

## A CRITICAL ANALYSIS OF THE PROTECTION OF TRADE SECRETS BILL, 2024

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### Abstract

*The Protection of Trade Secrets Bill, 2024, aims to provide comprehensive protection for trade secrets in India, addressing gaps in the current legal framework. India lacks a dedicated law for trade secrets, relying instead on various existing laws, such as the Indian Contract Act, 1872, the Copyright Act, 1957, and the Information Technology Act, 2000, to offer limited protection. While these laws provide some safeguards, they are fragmented and do not offer a holistic approach to trade secret protection. The Protection of Trade Secrets Bill 2024 is a huge milestone for India. This is intricately connected with the resolve to curb the idiosyncratic disclosure of Trade Secrets. Inspired by the recommendations of the 22<sup>nd</sup> Law Commission of India, this Bill is designed in a manner to promote innovation and ensure fair play among businesses. It precisely defines what constitutes trade secrets, lays down the duties and rights of their owners, and introduces measures for legal action in cases of infringement. While comprehensive, the bill exhibits certain limitations. Without criminal penalties, trade secret theft may not be taken seriously, and relying on general laws could lead to inconsistent enforcement. The unclear compulsory licensing provisions create uncertainty, making businesses hesitant to invest in innovation. The bill also lacks clear guidelines on how trade secret owners will be compensated, which could lead to disputes. While civil remedies like injunctions and damages are included, they may not fully cover financial losses. Additionally, MSMEs, which often lack resources, do not get enough practical support to protect their trade secrets. These gaps need to be addressed to ensure better protection for businesses. This paper looks into the Bill's features, points out its weaknesses, and suggests improvements to make India's trade secret protection regime stronger, thereby promoting a healthier business ecosystem conducive to growth and creativity.*

**Keywords:** Trade Secrets, Protection, Confidentiality, Infringement, Innovation.

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## 1. Introduction

Over the course of many centuries, the business environment has remained one of the fiercest arenas. There have been many instances in which we observed an entrepreneur or two elevated beyond all others mostly due to a certain element or a strategy that they had conceived but never disclosed. Every entrepreneur had this secret of theirs that distinguished them from their competitors and became an instrument of their success - a “secret ingredient” if you will. It’s these hidden innovations that often made all the difference.

Trade secrets play an important role in both the global and Indian business landscapes protecting confidential information that gives companies a competitive edge. From proprietary formulas and algorithms to manufacturing processes and customer databases, trade secrets drive innovation, foster economic growth, and enable businesses, especially startups and small enterprises to maintain their market position. In the Indian context, the protection of trade secrets is particularly significant in attracting foreign investment and ensuring technology transfer, as companies need legal certainty before sharing sensitive business information.

Despite their importance, India has long lacked a dedicated legal framework for trade secret protection. Instead, businesses have relied on contractual agreements and scattered provisions across various laws, such as the Indian Contract Act, 1872, the Copyright Act, 1957, and the Information Technology Act, 2000. This fragmented approach has led to inconsistencies in enforcement and limited remedies for misappropriation. In order to address these gaps, the 22<sup>nd</sup> Law Commission of India, in its report “Trade Secrets and Economic Espionage,” recommended the introduction of a comprehensive legal structure for protecting confidential business information on March 5, 2024.<sup>1</sup>

The report puts forward some suggestions for establishing a new legal structure for dispute resolution regarding the protection of confidential information and outlines important provisions that should be included in this structure. These recommendations and suggestions led to the adoption of the Trade Secret Bill, 2024 which is presented to

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<sup>1</sup> Law Commission of India, “22nd Report on Trade Secrets and Economic Espionage” Law Commission of India” (March, 2024).

secure sensitive business information that aids businesses in remaining competitive in the industry. The preamble clearly states that its goal is “to provide effective protection of trade secrets against misappropriation, encouraging innovation and fair competition.”

The Bill defines what trade secrets are and explains how to deal with cases of their misuse. It offers legal protections and remedies like stopping someone from using the secrets and seeking damages. It also keeps information confidential during legal proceedings, sets a time limit for filing claims, and balances the protection of trade secrets with the ability for employees to change jobs. Overall, the Bill aims to support innovation and fair competition, which can help the economy grow. These will be enforced by federal and state agencies, and in addition, the Bill provides for measures by which corporations will be able to protect their trade secrets including but not limited to security measures and use of non-disclosure agreements.

