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# THE ROLE OF CONTRACT LAW IN PROTECTING R&D TRADE SECRETS IN INDIA

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## ABSTRACT

In today's knowledge-driven economy, safeguarding trade secrets, particularly those arising from research and development (R&D), is essential for industrial growth and innovation. Unlike patents or copyrights, trade secrets do not require registration; their value depends on confidentiality. However, India lacks a dedicated statute for trade secret protection, leaving sensitive business information and R&D results vulnerable to misuse. In practice, companies rely on contractual safeguards such as non-disclosure agreements (NDAs), confidentiality clauses, and employment contracts to secure proprietary data.

This paper critically examines the adequacy of Indian contract law in protecting trade secrets and R&D outcomes. It highlights the strengths and limitations of contractual mechanisms, evaluates judicial interpretations, and addresses enforcement challenges. A particular concern is Section 27 of the Indian Contract Act, 1872, which restricts agreements in restraint of trade and creates uncertainty regarding non-compete clauses often used to protect trade secrets. By employing doctrinal and comparative analysis, the study contrasts India's framework with international regimes, including the United States 'Defend Trade Secrets Act, 2016 and the European Union's Trade Secrets Directive, 2016.

The findings suggest that contractual protection, though significant, is inadequate on its own. The study recommends the introduction of a comprehensive trade secrets law in India to strengthen R&D protection, encourage innovation, and align with global practices.

## 1.1 Introduction

In today's global knowledge economy, trade secrets and proprietary Research and development (Hereinafter referred to as R&D) outputs form the backbone of innovation and competitive advantage. Trade secrets include formulas, methods, techniques, and strategies that derive economic value from not being generally known or readily accessible.<sup>1</sup> Unlike patents or copyrights, trade secrets are not publicly registered and rely heavily on confidentiality for their protection. However, India currently lacks a dedicated statutory framework for trade secret protection, making it an outlier among major economies.<sup>2</sup>

Due to this legal vacuum, Indian businesses and innovators predominantly depend on contractual mechanisms such as non-disclosure agreements (NDAs), confidentiality clauses in employment contracts, and technology transfer agreements to secure sensitive information.<sup>3</sup> The Indian judiciary has recognized the enforceability of such contracts under common law and equity, yet challenges remain, especially in cases involving third parties or where misappropriation occurs outside contractual relationships.

Moreover, Section 27 of the Indian Contract Act, 1872, which voids agreements in restraint of trade, limits the enforceability of non-compete clauses crucial for R&D protection.<sup>4</sup> The adequacy of contract law in protecting trade secrets in India is questioned, prompting consideration of whether a comprehensive statutory framework similar to the U.S. Defend Trade Secrets Act (2016) or the EU Trade Secrets Directive (2018) is necessary for more robust protection.

## 1.2 Statement of Problem

India lacks a comprehensive legislation for the protection of trade secrets and R&D outputs. As a result, the burden of protection rests almost entirely on contractual arrangements, such as non-disclosure agreements, non-compete agreements, and confidentiality clauses in employment or collaboration contracts. However, these are often limited by weak enforceability, vague drafting, and a lack of deterrence. Furthermore, Section 27 of the Indian

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<sup>1</sup> World Intellectual Property Organization, *Trade Secrets: Tools for Innovation and Collaboration* 4 (2020), <https://www.wipo.int/publications/en/details.jsp?id=4528>.

<sup>2</sup> Shamnad Basheer, Protection of Trade Secrets in India: A Policy Gap, 7 NUJS L. Rev. 135, 136 (2015).

<sup>3</sup> Dr. S.R. Myneni, *Law of Intellectual Property* 624 (9th ed. 2019).

<sup>4</sup> Indian Contract Act, 1872, § 27, No. 9, Acts of Parliament, 1872 (India).

Contract Act, 1872, restricts non-compete clauses, creating loopholes in protection. The problem is aggravated in sectors with high employee turnover, joint R&D efforts, or cross-border collaborations, where only contractual obligations may not suffice.

