

## Trade Secret Bill, 2024: An Overview

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### Introduction

Businesses are always competitive and there have been umpteen examples in the history wherein some businessmen were more successful than others, due to some secret ingredient or element, which being confidential was unknown to the rest of the world. Such secret ingredient or element was the differentiator for all such innovators.

Probably recognizing the above concept, the proposed **Trade Secret Bill, 2024** now aims to officially protect confidential business information that provides business enterprises with a competitive advantage. The preamble of the Bill thus states that it is “*a bill to provide for effective protection of trade secrets against misappropriation so as to encourage innovation and fair competition.*”

The bill thus defines trade secrets and addresses their misappropriation, outlining legal protection and remedies, including injunctions and damages. The bill ensures confidentiality during litigation, sets a statute of limitations for claims, and balances trade secret protection with employee mobility. By safeguarding intellectual property and promoting fair competition, the bill encourages economic growth and innovation. Enforced by federal and state agencies, it urges companies to implement security measures and use legal tools like non-disclosure agreements (NDAs) to protect their trade secrets.

### Origin and history

Trade secrets date back to the Roman Empire, where they were safeguarded. This concept quickly spread throughout Europe and then the rest of the world. During the Renaissance, many European nation-states had regulations to protect enterprises, mainly guild cartels, against unauthorized use of their trade secrets. These practices were translated and codified into law during the Industrial Revolution, making trade secret law essential. Initially, called “*Industrial Secrets*” the concept was first discussed in the 1929 article “*Trade Secrets and the Roman Law*” published in the Columbia Law Review. The English case of *Newbery Vs. James (1817)* gave rise to modern trade secret law, and concept was applied in the United State in *Vickery Vs. Welch (1837)*.

Article 10bis (*Unfair Competition*) of the International Convention for the Protection of Industrial Property (**Paris Convention**) is often cited as the beginning of the regulated evolution of trade secrets. The Trade-Related Aspects of Intellectual Property Rights (**TRIPS**) agreement later formalized this further. According to Article 39 of the accord, the parties are obligated to take adequate steps to safeguard “data submitted to the government or governmental agencies” and “undisclosed information.” Since it was the first international agreement to codify the IPR, this marked a significant advancement in the field of trade secrets. Article 10bis of the Paris Convention must be read in combination with this. Despite being a signatory to the 1994 TRIPS agreement, India did not so far enact its own legislation on Trade Secrets.<sup>1</sup>

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<sup>1</sup> Trade Secrets and the Justification of Intellectual Property: A Comment on Hettinger on JSTOR. (n.d.-b). [www.jstor.org/https://www.jstor.org/stable/2265433](http://www.jstor.org/https://www.jstor.org/stable/2265433)

## Present Position with respect to Trade secret law in India

The Indian legal system follows the common law system primarily based on customs, precedents, and legislation. Hitherto India did not have a specific statute or Act for protecting trade secrets. Instead, Trade secrets were being protected through a series of precedents and various laws, including:

- The Patents Act, 1970;
- The Trade Marks Act, 1999;
- The Copyright Act, 1957;
- The Designs Act, 2000;
- The Geographical Indications of Goods (Registration and Protection) Act, 1999;
- The Plant Variety Protection and Farmer's Rights Act, 2001;
- The Biodiversity Act, 2002;
- The Semiconductor Integrated Circuits Layout Designs Act, 2000;
- The Information Technology Act, 2000;
- The Indian Contract Act, 1872;
- The Competition Act, 2002;
- The Indian Penal Code, 1860 (with effect from 1 July 2024, this will be known as Bharatiya Nyaya Sanhita) etc.

As a signatory to the TRIPS Agreement, India is obligated under Article 39 to protect “undisclosed information” which in simple words means Trade Secrets. Furthermore, Article 10bis of the Paris Convention and Article 39(2) to 39(3) of the TRIPS Agreement allows member states to have *sui generis* (of its own kind) mechanisms. All this while, Indian courts have utilized common law principles to protect such “undisclosed information”.

The National IPR Policy, 2006 states in Objective 3.8.4 that the protection of trade secrets is crucial for strong and effective intellectual property (IP) laws to balance the interests of rights-owners with the larger public interest.

Trade secrets have been protected through various means, such as:

- constitution of confidentiality clubs;
- non-disclosure agreements; and
- other contractual obligations.

In case of breach of such contractual agreement, the owner of trade secrets can bring actions for (among other remedies):

- specific performance;

- the tort of misappropriation under common law;
- criminal breach of trust;
- theft; and
- damages.

Therefore, trade secrets have been recognized as an equitable right. In the case of Pawan *Kumar Goel Vs. Dr Dhan Singh and Another, CS (COMM) 672/2022*, the Hon'ble Delhi High Court ruled that establishing a confidentiality club is essential to enable access to commercially sensitive documents and information. This approach effectively allows for the sharing of sensitive information, such as a defendant's trade secrets, while addressing confidentiality concerns.

Confidentiality considerations have been a necessary aspect of trade remedy proceedings, including anti-trust/competition cases, anti-dumping actions, and safeguard measures. In these proceedings, the investigating and adjudicating authorities allow disclosing parties to submit non-confidential summaries of confidential information. This practice prevents potential harm to the disclosing parties that might occur if sensitive information were to be revealed.

