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## POSITION OF TRADE SECRETS IN INDIAN LAW

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### ABSTRACT

Trade Secrets are truly vital in the business sectors, specifically in those sectors which are driven by an innovation, technology etc. A trade secret means an information which is valuable for a company. So, this kind of information should be kept confidential. In today's globalized economy, trade secrets have the utmost importance. This can be a method, process, formula, recipe, etc. An information should meet significant criteria to get the qualifications for trade secret protection, they are – secrecy, commercial value, and reasonable efforts for a protection. Although trade secrets are safeguarded by the internal measures, such as – access control, non-disclosure agreements, etc., but some drawbacks are also there. It requires a precise legal protection and internal security. India does not have a standalone statute for trade secrets. So, there is an absence of a statutory definition of trade secrets. As a result, Indian companies are depending on a fragmented set of legalized tools. And this situation creates challenges in guiding trade secret protection strongly. The cases relating to trade secrets are handled under the Law of Tort or the breach of contract, which may not deliver the most suitable remedies for companies. Indian Courts have yet to create an immense body for the cases of trade secrets. So, the legal framework leaves uncertainty regarding the scope of protection. And the different legal systems of different countries can raise challenges for the international enforcement of trade secret protection. The basic motive behind this study is to unlock a path of intellectual property rights and analyze the pivotal role of trade secrets in this competitive world. This study aims to analyze the current position of confidential business information in the Indian scenario. This paper will focus on the present-day conditions and suggest some worthy proposals as a response to the rapidly changing situations of the Indian business sectors.

**Keywords:** Trade secrets, Confidential, Business sectors, Commercial value, Intellectual Property Rights.

## INTRODUCTION

Trade Secrets are quite important for a business sector or industry. A trade secret is an information that has an economic value.<sup>1</sup> Confidential information can relate to any kind of subject-matter. Trade secret does not require any procedural formalities for their protection, but the information protected should actually be secret. The owners of trade secrets may share the information with their business partners and employees. However, unlike other developed countries, India has no specific legislation to deal with trade secrets. So, in Indian jurisprudence, the term “trade secret” is not clearly defined by any enactment<sup>2</sup>. In this changeable digital scenario, it becomes quite challenging to safeguard trade secrets in India without the presence of any exact legislation. This paper focuses on the current position of trade secret protection law in India. The aim of this study is to understand whether there is genuine need for the enactment of trade secret legislation in India or not. If it is truly required, then this paper will provide some worthy proposals also.

## HISTORICAL BACKGROUND

Laws relating to trade secret had its origin in the common law. In 1817 and 1837, the English and American Courts had recognized a cause of action for damages for misappropriation of trade secrets, for the first time.<sup>3</sup> There were various forms of trade secret protection in Roman times, but the modern form of trade secret law is based on the Anglo-American doctrine. Protection of Indian trade secret is common law based. Proper maintenance of trade secret is very important. The foreign investors need to be assured of their trade secret protection in India<sup>4</sup>. After getting this kind of assurance, they can do business with India. However, the protection of trade secrets is equally important for the successful expansion of industries worldwide.

## STATEMENT OF THE PROBLEM

The preservation of trade secret is an evolving challenge in India. Enforcement of the protective measures for trade secrets is complicated by the lack of specific and clear legal guidelines.

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<sup>1</sup> Manish Yadav and Sarvesh Kumar Shahi, *Law Relating To Trade Secret And Technology Transfer* 27 (Satyam Law International, New Delhi, 2017).

<sup>2</sup> *Id.* at 79.

<sup>3</sup> *Id.* at 2.

<sup>4</sup> *Id.* at 78.

Indian trade secrets are sheltered by a combination of laws. So, it's can be said that, this situation creates an extensive gap in Indian legal framework. There is no such a comprehensive body of the Indian Courts to decide only the case laws related to the trade secret issues. Another problem is the dissociation of legal system throughout the world. This kind of differences can raise obstacles for the international enforcement.

## **RESEARCH METHOD**

In this study, doctrinal research method has been adopted. This research paper includes the systematic arrangement of legal data to identify the inconsistencies in a particular area of law. This research work is conducted through the secondary sources like govt. reports, case reports, statutes, websites, and scholarly articles.

## **OBJECTIVES OF THE STUDY**

- 1) To analyze the efficacy of existing legal tools, such as common law remedies for the prevention of misappropriation of trade secret.
- 2) To recognize the lacunae in the current legislations that may hinder to provide enough protection for the trade secrets.
- 3) To analyze the weakness of the businesses to preserve their trade secrets and confidential data.
- 4) To propose for the enactment of a more particular legislation, like the Protection of Trade Secrets Bill, 2024, for the preservation of a novelty.