### 1.3 Literature Review

**Dr. S. R. Myneni, in his book *Law of Intellectual Property* (2019)<sup>5</sup>**, emphasizes the absence of a specific statute governing trade secrets in India. He highlights the crucial role of contractual mechanisms like NDAs and confidentiality clauses in employment agreements. Myneni also notes that Indian courts have protected trade secrets through principles of equity, justice, and good conscience, despite the legislative silence on the matter.

**Dr. Justice B. P. Saraf and Justice S. M. Jhunjhunwala, in their treatise *Law of Contract and Specific Relief* (2020)<sup>6</sup>**, provide an in-depth analysis of the enforceability of confidentiality and non-compete clauses under the Indian Contract Act, 1872. They observe that while such clauses are generally valid, Section 27 poses significant challenges to post-employment restrictions, often rendering non-compete agreements void unless exceptional circumstances are demonstrated.

**Prof. Shamnad Basheer, in his article *Protection of Trade Secrets in India: A Policy Gap* (NUJS Law Review, 2015)<sup>7</sup>**, critiques the absence of a statutory framework for trade secret protection in India. He warns against the over-reliance on contract law, arguing that it provides limited protection in scenarios involving third-party disclosures or misappropriation that does not involve a breach of contract.

**The World Intellectual Property Organization (WIPO), in its 2020 report *Trade Secrets Protection: Global Trends and Best Practices*, categorizes India as a country with “contract-reliant protection.”<sup>8</sup>** The report contrasts this with countries like the U.S., which

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<sup>5</sup> Myneni, S. R. (2019). *Law of Intellectual Property*. Hyderabad: Asia Law House.

<sup>6</sup> Saraf, B. P., & Jhunjhunwala, S. M. (2020). *Law of Contract and Specific Relief*. Mumbai: Snow White Publications.

<sup>7</sup> Basheer, S. (2015). Protection of Trade Secrets in India: A Policy Gap. *NUJS Law Review*, 8(4), 475–489. Retrieved from <https://www.nujslawreview.org>

<sup>8</sup> World Intellectual Property Organization (WIPO). (2020). *Trade secrets protection: Global trends and best practices* (WIPO/IP/INN/GE/20/1). Geneva: WIPO. Retrieved from <https://www.wipo.int/publications/en/details.jsp?id=4532>

have hybrid frameworks combining statutory and contractual protections. It recommends that India adopt dedicated legislation to improve the effectiveness of trade secret enforcement.

**Adv. R. Venkata Rao, in his article *Confidentiality, Contracts and the Courts: Trade Secrets in the Indian Context* (Indian Journal of Law and Technology, 2021)<sup>9</sup>**, examines landmark Indian cases such as *American Express Bank Ltd. v. Priya Puri* and *John Richard Brady v. Chemical Process Equipment Pvt. Ltd.*. He concludes that while courts recognize the commercial value of trade secrets, they are limited by the inadequacy of existing legal mechanisms to fully protect such interests.

#### 1.4 Scope of the study

The study is not confined to the Indian legal framework alone but also examines the approaches of jurisdictions that have enacted or are evolving laws on trade secret protection.

#### 1.5 limitations of the study

- The research is primarily based on doctrinal legal analysis and secondary data.
- It does not include empirical fieldwork or interviews with legal professionals, R&D experts, or industry stakeholders.
- The contractual agreements analyzed are sourced from public templates and case law, which may not fully reflect real-world commercial complexities.
- The comparative analysis with jurisdictions like the US and EU is limited due to differences in legal systems, economic conditions, and enforcement practices.
- Enforcement issues in Indian lower courts are underrepresented due to the lack of publicly accessible and comprehensive case data at those levels.

#### 1.6 Research Objectives

- To analyze the role and effectiveness of contract law in protecting trade secrets and

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<sup>9</sup> Rao, R. V. (2021). Confidentiality, Contracts and the Courts: Trade Secrets in the Indian Context. *Indian Journal of Law and Technology*, 17(1), 92–108. Retrieved from <https://ijlt.in>

R&D in India.