However, although this Bill aims to improve the protection of trade secrets in India and marks an important step forward, it has some gaps and shortcomings. These gaps can make it harder for businesses to protect their important information. This can limit their ability to innovate and compete effectively.

Given this situation, it is important to explore how the Bill can be improved to better protect trade secrets and create a better environment for all businesses. Existing analyses of the Bill primarily focus on its alignment with international standards and its impact on large corporations. This paper takes a broader perspective by also examining how the Bill addresses (or fails to address) the needs of small and medium enterprises (SMEs), the absence of criminal penalties, and the ambiguity surrounding compulsory licensing provisions. By identifying these gaps and proposing solutions, this paper aims to contribute to the ongoing discourse on strengthening India’s trade secret protection regime.

This study takes a doctrinal perspective through an examination of legal texts, specifically the Protection of Trade Secrets Bill, 2024 to investigate the manner in which trade secrets are safeguarded in the country of India. A close examination of the Bill, applicable laws and landmark judicial precedents is conducted to see what exists in relation to the contemporary rules relating to trade secrets. This methodology also assists

in enumerating the gaps and flaws in the existing laws which can be corrected in protecting trade secrets in India more effectively.

## **2. Existing legal framework**

Before delving into the existing laws that protect trade secrets in India, it is first essential to briefly examine the international legal framework in place in the United States, the United Kingdom and also under the Agreement on Trade Related Aspects on Intellectual Property Rights (TRIPs).

### **2.1. Trade Secret Protection in the United States**

In the United States, trade secret laws evolved from state-specific regulations to a more standardized framework with the introduction of the Uniform Trade Secrets Act (UTSA) in 1970. The UTSA defines trade secrets as confidential, commercially valuable information that is kept secret and shared only with a limited group.<sup>2</sup>

Federal laws, such as the Defend Trade Secrets Act, 2016, allow civil actions for trade secret theft, while the Economic Espionage Act, 1996 criminalizes trade secret theft. 18 U.S. Code 1831 punishes theft aimed at benefiting a foreign power with up to 15 years in prison and a fine of up to \$500,000.<sup>3</sup> 18 U.S. Code 1832 targets theft involving interstate or international commerce, with penalties of up to 15 years in prison and a \$5 million fine. The law also permits individuals to use their skills for personal gain, even when it involves similar information.<sup>4</sup>

### **2.2. Trade Secret Protection in The United Kingdom**

In the United Kingdom (UK), trade secret protection is largely influenced by the European Union's 2016 Directive on Trade Secrets, which aligns closely with definitions found in the UTSA and TRIPs Agreement. This directive offers a range of civil remedies, such as compensation, damages, and injunctions to prevent the misuse of trade secrets. It also allows for the destruction of materials that contain the secrets and the publicizing of court decisions to act as a deterrent. UK law also allows for the innocent acquisition of

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<sup>2</sup> Suzana Nashkova, "Defining Trade Secrets in the United States: Past and Present Challenges – A Way Forward?" 54 *International Review of Intellectual Property and Competition Law* 634-672 (2023).

<sup>3</sup> *Ibid.*

<sup>4</sup> Charles Doyle, "Stealing Trade Secrets and Economic Espionage: An Overview of the Economic Espionage Act," *Congress.Gov*, October 29, 2024, available at: <https://www.congress.gov/crs-product/R42681> (last visited on March 05, 2025).

trade secrets in some cases, with exceptions for public interest or national security reasons.

A notable feature in UK is the use of confidentiality clubs, which help safeguard sensitive information. One example is the External Eyes-Only Club, where access to confidential details is restricted to a specific group, such as legal professionals or experts involved in the case. These clubs are very exclusive, and their use is generally allowed only in special cases where protecting the information is critical.

### **2.3. Protection Under TRIPS Agreement**

The TRIPS Agreement does not explicitly mention about “trade secrets”, but it requires Member States to protect “undisclosed information.”<sup>5</sup> This includes trade secrets, confidential business data, and technical information. The agreement outlines a general principle for protection, specifies qualifications and safeguarded acts, and also protects data submitted to governments. India, as a signatory to the TRIPS Agreement, is required to protect undisclosed information or trade secrets. The agreement does not specify how it is to be done, so India relies on existing common law and contract law to do so.