## **HYPOTHESIS**

In India, there is no such specific legislation to deal with trade secrets exclusively. It is certainly important for a company to protect and maintain their trade secrets. Although Indian trade secrets are secured by several legislations, but some limitations are also there. Implementation of appropriate rules and regulations can help to protect the trade secrets on a global scale.

## **LEGAL FRAMEWORK**

India does not have any specific and single law for the ultimate protection of trade secrets. In

India, trade secrets are safeguarded through an amalgamation of various existing laws. They are as follows-

- A. Common Law and Equity Principles-** The Courts generally use the principles of “breach of confidence” to stop the misuse of confidential business information. The Courts have the fiduciary duty to enforce some obligations even without any specific statute.
- B. Indian Contract Act, 1872-** This Act has established a framework to enforce confidentiality clauses and non-disclosure agreements. By imposing contractual restrictions on the stakeholders and employees, this Act tries to protect the sensitive information from disclosure.
- C. Copyright Act, 1957-** This Act protects original dramatic, artistic works. It covers software code, databases etc., which can overlap with the trade secrets.
- D. Intellectual Property Law-** Although the intellectual property laws of India do not directly address trade secrets, but some provisions offer protection indirectly. For example, under the Act<sup>5</sup> of 1999, unfair competition laws can be invoked if a competitor illegally uses a confidential information for an unfair purpose.
- E. The Information Technology Act, 2000-** In general, this Act focuses on cybercrimes and electronic transactions. But this Act also includes some provisions for the protection of trade secrets in cases of unauthorized sharing or digital data misappropriation. A section<sup>6</sup> of this Act penalizes a violation relating to a privacy of information. It talks about the violations of digitally stored or transmitted business secrets.<sup>7</sup>
- F. TRIPS Agreement -** TRIPS, an international agreement, sets a minimum standard for the protection of intellectual property. TRIPS encourages its members to combat with unfair competition in the market, which can cover the matter of trade secrets also. As a member of WTO, India adheres to the standards of the TRIPS Agreement and protects the confidential information.

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<sup>5</sup> The Trade Marks Act, 1999 (Act 47 of 1999).

<sup>6</sup> The Information Technology Act, 2000 (Act 21 of 2000), s.66E.

<sup>7</sup> Trade Secret Protection in India: A Comprehensive Overview, available at: <https://kankrishme.com/trade-secret-protection-in-india-a-comprehensive-overview/> (last visited on May 12, 2025).

**G. Bharatiya Nyaya Sanhita (2023)-** This new code offers some provisions for confidentiality and data protection also.

**H. Digital Personal Data Protection Act, 2023-** The DPDP Act talks about the protection of personal data. And this is relevant for the sensitive business information also.

Recently, in 2024, a bill was proposed by the 22<sup>nd</sup> Law Commission of India. So, the Protection of Trade Secrets Bill, 2024, is a proposed law in India. This Bill aims to create a dedicated rules and regulations to protect confidential trade information. But this Bill is not yet enacted.<sup>8</sup>

## JUDICIAL REVIEW

a) *A case was decided by the Delhi High Court on the ground of trade secret and patent infringement dispute in 2023.*<sup>9</sup> This case examines the legal principles connected with the trade secrets in-depth. In this case, the defendant was accused of unlawful usage of proprietary technology for personal profit or to benefit the competitor. Ultimately, the Court ruled in favour of the plaintiff. However, the Court reinforced the protection of trade secrets in a competitive business arena. The Court highlighted that the confidential information must not be publicly available. This kind of decision also affirmed that an unauthorized use of other's confidential information creates a breach of trust. And this can result penalties for an infringing party.

The Court has established a 'Confidentiality Club'. By this, the Court aims to create an organized approach to protect the trade secrets and ensure fair competition. However, this case raises awareness about the necessity of protecting sensitive business information.<sup>10</sup>

b) *A case was decided by the Bombay High Court on the ground of breach of confidentiality in 2023.*<sup>11</sup> In this case, the plaintiff was a manufacturer of water purification equipment. Former employees of the plaintiff had joined with the defendant. So, the plaintiff alleged

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<sup>8</sup> Safeguarding Secrets: 22nd Law Commission's push for Trade Secrets in India, available at: <https://www.google.com/amp/s/www.barandbench.com/amp/story/view-position-push-for-trade-secrets-in-india> (last visited on May 14, 2024).

<sup>9</sup> *Pawan Kumar Goel vs. Dr. Dhan Singh & Anr.*, CS (COMM) 672/2022, (Delhi High Court).