- To study key judicial decisions relating to contractual protection of confidential information.
- To examine the limitations of contractual protection in practical enforcement and coverage.
- To compare India's current framework and global legislative benchmarks.

### **1.7 Research Questions**

- How does Indian contract law currently protect trade secrets and R&D information?
- What role has the Indian judiciary played in interpreting and enforcing trade secret-related contracts?
- What are the limitations of relying solely on contract law for protecting confidential business information?
- Should India introduce a dedicated statute for trade secret protection?

### **1.8 Research Methodology**

The present research is doctrinal and descriptive in nature, relying on secondary data collected from credible and authenticated sources. The study draws upon information from academic journals, published articles, legal commentaries, case law, and books relevant to the subject of trade secret protection and contract law. It also includes an analysis of statutory provisions under the Indian Contract Act, 1872, along with relevant judicial decisions. Additionally, the study incorporates comparative insights from international legal frameworks such as the U.S. Defend Trade Secrets Act, 2016 and the EU Trade Secrets Directive, 2016, to evaluate best practices and propose potential reforms suitable for the Indian context.

## **2. Conceptual Framework**

In today's innovation-centric global economy, the value of intangible assets, particularly trade secrets and research and development (R&D) outputs, has surpassed that of traditional capital.

Businesses in fields such as biotechnology, artificial intelligence, pharmaceuticals, and information technology often derive a significant portion of their market value from proprietary knowledge. Protecting this knowledge becomes crucial for sustaining competitive advantage, and in India, where there is no standalone legislation on trade secrets, contract law has assumed a central role in enabling this protection.

### **Definition of Trade Secrets and R&D Outputs**

A trade secret refers to information that is not publicly known, has commercial value because it is secret, and is subject to reasonable efforts to maintain its secrecy.<sup>10</sup> The nature of such information can vary from technical formulas and manufacturing methods to customer databases and business strategies. The World Intellectual Property Organization (WIPO) underscores that trade secrets need not be inventive or novel in the legal sense but must be confidential and economically valuable<sup>1</sup>.

In India, trade secrets are protected not by statute but through the judicial enforcement of common law principles, particularly under the Indian Contract Act, 1872. Section 27 of the Act, which governs agreements in restraint of trade, is frequently invoked in the context of non-disclosure agreements (NDAs) and non-compete clauses, especially in employment contracts.<sup>11</sup> Neelam Sihag explains that Indian courts have used this provision to uphold confidentiality obligations where the information in question constitutes a legitimate business interest.<sup>12</sup>

R&D outputs encompass the results of scientific and technical inquiry, such as experimental data, software prototypes, production techniques, or proprietary models. While some of these outputs may qualify for protection under patent law, others may be strategically retained as trade secrets to avoid the disclosure requirements that come with patent filings. The preference for trade secret protection is often motivated by the desire for long-term exclusivity and minimal regulatory interference.

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<sup>10</sup> WORLD INTEL. PROP. ORG., *What is a Trade Secret?*, <https://www.wipo.int/tradesecrets/en/> (last visited July 27, 2025).

<sup>11</sup> Indian Contract Act, 1872, § 27, No. 9, Acts of Parliament, 1872 (India).

<sup>12</sup> Neelam Sihag, *Securing Trade Secrets: An Overview of Legal Framework Under Indian Contract Act 1872*, INDIAN J.L. & LEGAL RES. (2023), <https://www.ijllr.com/post/securing-trade-secrets-an-overview-of-legal-framework-under-indian-contract-act-1872>.

## Importance of Confidentiality in Innovation-Driven Industries

Industries driven by innovation invest heavily in R&D and rely on robust systems to prevent unauthorized use or disclosure of their intellectual assets. For instance, in sectors like pharmaceuticals or fintech, even a small leak of process data or customer insights can have irreparable commercial consequences. The contractual duty of confidentiality—typically codified in NDAs or employment agreements—serves as a legal mechanism to control information flows and secure sensitive knowledge.

