⁸⁵.
4. **Insufficient Guidance on Reasonable Protective Measures:** While Bill requires trade secret holders to take reasonable steps to protect their information, it does not provide clear guidelines on what constitutes reasonable measures. This could lead to inconsistent judicial interpretations and outcomes⁸⁶.
5. **Potential for Overregulation:** Critics argue that Bill's stringent requirements for defining and proving trade secrets may discourage innovation and impose unnecessary compliance burdens on businesses. Striking right balance between protection and flexibility is crucial to avoid overregulation⁸⁷.
6. **Exclusion of the Public Interest Exceptions:** The Bill does not adequately address scenarios where disclosure of the trade secrets may be in public interest, such as in cases of the public health or environmental concerns. Incorporating explicit exceptions for public interest could enhance Bill's fairness and acceptability⁸⁸.

14.4 Pros: Clarity, Enhanced Remedies, and Alignment with International Standards

The bill's comprehensive definitions provide much-needed clarity, addressing ambiguities in current reliance on common law principles. It sets clear criteria for what constitutes trade secret, ensuring consistent application across cases. Enhanced remedies, including interim relief and confidentiality measures, strengthen enforcement mechanisms, reducing procedural delays and risk of the further harm to businesses during litigation⁸⁹.

Alignment with international standards, such as TRIPS Agreement and practices under Defend Trade Secrets Act (2016) in USA, makes framework globally competitive. This fosters foreign investment and technology transfer by assuring multinational corporations of the robust intellectual property protection⁹⁰. By codifying trade secret protection, bill also bridges compliance gaps highlighted in international forums, bolstering India's reputation in global trade⁹¹.

14.5 Cons: Potential Overreach, Employee Mobility Concerns, and Implementation Challenges

Critics argue that bill's stringent provisions may lead to overreach, particularly in defining misappropriation. Legitimate practices such as reverse engineering or independent innovation may face unjustified scrutiny. Concerns about employee mobility are also significant, as restrictive provisions could stifle job opportunities and innovation⁹². The balance between protecting trade secrets and ensuring fair labour practices remains delicate.

Implementation challenges are another drawback. Establishing procedural safeguards, such as confidentiality clubs, requires judicial resources and training, which could burden legal system. MSMEs and startups may find compliance with new framework resource-intensive, potentially disadvantaging smaller players in litigation against larger entities with greater legal expertise and financial resources⁹³.

⁸⁴ Law Commission of the India, Report No. 289 (2024) 15.

⁸⁵ *Ibid.*

⁸⁶ TRIPS Agreement (1994), Art 39.2.

⁸⁷ *Ibid.*

⁸⁸ Chandni Raina, Trade Secret Protection in India: The Policy Debate (CWS, 2015) 5.

⁸⁹ **DPIT Report** on IPR Policy (2021).

⁹⁰ Defend Trade Secrets Act 2016 (USA), S. 1836.

⁹¹ TRIPS Agreement, Art 39.2.

⁹² *American Express Bank Ltd v Priya Puri* [2006] 3 LLJ 540 (Del).

⁹³ Law Commission of the India, Report No. 289 on Trade Secrets and Economic Espionage (2024) 15.

15. CASE STUDIES AND JUDICIAL ANALYSIS

15.1 Analysis of the Landmark Indian Cases on Trade Secret Protection

The Indian courts have largely relied on English laws and cases but recently they have been trying to develop their own ground of jurisprudence to protect trade secrets.

1. Burlington Home Shopping Pvt Ltd V. Rajnish Chibber⁹⁴

The business of the Plaintiff was to publish mail order catalogues dealing with consumer items which were posted to the select list of Plaintiff's clients. A major investment in this regard was compilation of client list/customer database. Plaintiff had developed a list of clientele/customers database over a period of three years which was always in the gradual process of compilation. The Defendant was an employee in the Plaintiff Company. After leaving the employment of the Plaintiff, Defendant started his own business similar to as that of the Plaintiff. He had also managed to get a copy of database of the Plaintiff and started to use the same for his own purpose

The Delhi High Court touched upon the aspects of trade secrets pertaining to copyright in reference to business data and observed that, copyright and trade secret law protect different elements of compiled business data, with copyright protecting the expression in these compilations and trade secret law protecting the underlying data.