### **2.4. Existing Trade Secret Protection in India**

India has, so far, not had a specific law dedicated to protecting trade secrets.<sup>6</sup> Instead, the country has relied on a combination of various legal frameworks and judicial precedents that offer indirect protection to these valuable assets. The country has traditionally relied on a mix of common law principles, contract law, criminal law, and the doctrines of breach of confidence and equity to handle trade secret protection. These existing laws, although not primarily focused on trade secrets, have provided a form of safeguarding through provisions related to confidentiality, intellectual property (IP), and contractual obligations. For example, when a trade secret is misappropriated, it often falls under the broad umbrella of intellectual property rights (IPR), where courts have interpreted certain provisions to offer protection.

In addition, there are laws related to contracts that come into play when businesses enter into non-disclosure agreements, which help secure sensitive business information from being disclosed or misused. Non-disclosure agreements (NDAs) and

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<sup>5</sup> TRIPS Agreement, 1994, art. 39 (Paragraph 1).

<sup>6</sup> Edwin C. Hettinger, “Justifying Intellectual Property” 18(1) *Philosophy and Public Affairs* 31 (1989).

confidentiality clauses under the Indian Contract Act, 1872, have been the standard approach. When a contract protecting trade secrets is violated, the owner has a few different options to take action. They can ask the court to enforce the contract, file a claim for misappropriation under common law, or even bring criminal charges for breach of trust or theft. They might also seek compensation for the misuse of their trade secrets but these methods have generally shown to be ineffective in many situations of misappropriation of trade secret.

Furthermore, Indian courts have drawn on past judicial decisions to establish a precedent for how trade secrets should be treated, even though the protection is scattered across different legal domains. These legal precedents have provided a certain level of security for trade secrets, even in the absence of a clear, standalone law. This patchwork approach, however, has led to inconsistencies and challenges in enforcement, especially when dealing with cross-border cases or the growing complexities of global trade and business practices. The lack of a dedicated law for trade secrets has often left businesses uncertain about the level of protection their confidential information truly enjoys under the current legal system.

Let us look at the body of laws and other forms of legal precedents that have provided protection for trade secrets in the following:

#### *2.5.1. The Indian Contract Act, 1872*

In India, trade secret protection relies on the India Contract Act, 1872, specifically Section 27,<sup>7</sup> due to the absence of a dedicated trade secret law. This section offers remedies for the unauthorized disclosure of confidential information acquired during employment or via contracts, but it does not provide for criminal penalties. To qualify as a trade secret, information must be highly confidential. Employers can use contracts to prevent former employees from using trade secrets and confidential information.

#### *2.5.2. The Copyright Act, 1957*

The laws on the protection of IP provide that, apart from registration protection offered to works, the scope of the Copyright Act of 1957<sup>8</sup> in India also provides protection

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<sup>7</sup> The Indian Contract Act, 1872 (Act 9 of 1872), s. 27.

<sup>8</sup> The Copyright Act, 1957 (Act 14 of 1957).

to the trade secrets in the form of the existing business data compilations. It provides protection to both the form and the content of such compilations, which often implicates trade secret law. This Act offers remedies for the illegal protection and use of confidential business information including but not limited to client rosters and various made databases preventing their abuse and exploitation.

#### *2.5.3. The SEBI Regulations, 1992*

The Securities and Exchange Board of India (SEBI) has developed and put in place several measures aimed at mitigating the challenges posed by insider trading and other possible information leakage.<sup>9</sup> Nevertheless, in safeguarding against insider's misconduct and corruption, the given measures do not consider the act of making use of such knowledge by other unrelated parties as a crime. This shields the average investor due to the protection of privileged information and prophylactic measures against the abuse of the securities market.

#### *2.5.4. The Information Technology Act, 2000*

The Information Technology Act of 2000<sup>10</sup> (IT Act) comprises of laws in India relating to cyber and information technology and controls access to data residing in computer systems, networks and databases. The Act has undergone amendments to tackle nefarious acts over the internet which entail Section 43A and 72A dealing with an enhanced protection of data. However, the Act does not explicitly give a meaning to "sensitive personal data or information," and so it is up to the Union Government to define that in consultation. The absence of specific definitions and adequate protection mechanisms puts business secrets at risk.