*Siddhi Shridhar Kalamkar*, in her analysis of non-compete clauses, argues that such contractual terms are integral to protecting trade secrets in India's current legal climate. However, their enforceability depends on judicial interpretation, which often seeks to balance an employer's proprietary interests with an employee's right to livelihood.<sup>13</sup> While Indian courts are generally cautious of restraints on trade, they have shown increasing willingness to enforce confidentiality provisions where sensitive commercial data is involved.

An illustrative example is the Delhi High Court decision in *American Express Bank Ltd. v. Priya Puri*, where the court granted injunctive relief to prevent an employee from disclosing client information.<sup>14</sup> The court recognized that customer databases, financial strategies, and internal processes can constitute trade secrets, thus warranting protection under both contract and equity principles. Such precedents demonstrate the judiciary's evolving stance on the enforceability of confidentiality obligations.

## Distinction Between Trade Secrets and Other Forms of IP

Trade secrets stand apart from other forms of intellectual property (IP) such as patents, copyrights, and trademarks in several critical respects. Firstly, trade secrets require no registration and can be protected indefinitely, provided they remain confidential. In contrast, statutory IP rights are limited by territorial scope and time. Secondly, patents involve mandatory public disclosure, which may not be suitable for all R&D outputs.

*Astha Satapathy & Sweta Sapar* have pointed out that trade secrets are inherently more fragile

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<sup>13</sup> Siddhi S. Kalamkar, *Trade Secrets Protection in India: Evaluating Non-Compete Agreements and Legal Challenges*, 4 ILE MULTIDISCIPLINARY J. (2025), <https://mj.ilededu.in/trade-secrets-protection-in-india-evaluating-non-compete-agreements-and-legal-challenges>.

<sup>14</sup> *American Express Bank Ltd. v. Priya Puri*, 2006 SCC OnLine Del 1301.

than patents because their legal protection ceases the moment confidentiality is breached.<sup>15</sup> This makes the role of contracts pivotal in an organization's ability to enforce trade secret protection is only as strong as the confidentiality framework it establishes. In contrast, statutory IP rights offer protection regardless of whether the rights-holder can keep the subject matter secret.

Given that trade secrets do not require novelty or inventive step, unlike patents, they are particularly useful for protecting commercially valuable but technically incremental innovations. Their application is also broader: trade secrets can cover everything from internal costing methods to supplier negotiations, many of which do not fall within the ambit of traditional IP regimes.

### **3. Legal Landscape in India**

The protection of trade secrets in India is currently situated within a fragmented legal framework that relies primarily on principles of contract law, equity, and judicial precedents. In contrast to jurisdictions such as the United States or the European Union, where trade secret legislation is codified under statutes like the Defend Trade Secrets Act, 2016 or the EU Directive 2016/943, respectively, India lacks a dedicated statutory regime that defines and enforces trade secret rights. The legal recognition and enforcement of trade secrets in India are, therefore, predominantly derived from common law principles and contractual obligations.

#### **Absence of Specific Trade Secret Legislation**

India does not have a standalone trade secret statute that expressly defines what constitutes a trade secret, nor does it set out a procedural or substantive mechanism for its protection. Instead, courts rely on equitable principles and breach of fiduciary duty or contract to grant relief in case of misappropriation of confidential business information. This reliance creates inconsistency and uncertainty for businesses, particularly multinational corporations and R&D-intensive firms that require predictable legal protections.

Astha Satapathy and Sweta Sapar note that this legislative vacuum leads to overdependence on judicial interpretation, often resulting in varied outcomes depending on the nature of the

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<sup>15</sup> Astha Satapathy & Sweta Sapar, *Trade Secrets: Need for Statutory Protection in India*, ASIA PAC. L. & POL.'Y REV. (2023), <https://journal.thelawbrigade.com/aplpr/article/view/142>.



agreement and the discretion of the court.<sup>16</sup> They argue for the introduction of a specific legislative framework to ensure uniformity, clarity, and enforceability in trade secret protection.