In *John Richard Brady v Chemical Process Equipment Pvt Ltd*, Bombay High Court granted relief to employer, recognizing confidential nature of the technical designs shared during employment. The court upheld doctrine of the breach of the confidence, marking important precedent for trade secret protection⁹⁵.

2. American Express Bank Ltd v Priya Puri⁹⁶

The defendant was giving the plaintiff in her 30-day notice as she resigned as head of wealth management and filed her resignation to the plaintiff. At this phase, the plaintiff asserts that the defendant infringed the plaintiff's intellectual property rights and that she had provided confidential material to individuals who were unassociated with the company's business, utilized trade secrets and confidential information for her personal gain, and breached the American Express customer privacy policy.

The Delhi High Court ruled in Favor of American Express Bank, emphasizing the importance of protecting trade secrets and confidential information and stated that trade secrets are "...a formula, technical know-how, or a particular manner or practice of business established by an employer which is inaccessible to others." Such data reasonably affects organizational development and financial interests.

3. Bombay Dyeing and Manufacturing Company v. Mehar Karan Singh⁹⁷

In this case, the respondent was the whole-time Director of the Plaintiff-Company appointed according to a Contract Of employment. In accordance with the aforementioned agreement, he furthermore guaranteed not to disclose or reveal any kind of confidential material to other parties in violation of a confidentiality clause. A guide of specially designed software for Plaintiff's real estate firm, which was acquired by Plaintiff after paying a software manufacturer company, Oracle, Rs. 93 lakhs, was purportedly forwarded on email by Defendant to a competing company, according to the Plaintiff-Company.

The Court granted an injunction in favour of Plaintiff prohibiting Defendant from disclosing or passing over the proprietary information in any way contained in the software manual attached to Defendant's email and the Memorandum of Understanding attached to another email of the defendant, both of which relate to a property owned by the Plaintiff in Goa.

⁹⁴ *Burlington Home Shopping Pvt Ltd v Rajnish Chibber* [1995] PTC 278 (Del)

⁹⁵ *John Richard Brady v Chemical Process Equipment Pvt Ltd* [1987] AIR 276.

⁹⁶ *American Express Bank Ltd v Priya Puri* [2006] 3 LLJ 540 (Del)

⁹⁷ *Bombay Dyeing and Manufacturing Company v. Mehar Karan Singh*, (2010 (112) BomLR 375)

4. Fairfest Media Ltd v. LTE Group Plc.⁹⁸

In this case, Fairfest Media Ltd, an event management company, organized travel and tourism exhibitions and had developed a proprietary database of exhibitors and attendees over several years. LTE Group Plc, a competitor, allegedly misappropriated this database after hiring a former employee of Fairfest who had access to the confidential information.

The Calcutta High Court ruled in Favor of Fairfest Media, recognizing the database as a trade secret that had been developed through significant investment and effort. The court held that LTE Group's actions constituted misappropriation of confidential information, leading to an injunction against the use of the database and affirming the importance of protecting trade secrets in business.

15.2 International Cases Illustrating Best Practices

Internationally, USA's *E.I. du Pont de Nemours & Co v Christopher* case underscored importance of the safeguarding trade secrets from industrial espionage, setting precedent for stringent enforcement measures⁹⁹. The case involved aerial photography to capture confidential manufacturing processes, with court ruling in favor of the trade secret holder.

In UK, *Coco v AN Clark (Engineers) Ltd* established threefold test for breach of the confidence, requiring information to be confidential, disclosed under circumstances imposing obligation of the confidence, and misused to detriment of the plaintiff¹⁰⁰. This test continues to guide trade secret cases, offering balanced approach to enforcement.

In *Saltman Engineering Co. case*¹⁰¹ Saltman Engineering Company Limited ("Saltman") who was the owner of certain drawings, had proposed to enter into a contract with Campbell Engineering Company Limited ("Campbell") for the manufacture of certain leather products, and had shared the relevant drawings with Campbell for the said purpose. Subsequently, Campbell started using the drawings for its own purpose.