The Indian government has been taking various steps to protect trade secrets and personal data, acknowledging the economic losses that can result from their leakage and misuse. In early August 2023, the Indian Parliament passed the Digital Personal Data Protection (DPDP) Act, 2023. The new law is India's first cross-sectoral legislation on personal data protection.<sup>2</sup>

## Safeguarding Secrets: 22nd Law Commission's push for Trade Secrets in India

### *Definition of Trade Secrets*

The Bill provides a detailed definition of trade secrets, including knowledge such as formulas, patterns, compilations, programs, devices, methods, techniques, or processes. For information to qualify as a trade secret, it must:

- Remain a secret, known only to relevant business circle or not easily obtained by others.
- Provide a financial benefit from being kept secret.
- Be protected by reasonable measures taken by the owner to maintain its confidentiality.

### *Rights and Responsibilities of Holders*

The proposed Protection of Trade Secret Bill, 2024, outlined the rights and responsibilities of trade secret holder, giving them legal backing to protect and manage their intellectual property. This clarity helps businesses operate within a secure legal framework, encouraging innovation and preservation of their trade secrets.

### *Rights of the Holders*

The Bill grants several rights to trade secrets holders:

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<sup>2</sup> *Trade Secrets 2024 - India | Global Practice Guides | Chambers and Partners.* (n.d.). <https://practiceguides.chambers.com/practice-guides/trade-secrets-2024/india>

- **Use and Disclosure:** Holder can use their trade secret for any purpose, including technological advancement, business strategies, and manufacturing techniques. They can also share this information with partners, employees, or third parties under confidentiality agreements.
- **Licensing and Commercialization:** Owners can license their trade secrets to third parties, enabling them to profit without making the trade secrets public and keeping them legally protected.
- **Misappropriation Legal Action:** Holders can sue anyone who steal their trade secret, which helps prevent and address unauthorized use or disclosure.

## *Responsibilities of the Holders*

To keep a trade secret protected, holders must:

- **Secrecy Measures:** Prove they have taken steps to safeguard the information, such as physical security, digital cybersecurity, or strict confidentiality contracts.
- **Legal Compliance:** Ensure their use of trade secrets complies with relevant laws, including labour and contract laws, to avoid accidental exposure.

## *Misappropriation and Legal Remedies*

Misappropriation includes acquiring, disclosing, or using trade secrets without permission or through unethical means. The Bill proposes civil remedies such as injunctions and damages to deter and compensate for lawful use of trade secrets.

## *Whistle-blower Protection and Public Interest Exception*

The Bill protects whistleblowers who disclose trade secrets to expose illegal activities, promoting ethical practices in businesses. It also allows for trade secret disclosure when it's necessary for public interest or safety, suspending protections in such cases.

## *Compulsory Licensing*

The Bill includes provisions for compulsory licensing, allowing the government to require trade secret owners to license their secrets in urgent situations like national or public health emergencies, ensuring public needs are met without compromising the holder's rights.

## *Provision for mandatory licensing in public interest*

The Bill balances protecting intellectual property while allowing its use for societal benefits. For instance, Section 3 grants broad powers to holders but emphasizes compliance with the Indian Contract Act of 1872. Section 6 details a nuanced approach to mandatory licensing, reflecting the government's right to intervene when necessary.<sup>3</sup>

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<sup>3</sup> Vikrant Rana, Gaurav Goswami, Vikrant Rana, & Gaurav Goswami. (2024, May 14). *Safeguarding Secrets: 22nd Law Commission's push for Trade Secrets in India*. Bar and Bench - Indian Legal news. <https://www.barandbench.com/law-firms/view-point/safeguarding-secrets-22nd-law-commission-push-for-trade-secrets-in-india>

## *Advantages and Implications of the Bill*

The proposed Protection of Trade Secrets Bill, 2024, offers several benefits. It promotes the culture of research and development by providing strong trade secret protection, encouraging companies/enterprises to invest in innovative technologies. It also enhances India's appeal to international investors, potentially fostering unhindered technology transfer and collaboration. Ultimately, by protecting trade secrets, the Bill boosts economic performance, helping businesses preserve and grow their market share, which drives economic activity and job creation.

## **Conclusion**

Though our country has always been in the forefront of protecting intellectual property rights of the owners, the Trade Secret Bill, 2024, definitely marks a significant advancement in furthering the intellectual property protection in India. By clearly defining trade secrets and establishing legal mechanisms to prevent their misappropriation, the bill gives businesses the confidence to innovate and invest in new technologies. It includes setting out comprehensive rights and responsibilities for trade secret holders, along with provisions for whistle-blower protection and compulsory licensing, ensuring a balanced approach that promotes both economic growth and public interest in a nuanced manner.

Additionally, the bill aligns India with international standards, making it more attractive to foreign investors and facilitating technology transfer and collaborations. This legislative measure is expected to enhance economic performance, create jobs, and strengthen the intellectual property regime. In conclusion, the Trade Secret Bill, 2024 is a crucial legislative measure towards securing India's position as a leader in innovation and economic development.