### **Role of the Indian Contract Act, 1872**

In the absence of a comprehensive statute, the Indian Contract Act, 1872 provides the foundational legal framework for protecting trade secrets in India. Specifically, Section 27 of the Act, which prohibits agreements in restraint of trade, is frequently invoked in litigation concerning the misuse or unauthorized disclosure of confidential information. While the section bars restrictive covenants that limit trade or profession, courts have carved out exceptions for clauses that protect proprietary and confidential information.

In *Niranjan Shankar Golikari v. Century Spinning and Manufacturing Co. Ltd.*, the Supreme Court of India held that non-compete clauses validly incorporated into an employment agreement and limited to the term of employment are not void under Section 27.<sup>17</sup> The court recognized that employers have a legitimate interest in protecting trade secrets and business know-how disclosed during the employment relationship.

Similarly, in *American Express Bank Ltd. v. Priya Puri*, the Delhi High Court upheld a confidentiality clause and issued an injunction against an ex-employee from using the client database, finding that the information qualified as a trade secret.<sup>18</sup> These rulings underscore the judiciary's recognition of trade secrets under contractual obligations, even though no explicit statutory protection exists.

### **Common Contractual Mechanisms**

In practice, businesses rely on various contractual tools to safeguard their confidential assets. The most common mechanisms include:

- **Non-Disclosure Agreements (NDAs):** These agreements impose confidentiality obligations on the receiving party and typically outline the nature of the information

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<sup>16</sup> Astha Satapathy & Sweta Sapar, *Trade Secrets: Need for Statutory Protection in India*, ASIA PAC. L. & POL'Y REV. (2023), <https://journal.thelawbrigade.com/aplpr/article/view/142>.

<sup>17</sup> *Niranjan Shankar Golikari v. Century Spinning & Mfg. Co. Ltd.*, AIR 1967 SC 1098.

<sup>18</sup> *American Express Bank Ltd. v. Priya Puri*, 2006 SCC OnLine Del 1301.

being shared, the duration of the obligation, and remedies for breach. NDAs are used across various commercial settings, including vendor agreements, licensing arrangements, and M&A transactions.

- **Confidentiality Clauses in Employment Contracts:** Employment agreements often contain express confidentiality clauses prohibiting employees from disclosing or using proprietary information, both during and after the term of employment. These clauses are crucial in protecting trade secrets disclosed in the course of work.
- **Intellectual Property Assignment and Non-Compete Clauses:** IP clauses in employment contracts ensure that any inventions, improvements, or processes developed by an employee in the course of employment are assigned to the employer. While non-compete clauses are generally unenforceable post-employment due to Section 27, courts have permitted them when confined to the employment period and reasonable in scope.<sup>19</sup>

As Siddhi S. Kalamkar explains, the enforceability of such clauses depends heavily on judicial balancing between individual rights and the employer's proprietary interests.<sup>20</sup> The courts evaluate whether the restriction is reasonable, necessary for protecting legitimate business interests, and not excessive in duration or geographical extent.

Thus, contract law in India offers a working but imperfect framework for the protection of trade secrets. However, the reliance on contracts places the burden of drafting, negotiation, and enforcement squarely on private parties, which may not always be feasible, especially for startups and small enterprises.

#### 4. Judicial Interpretation and Case Law

In the absence of dedicated trade secret legislation, the Indian judiciary has played a pivotal role in shaping the protection of confidential business information through its interpretation of contract law and equity. Courts have routinely relied on common law principles such as breach of confidence, fiduciary duty, and implied obligations of trust to resolve trade secret disputes.

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<sup>19</sup> Indian Contract Act, 1872, § 27, No. 9, Acts of Parliament, 1872 (India).

<sup>20</sup> Siddhi S. Kalamkar, *Trade Secrets Protection in India: Evaluating Non-Compete Agreements and Legal Challenges*, 4 ILE MULTIDISCIPLINARY J. (2025), <https://mj.iledu.in/trade-secrets-protection-in-india-evaluating-non-compete-agreements-and-legal-challenges>.