#### *2.5.5. The Design Act, 2000*

The Design Act, 2000 offers rights to the designers over their design which allows the designers to have further control of their intellect and in addition keeps trade secrets safe. The Act also safeguards designs and as such protects the designs from any

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<sup>9</sup> Manjari Tyagi, Deepika Goyal, *et. al.*, "India: A Deep Dive into SEBI and Related Legislation Amid Insider Trading and Market Manipulation Investigations" *Global Investigations Review*, December 07, 2023, available at: <https://globalinvestigationsreview.com/guide/the-guide-international-enforcement-of-the-securities-laws/third-edition/article/india-deep-dive-sebi-and-related-legislation-amid-insider-trading-and-market-manipulation-investigations> (last visited on March 10, 2025).

<sup>10</sup> Information Technology Act, 2000 (Act 21 of 2000).



unauthorized usage or public disclosure that would reveal sensitive information thereby protecting trade secrets.

#### 2.5.6. *The Civil Procedure Code, 1908*

The Civil Procedure Code protects trade secrets during legal proceedings by not compelling plaintiffs to disclose sensitive information. It allows parties to request disclosures from each other to prove or disprove the confidentiality of the information and its sharing under a confidentiality agreement.

#### 2.5.7. *The Indian Penal Code, 1860 (now Bharatiya Nyaya Sanhita, 2023)*

The provisions contained in the Indian Penal Code (IPC) act as a strong protector against the illegal communication and stealing of trade secrets. These sections also impose upon the wrongdoer's breach of trust which introduces a copious effect of deterrence, hence limiting the likelihood of unscrupulous utilization of sensitive information. Liability can also arise under the provisions of the IPC, 1860 such as Section 379<sup>11</sup> for theft, Section 405 to 409<sup>12</sup> against criminal breach of trust, Section 417<sup>13</sup> for cheating and Section 418<sup>14</sup> for cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect. Since the Bharatiya Nyaya Sanhita, 2023 has been enacted, the corresponding provisions under Section 303<sup>15</sup> for theft, Section 316<sup>16</sup> against criminal breach of trust and Section 318<sup>17</sup> against cheating can be possibly invoked.

#### 2.5.8. *The Right to Information (RTI) Act, 2005*

The RTI Act promotes transparency, but exempts trade secrets and commercial confidence from disclosure under Section 8(1)(d)<sup>18</sup> if it would harm a third party's competitive advantage. However, disclosure is allowed under Section 8(2)<sup>19</sup> if it serves a larger public interest or does not harm the third party's competitive position, outweighing the exemptions in Section 8(1).

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<sup>11</sup> The Indian Penal Code, 1860 (Act 45 of 1860), s. 379.

<sup>12</sup> *Id.*, ss. 402-409.

<sup>13</sup> *Id.*, s. 417.

<sup>14</sup> *Id.*, s. 418.

<sup>15</sup> Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023) s. 303.

<sup>16</sup> *Id.*, s. 316.

<sup>17</sup> *Id.*, s. 318.

<sup>18</sup> Right to Information Act, 2005 (Act 22 of 2005), s. 8 (1)(d).

<sup>19</sup> *Id.*, s. 8 (2).



### 2.5.9. *The Indian Drugs and Cosmetic Rules, 1945*

The Indian Drugs and Cosmetics Rules, 1945 under Rule 122E<sup>20</sup> offer 4-year data exclusivity for new drugs from the approval date, but this is limited and does not fully address the need for data protection.

## 3. Important Provisions of the Proposed Bill in India

Some of the important provisions under the proposed Bill are as follows:

### 3.1. Definition of Trade Secrets<sup>21</sup>

Firstly, the Bill makes it clear what qualifies as a “Trade Secret.” In India, trade secrets are often called “confidential information.” Although some cases, like *Rochem v. Nirtech*,<sup>22</sup> have defined confidential information, courts can sometimes have difficulty determining if the information is actually confidential. For instance, in the case of *Markets and Markets Research Pvt. Ltd. v. Meticulous Markets Research Pvt. Ltd. & Ors.*,<sup>23</sup> the court did not provide a definitive answer.

The Bill takes cues from TRIPs and lays out specific conditions for something to be labelled as trade secret. To qualify, the information must not be commonly known, it should hold commercial value because it is kept secret and the holder needs to take reasonable steps to keep it confidential and sharing the information should lead to damages.