When Saltman challenged Campbell's use of the drawings before the High Court of Justice (Chancery Division), Campbell argued that in the absence of a contract, Campbell did not have the obligation to treat the drawings as confidential matter. While deciding the matter, Lord Greene observed that "*it would not matter the least bit whether there was a contract or whether there was not a contract*". What mattered was that the defendants got those drawings into their hands knowing, or knowing shortly afterwards, that they belonged to Saltman, that they were obviously confidential matter and they knew that they had got them into their hands for a strictly limited purpose. Hence, it was held that there was a breach of confidence on the part of Campbell.

In the case *Mulsanne v Marshmallow*¹⁰², Marshmallow was an intermediary for insurance policies provided by Mulsanne and chose to form its own insurance company. Mulsanne claimed that in doing so it was misusing its confidential information and trade secrets. The Court held that the breaches were incidental only and that Marshmallow had sought to avoid using Mulsanne's trade secrets. Such cases continue to highlight the importance of demonstrating steps taken to avoid misusing information and good record keeping when it comes to trade secrets.

15.3 Insights into Judicial Attitudes Towards Trade Secret Claims

Judicial attitudes in India reflect evolving recognition of the trade secret protection, albeit with inconsistencies. Courts have increasingly acknowledged economic value of the trade secrets but often prioritize broader societal interests, such as labour rights and competition. This creates unpredictability in enforcement, deterring businesses from pursuing legal remedies. Internationally, more structured approach, as seen in USA and UK, provides greater predictability, highlighting need for similar reforms in India¹⁰³.

⁹⁸ *Fairfest Media Ltd v. LTE Group Plc.* (2015) (2) CHN (CAL) 704

⁹⁹ *E.I. du Pont de Nemours & Co v Christopher* [1970] 431 F.2d 1012.

¹⁰⁰ *Coco v AN Clark (Engineers) Ltd* [1969] RPC 41 (Ch D).

¹⁰¹ *Saltman Engineering Co. v. Campbell Engineering Co. Limited* (1948) 65 RPC 203

¹⁰² *Mulsanne v Marshmallow* [2022] EWHC 276 (Ch)

¹⁰³ Law Commission of the India, Report No. 289 on Trade Secrets and Economic Espionage (2024) 18.

16. CONCLUSION

Snippet of the Key Findings and Arguments

India's reliance on common law and contractual remedies for trade secret protection is insufficient to address complexities of the modern business environments. The absence of the statutory recognition, coupled with procedural and evidentiary challenges, leaves businesses vulnerable to misappropriation. Judicial trends, while gradually evolving, lack consistency and clarity required for robust enforcement.

The proposed Trade Secrets Bill, 2024, addresses these gaps by codifying trade secret protection and aligning with international standards. Its provisions for statutory definitions, civil and criminal remedies, and procedural safeguards represent significant step forward. However, bill must strike balance between protecting trade secrets and safeguarding legitimate interests, such as employee mobility and independent innovation.

Urgent Need for Dedicated Trade Secret Protection Law in India

A dedicated trade secret protection law is critical for fostering innovation, attracting foreign investment, and ensuring India's competitiveness in global economy. The proposed bill provides comprehensive framework to address current inadequacies, offering businesses confidence to innovate without fear of the misappropriation. It also enhances India's compliance with TRIPS obligations, strengthening its position in international trade negotiations.

Policy Recommendations for Effective Implementation of the Trade Secrets Bill, 2024

To ensure effective implementation, bill should include clear guidelines for balancing trade secret protection with employee mobility. Provisions for legitimate defences, such as reverse engineering and independent creation, should be explicitly outlined to prevent overreach. MSMEs and startups require targeted support, such as simplified compliance mechanisms and access to legal aid, to navigate new framework.

Judicial training on trade secret issues is essential to ensure consistent and efficient enforcement. Procedural safeguards, such as confidentiality clubs and in-camera proceedings, must be adequately resourced to prevent misuse. A phased implementation strategy, supported by awareness campaigns, can help businesses adapt to new legal framework, ensuring its success.

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