Judicial decisions over the past few decades reveal an emerging body of case law that affirms the enforceability of confidentiality obligations, particularly where proprietary interests are at stake.

### **American Express Bank Ltd. v. Priya Puri**

In one of the most frequently cited trade secret cases, *American Express Bank Ltd. v. Priya Puri*, the Delhi High Court delivered a significant ruling on the enforceability of confidentiality clauses in employment contracts.<sup>21</sup> The case concerned an ex-employee who allegedly attempted to use a confidential client database after leaving the bank. The employer sought an injunction, claiming that the client information constituted a trade secret and was protected under the terms of her employment contract.

The court held that the customer database and internal reports generated during the course of employment were confidential and proprietary to the employer. It further recognized that an employee, by virtue of her position and trust, owed a fiduciary duty not to disclose or misuse such information, even in the absence of a post-termination non-compete clause.<sup>1</sup> This ruling reinforces that breach of confidence is actionable in Indian law when it involves unauthorized use of sensitive business data obtained through an employment relationship.

The judgment emphasized that confidentiality obligations may survive termination of employment if they pertain to trade secrets or other proprietary information, provided the agreement is not overly restrictive under Section 27 of the Indian Contract Act, 1872.<sup>22</sup>

### **John Richard Brady v. Chemical Process Equipment Pvt. Ltd.**

Another noteworthy judgment is *John Richard Brady v. Chemical Process Equipment Pvt. Ltd.*, where the Delhi High Court examined the misuse of confidential technical know-how.<sup>23</sup> The plaintiff, a foreign expert who had shared proprietary information with the defendant for a business venture, claimed that the latter had wrongfully used and disclosed the information after the breakdown of their commercial relationship.

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<sup>21</sup> American Express Bank Ltd. v. Priya Puri, 2006 SCC OnLine Del 1301.

<sup>22</sup> Indian Contract Act, 1872, § 27, No. 9, Acts of Parliament, 1872 (India).

<sup>23</sup> John Richard Brady v. Chemical Process Equipments Pvt. Ltd., 1997 SCC OnLine Del 566: (1997) 42 DRJ 643.

The court found in favor of the plaintiff, holding that the technical drawings and manufacturing processes shared under a confidential understanding were protected under the equitable doctrine of breach of confidence. Importantly, the court observed that the absence of a formal non-disclosure agreement did not invalidate the plaintiff's claim, as the circumstances indicated that the information was imparted with an expectation of trust.

This case marked a turning point by reinforcing the idea that confidentiality can be implied from the nature of the relationship and the conduct of the parties, and not just from express contractual clauses. It further highlighted that good faith and fiduciary standards play an important role in trade secret litigation in India.

### **Saltman Engineering Co. Ltd. v. Campbell Engineering Co. Ltd. (UK)**

While not an Indian case, *Saltman Engineering Co. Ltd. v. Campbell Engineering Co. Ltd.* is often cited in Indian judgments to articulate the foundational common law doctrine of breach of confidence.<sup>24</sup> In that case, the Court of Appeal in England held that confidential technical drawings, shared in the course of business, were wrongfully used by the defendant for commercial gain. The court ruled that equity would intervene to prevent the unauthorised exploitation of such information, even in the absence of a written agreement.

Indian courts have adopted this precedent to explain that when confidential information is imparted in circumstances importing an obligation of confidence, any misuse or disclosure amounts to a breach of that obligation. For instance, this reasoning has been cited in *Mr. Anil Gupta v. Mr. Kunal Dasgupta*, where the Delhi High Court upheld the plaintiff's claim over an innovative concept for a television show shared in confidence.<sup>25</sup>

These cases together illustrate that Indian jurisprudence has gradually absorbed the common law approach to trade secret protection, focusing on the circumstances of disclosure, the presence of fiduciary or contractual obligations, and the intent behind the recipient's use of information.