### 3.2. Rights of the Holders

The rights are unambiguously stated. The possessor can use his trade secret for any objective whether, developing technology, working on business plans, or applying manufacturing processes and techniques. Such information can also be disclosed to associates, workers, or outsiders under nondisclosure agreements. An owner may also transfer the rights to use trade secrets to other businesses without having to disclose the trade secrets to the public, thus keeping them safe legally. Holders may improve ways of

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<sup>20</sup> The Indian Drugs and Cosmetic Rules 1945, Rule. 122E

<sup>21</sup> Mark F. Schultz and Douglas C. Lippoldt, “Approaches to Protection of Undisclosed Information (Trade Secrets)”, Background Paper 162 (OECD Trade Policy, 2014).

<sup>22</sup> *Rochem Separation Systems (India) Pvt. Ltd. v. Nirtech Private Limited & Ors.*, [Commercial IP Suit (L) No. 29923 of 2022.

<sup>23</sup> *Markets and Markets Research Pvt. Ltd. v. Meticulous Markets Research Pvt. Ltd. & Ors.*, CS (Comm) 140/2023.

doing businesses knowing that any third party that makes away with their information without permission can be brought to court.

### 3.3. Responsibilities of the Holder

In order to maintain the secrecy of a trade secret, the trade secret holders are required to perform certain acts which will safeguard it. This includes things like prohibiting unauthorized access, installing sophisticated cybersecurity measures, and signing non-disclosure agreements with workers or associates. Additionally, it is required to ensure that trade secret complies with all applicable laws such as employment and contract laws to avoid inadvertent disclosure. By doing these things, the trade secret can stay protected.

### 3.4. Rights of the Employees

Section 2(f)<sup>24</sup> makes it clear that skills and experience gained by an employee through regular work are not considered trade secrets. In *Niranjan Golikari v. The Century Spinning*<sup>25</sup> case, the Supreme Court had stopped an ex-employee from joining a competitor, worrying they might share confidential information about special processes or machinery. This view is flawed because it assumes that the employee cannot switch jobs without breaking confidentiality. The new provision protects employee mobility by preventing courts from reaching similar conclusions and also shields employees from unfair legal actions that could limit their career options.

### 3.5. Misappropriation of Trade Secrets

Misappropriation refers to obtaining, sharing, or using trade secrets without consent or through unethical methods. The Bill suggests civil remedies, like injunctions and damages, to discourage such actions and provide compensation for the lawful use of trade secrets.

### 3.6. Mandatory Licensing for the Public Good<sup>26</sup>

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<sup>24</sup> Vikrant Rana and Swayamsiddha Das, "Guarding Secrets: Law Commission proposal for Trade Secrets Bill 2024", *S.S. Rana & Co. Advocates*, May 03, 2024, available at: <https://ssrana.in/articles/law-commission-trade-secrets-bill-2024/> (last visited on March 20, 2025).

<sup>25</sup> AIR 1967 SC 1098.

<sup>26</sup> Vikrant Rana, "Safeguarding Secrets: 22nd Law Commission's Push for Trade Secrets in India," available at: <https://www.barandbench.com/law-firms/view-point/safeguarding-secrets-22nd-law-commission-push-for-trade-secrets-in-india> (last visited on October 14, 2024).

The Bill seeks to balance protecting IP with allowing its use for societal benefits. Section 3<sup>27</sup> gives holders important rights but they have to follow the Indian Contract Act of 1872 also. Section 6<sup>28</sup> explains how mandatory licensing works and shows that the government can step in when it becomes necessary.

### **3.7. Protection Against Baseless Legal Threats**

The Bill offers protection against baseless legal threats. It is pointed out that some employers resort to criminal charges to scare off former employees from joining competing firms, treating confidential information like it is their property. However, the Law Commission in their Bill argues that trade secrets are not the same as property and do not come with exclusive rights. They can be legally obtained through methods like independent discovery or reverse engineering. In addition, as trade secrets are not shared with the public, Section 4<sup>29</sup> of the Bill makes it clear that they do not give holders monopoly rights. This means that using criminal threats to intimidate employees is likely to become less effective.