<sup>10</sup> Case Analysis: Pawan Kumar Goel v. Dr. Dhan Singh and Another, available at: <https://prezi.com/p/3qzn9xqdnemp/case-analysis-pawan-kumar-goel-v-dr-dhan-singh-and-another/> (last updated on Oct. 20, 2025).

<sup>11</sup> *Rochem Separation Systems (India) Pvt. Ltd. v. Nirtech Pvt. Ltd. & Ors.*, COMM IP SUIT (L) No. 29923 of 2022 (Bombay High Ct. Mar. 30, 2023).

that, the ex-employees wrongfully used its trade secret, confidential information and technical drawings for the defendant's company. After that, the High Court of Bombay passed an order of injunction. And a technical expert was appointed to seize data and materials from the premises of the defendant. Then, the defendant contested this order.<sup>12</sup>

The final verdict capsized the initial order. The Court had ruled in favour of the defendant due to the lack of sufficient evidence from the plaintiff. The Court further noted that the plaintiff should provide a clear data about the information which they claimed as confidential. And the Courts need a concrete basis for the examination of this kind of disputes. The lack of a specific, statutory definition makes it difficult for the Courts to handle these matters with more clarifications.

- c) *A case was decided by the Telangana High Court on the ground of trade secret dispute in 2025.*<sup>13</sup> This is an important and recent case law on the trade secret jurisprudence. The Division Bench of the Telangana High Court have evaluated the submissions of both parties. The Bench has analysed the principles of trade secret protection. The Bench emphasized that an obscure claim of confidentiality cannot be served as a basis for the injunctive relief. Accordingly, the Division Bench set aside the order of the Commercial Court. By doing so, the High Court of Telangana clarified that the actual trade secret must be proven with proper evidence. A blanket injunction which restrains a legitimate trade without recognizing a precise confidential information, is unconstitutional and contrary to the principle of justice. However, in this case the High Court of Telangana sets aside the blanket injunction and emphasizes a need for the particularity. The Court has reaffirmed both the constitutional guarantee of freedom of trade and the purity of trade secret protection.<sup>14</sup>

## CONCLUSION AND SUGGESTIONS

It is clear that in India trade secret protection is an evolving challenge. Proper maintenance of trade secrets can foster an innovation. The advancement of a business depends on the

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12 Rochem Case Study| PDF| Trade Secret| Lawsuit, available at: <https://www.scribd.com/document/939089384/Rochem-Case-Study> (last visited on Nov. 25, 2025).

<sup>13</sup> *Mr. Venkateshwarlu Guduru v. Siddhardha De Bathula*, [2025 SCC OnLine TS 1394, decided on 26-9-2025].

<sup>14</sup> Telangana High Court Sets Aside Blanket Injunction in Trade Secret Dispute, Emphasizes Need for Specificity, available at: <https://thelegalaffair.com/news/telangana-high-court-sets-aside-blanket-emphasizes-need-for-specificity/> (last visited on Oct.6, 2025).

preservation of trade secrets. There is no specific law on trade secret protection in India till now, but the companies can rely on the common law, contractual obligations to safeguard their confidential information. In this way, the businesses can secure the secret data and sustain their market position. But a mix of these laws are not entirely sufficient in every circumstance. As the global economy values the trade secrets, India is expected to be improved with a specific trade secret protection law. The Law Commission of India had proposed a Bill for the protection of trade secrets in 2024, but it's still under a discussion and review stage. By an enactment and implementation of a particular Act, the companies will be able to secure their business secrets in a proactive manner. Some proposals for the betterment of trade secrets protection in India are as follows-

- **Need for a Dedicated Law-** A specific, standalone Act is required for Indian trade secret protection. The enactment of trade secret bill (2024) is quite necessary.
- **Training for Employees-** It is required to train staff regularly on the matter of data security and confidentiality obligations. It is also necessary to include clauses in contract that will bind the employees to keep the business secrets confidential even after their tenure ends.
- **Whistleblower Protection-** It can protect the disclosure of trade secrets which are made in a good faith, e.g. to report an illegal activity, etc. So, the proposed legislation may include whistleblower immunity for public interest.
- **Alternative Dispute Resolution-** Arbitration and mediation method can be utilized for faster resolution.
- **Leverage Technology-** Digital data can be secured with strong encryption, and password. By using this kind of technologies, digital information will be protected.
- **Appropriate Remedies-** It is required to introduce appropriate provisions for criminal action like the theft of trade secrets, etc.

A rational implementation of these suggestions may be beneficial in shaping India's trade landscape significantly.