### **3.8. Whistleblower Exception to Trade Secrets**

The Bill introduces a “whistleblower” exception to trade secrets in Section 5.<sup>30</sup> If a trade secret is disclosed to expose illegal activity or professional misconduct, or in good faith to protect the public interest, it will not be considered misappropriation under the Bill. This provision is aimed at safeguarding individuals who disclose any wrongdoing from suffering any consequences resulting from violation of any confidentiality obligations. In this instance, a breach of confidentiality would be deemed acceptable if the public interest would be served by such a breach.

## **4. Critical Analysis of the Proposed Bill**

### **4.1. Strengths of the Bill**

The Protection of Trade Secrets Bill currently is a step forward in the protection of trade secrets in the country. The Bill not only defines the relationships between parties who possess trade secrets in regard to such trade secrets, including the licensing and

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<sup>27</sup> The Protection of Trade Secrets Bill 2024, s. 3.

<sup>28</sup> *Id.*, s. 6.

<sup>29</sup> *Id.*, s. 4.

<sup>30</sup> *Id.*, s. 5.

monetization of such secrets, but also gives the right to trade secret holders to sue if their secrets are wrongfully accessed or utilized.

Previously, trade secrets or knowledge when put to license was mostly governed under a general principle of contract law but this Bill recognises this right, and provides appropriate relief on its breach. This is an encouraging change for the companies operating within the territory of India.

Speaking globally, the UK, USA, and France have enacted separate legislation on the law for the protection of trade secrets which has worked benefits. Many studies have indicated that stronger trade secret laws correlate with increased investment in research and development.

A prime example of effective trade secret legislation can be found in the United States.<sup>31</sup> The Defend Trade Secrets Act (DTSA) has created a consistent definition of trade secrets across federal courts, leading to greater legal clarity and reliability qualities that are currently missing in India's approach to trade secrets. This Bill represents a positive change towards enhancing protection for businesses and encouraging innovation in our developing country. Even with these improvements, there are gaps in the draft Bill that need to be fixed to provide complete protection and prevent possible issues.

#### **4.2. Gaps in the Draft Bill**

Some of the gaps identified under the draft Bill are as follows:

##### *4.2.1. Lack of Criminal Sanctions*

Not including criminal penalties in the draft Bill could lessen the seriousness of stealing trade secrets. Without criminal sanctions, the Bill may fail to convey the seriousness of stealing confidential business information. While the Law Commission has relied on existing laws like the Indian Penal Code (IPC) and the Information Technology Act, 2000, to address trade secret theft, these laws are not tailored to specifically cover the nuances of such crimes. As a result, there is a risk of inconsistent enforcement and application.

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<sup>31</sup> Abhinav Kumar, Pramit Mohanty, *et.al.*, "Legal Protection of Trade Secrets: Towards a Codified Regime" 11(6) *Journal of Intellectual Property Rights* 397-408 (2006).

In contrast, countries like the USA and Canada, which have strong protection for trade secrets, have implemented specific laws that treat trade secret theft as a criminal act. These laws provide clear and direct consequences for individuals or companies who steal confidential information. Having criminal penalties in place not only makes it clear that stealing trade secrets is a serious offense but also acts as a strong deterrent against potential violators.

India's current approach, relying on general criminal laws, may not be enough to effectively prevent or punish trade secret theft. Without specific criminal provisions, the Bill risks undermining the importance of protecting IP and may not adequately discourage those who may be tempted to misuse confidential business information.

#### *4.2.2. Compulsory Licensing Provisions*

The inclusion of compulsory licensing provisions in the Protection of Trade Secrets Bill, 2024, has sparked concerns about its potential impact on innovation and fairness. While the idea behind these provisions is to address emergencies, like public health crisis or national disasters, the Bill does not provide clear guidelines on when and how compulsory licensing would be applied. Without these specifics, there is a real worry that businesses might face unexpected and unfair government intervention.

When companies pour time, money, and effort into creating new technologies or processes, they do so with the hope that their IP will be protected. But if the government can step in and take control of a company's proprietary information without clear rules, businesses could feel insecure about their investments. The fear is that the State might seize their innovations without fair compensation or proper procedures.

This uncertainty could make companies think twice before investing in new ideas or technologies. If businesses feel that their IP could be taken away without proper notice or justification, it could discourage them from creating anything groundbreaking. In industries where trade secrets are essential to success, this could be especially damaging.

#### *4.2.3. Lack of Clarity*

One of the big concerns with the Bill is that it does not clearly explain how trade secret owners will be compensated when mandatory licensing comes into play. Right now, there is no clear guidance on how payments, whether in the form of royalties or one-

time fees, will be determined. This lack of clarity could cause frustration for businesses that rely on their trade secrets, as they may feel their valuable IP is being used without fair payment.

For trade secret owners, especially small and medium-sized businesses, knowing how much they will be paid if their secrets are licensed is important. Without a clear process, owners might worry that they will not receive a fair share of any profits made from their confidential information. This uncertainty could even discourage innovation, as businesses might hesitate to protect their secrets under unclear terms.

On top of that, if the Bill does not provide a straightforward way to calculate payments, it could lead to disputes and legal battles that drag on for years, costing both the trade secret holder and the licensee time, money, and resources. A clearer and fairer approach to payment would not only make sure that trade secret owners are fairly compensated but also create a more predictable environment for businesses to innovate without fear of being taken advantage of. The Bill needs to address this issue and provide a more transparent, fair process for determining compensation.

#### *4.2.4. Limited Remedies*

The draft Bill allows civil remedies through commercial courts, offering options like interim injunctions, permanent injunctions, and damages. While these are useful tools to address trade secret theft, there is a concern that they might not be enough to fully cover the financial losses companies face when their trade secrets are stolen. Losing a trade secret can cost a company more than just the value of the stolen information, it can impact their competitive edge, customer trust, and even their long-term market position.

The damages provided by the Bill might not be sufficient to cover the extent of the damage caused. While injunctions can prevent further misuse, they do not necessarily make up for the actual financial harm that businesses have already suffered. In many cases, the immediate loss of a trade secret can lead to a significant dip in revenue or market share, and traditional damages might not be enough to address that.

It could be helpful to think about stronger remedies, like compensatory damages, which would more accurately reflect the financial losses caused by the theft. Punitive damages might also be considered, as they could both punish the wrongdoer and act as a deterrent for future violations. By offering a wider range of remedies, the Bill could do a

better job of addressing the serious financial risks that come with trade secret theft and give businesses the protection they truly need.

#### *4.2.5. Lack of Attention to Small and Medium Enterprises*

The draft Bill acknowledges the need for protecting trade secrets of small and medium-sized enterprises (MSMEs), but it does not quite go far enough in addressing the real, day-to-day challenges these businesses face. MSMEs, which are an important part of India's economy, often lack the financial muscle and resources that larger corporations have. This can make it much harder for them to protect their valuable trade secrets from being stolen or misused.

The Bill mentions the protection of trade secrets, but it does not offer much in terms of practical solutions for MSMEs. These smaller businesses may not have the legal teams or the budget to engage in lengthy and expensive legal battles if someone steals their IP. They also might not have the advanced systems or security measures that big companies use to protect confidential information. This puts them at a disadvantage when it comes to preventing trade secret theft in the first place.

What is missing here is a more tailored approach that considers the limited resources MSMEs have. For example, offering them affordable legal assistance or simpler ways to secure their trade secrets could make a huge difference. Without such targeted support, the bill might unintentionally leave MSMEs exposed to exploitation, making it harder for them to compete and grow.

For the Bill to truly benefit all businesses, it should look at ways to offer MSMEs more than just basic protection. It should help them by providing practical tools and resources that are specifically designed for their smaller scale, so they can protect their ideas and innovations without facing overwhelming financial or legal hurdles.

### **5. Conclusion and Suggestions**

Thus it can be concluded that India urgently needs a clear and dedicated law to protect trade secrets. This is important for making business operations smoother, attracting foreign investment, and promoting technology transfer. Without a proper law in place, businesses, especially small and micro enterprises, are left in a state of confusion. The current system is a patchwork of different laws, which can be difficult to navigate, creating uncertainty and risk. Small businesses, already struggling with limited resources,



face even greater challenges in protecting their valuable IP in such an ambiguous legal environment.

By bringing all trade secret protection measures into one law, India could make things much simpler for businesses. A single, clear statute would give companies, particularly smaller ones, more confidence in the legal system and allow them to focus on growing and innovating, rather than worrying about complex legalities. It would also help the judicial system become more predictable, ensuring businesses know where they stand and what protections they have.

The draft Bill from the Law Commission is a step in the right direction, but it needs some changes as already discussed above. The government's decision to enact a specialized trade secret law will definitely impact how businesses operate in India and how well we protect our valuable intellectual assets.

A specialized trade secret law will help businesses thrive as it will ensure that valuable intellectual assets are protected. It will also make India a more attractive place for foreign investors and collaborators, driving growth and technology transfer. With a solid law in place, India will be better equipped to compete in the global economy, helping businesses of all sizes succeed and innovate.

With these background, the author seeks to put forward the following suggestions:

### **5.1. Adding Criminal Sanctions in the Draft Bill**

Criminal penalties should be part of the draft Bill. While the Law Commission suggested that the IPC and IT Act are enough, they were not designed to deal with trade secret theft. As a result, the punishments they offer do not really match the level of harm a company could experience when its secrets are stolen. For example, while the IPC's cheating provisions might apply in some cases, they do not fully address the nature of trade secret theft. This creates confusion and inconsistency in how the law is used. Countries such as USA, France and Canada have already imposed criminal sanctions for the misappropriation of trade secrets which illustrates the gravity of the concern. Introducing similar penalties in India would help us achieve international parity and also facilitate the businesses in taking appropriate action. It would also provide stronger protection for trade secrets and act as a more powerful deterrent against theft.

## **5.2. Mandatory Licensing for Emergency Sharing of Trade Secrets**

The new Bill brings to the table a concept known as required sharing of trade secrets. What this means is that in certain situations, like a national emergency or a significant health crisis, the Government could ask companies to share their closely guarded secrets with others. The COVID-19 pandemic really showed us how important it can be to share knowledge and secrets for the greater good, making sure that everyone has access to the tools and technology they need. This is not a new idea; it is even supported by international rules in agreements like TRIPS. As much as this is a step forward, there are details in the Bill that need ironing out. For instance, if companies are worried that they might have to give away their secrets without proper protection, they might not want to spend time and money on developing new ideas. Protecting a company's information should also be regarded as giving the companies a fighting chance to ensure that they are recompensed fairly when they have to let go of their secrets. The measure should indicate how they will be reimbursed, whether by means of periodic payments like royalties or a lump sum payment. Additionally, this entire arrangement for sharing should be temporal only. The company that created the invention in question should eventually be rewarded with their exclusive rights once again, for the rights of the innovator and the access to the public.

## **5.3. More Remedies for Trade Secret Thefts**

To fix the problem of limited remedies for trade secret theft, the draft Bill should offer more options for businesses. Adding punitive damages would show that serious violations have serious consequences. It is also important to include enhanced damages that reflect the real financial losses companies face. Courts should be able to quickly order the seizure of stolen materials and issue injunctions to stop further misuse right away. Finally, having regular reviews of these remedies will help ensure they stay effective as businesses face new challenges in protecting their trade secrets.

## **5.4. Adopting Best Practices from Global Trade Secret Laws**

To improve trade secret protection, India could benefit from incorporating practices from global frameworks like the Defend Trade Secrets Act (DTSA) in the U.S. and the EU Trade Secrets Directive. The DTSA allows for quick legal action, including injunctions and the ability to seize stolen trade secrets, providing businesses with

effective, immediate remedies. Similarly, the EU framework offers civil remedies such as damages and injunctions to ensure swift protection of valuable information. India's Bill could adopt punitive damages to better discourage violations and reflect the serious financial impact of trade secret theft. Adding provisions for the seizure of stolen secrets and easy access to injunctions would give businesses stronger tools to protect their assets. Regular reviews of these measures would make sure that the framework evolves with changing business practices and growing cyber risks, keeping India's protection in line with global standards.

### **5.5. Supporting MSMEs**

The draft Bill should offer more support for micro, small, and medium enterprises (MSMEs) because they have a harder time protecting their trade secrets. Creating programs that help them access legal help and resources can make a big difference. This would therefore help them to avoid complications that may get them stuck within tiresome legal procedures. Offering training programs on keeping business secrets safe can really help small and medium businesses learn how to protect their valuable information. Also, giving them financial help like grants or money for legal help can make things easier for them. This makes it fair for everyone and helps these smaller businesses keep safe what's most important to them.