### **Application of Common Law Doctrines**

Across these judgments, Indian courts have consistently invoked the principles of:

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<sup>24</sup> *Saltman Eng'g Co. Ltd. v. Campbell Eng'g Co. Ltd.*, (1948) 65 RPC 203 (Eng.).

<sup>25</sup> *Anil Gupta v. Kunal Dasgupta*, 2002 SCC OnLine Del 376; (2002) 97 DLT 257.

- **Breach of confidence:** Recognizing that certain relationships inherently carry an obligation not to disclose sensitive information.
- **Fiduciary duty:** Imposing higher standards of trust and loyalty where one party stands in a position of power or confidence.
- **Equitable relief:** Including injunctions, damages, or an account of profits where trade secrets have been misappropriated.

The trend suggests that Indian courts have developed a coherent, albeit judge-made, legal framework for protecting trade secrets through contractual interpretation and equitable remedies. However, the lack of legislative codification continues to leave gaps in enforcement consistency.

## 5. Comparative Analysis with Global Frameworks

While India relies primarily on contract law and equitable remedies to protect trade secrets, many developed jurisdictions have adopted statutory frameworks that define, regulate, and enforce trade secret protection. Notably, the United States and the European Union have codified their trade secret laws in recent years to ensure clarity, uniformity, and international compliance under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). A comparative analysis of these frameworks offers valuable insights for India's legal and policy development in this area.

### United States: Defend Trade Secrets Act (DTSA), 2016

The United States enacted the Defend Trade Secrets Act (DTSA), 2016 to provide a federal cause of action for trade secret misappropriation. Prior to this legislation, trade secret law in the U.S. was primarily governed by state laws, especially the Uniform Trade Secrets Act (UTSA), which led to inconsistent interpretations and remedies across jurisdictions. The DTSA harmonized this legal landscape by allowing trade secret owners to file civil actions in federal courts.

Under the DTSA, a "trade secret" is broadly defined as all forms and types of financial, business, scientific, technical, economic, or engineering information that:

- derives independent economic value from not being generally known, and
- is subject to reasonable measures to maintain its secrecy.

Key features of the DTSA include:

- Civil remedies such as injunctions, damages, and attorney's fees;
- Ex parte seizure of property to prevent dissemination of trade secrets;
- Whistleblower immunity provisions protecting disclosures made for reporting violations of law;
- Uniform standards for courts to evaluate misappropriation claims.<sup>26</sup>

This statutory clarity and availability of federal remedies have made the DTSA an effective legal tool, especially for R&D-driven companies across diverse sectors.

### **European Union: Trade Secrets Directive, 2016**

The European Union adopted Directive (EU) 2016/943 on the protection of undisclosed know-how and business information (trade secrets) in June 2016.<sup>27</sup> The Directive harmonizes member states' laws relating to trade secrets and provides a clear definition of trade secrets as:

- Information that is secret,
- Has commercial value because it is secret, and
- Has been subject to reasonable steps to keep it secret.

It identifies acts of unlawful acquisition, use, or disclosure and provides for:

- Civil remedies including interim measures, damages, and corrective actions;

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<sup>26</sup> Eric Goldman, *Primer on the Defend Trade Secrets Act (DTSA)*, TECH. & MKTG. L. BLOG (May 12, 2016), <https://blog.ericgoldman.org/archives/2016/05/primer-on-the-defend-trade-secrets-act-dtsa.htm>.

<sup>27</sup> Directive 2016/943, of the European Parliament and of the Council of 8 June 2016 on the Protection of Undisclosed Know-how and Business Information (Trade Secrets) Against Their Unlawful Acquisition, Use and Disclosure, 2016 O.J. (L 157) 1.

- Confidentiality safeguards during litigation;
- Employee mobility protections, ensuring that enforcement is not used to suppress legitimate labor movement or innovation.<sup>28</sup>

The EU model reflects a strong balance between protection and fair competition. It explicitly addresses internal company procedures for maintaining secrecy, such as employee training, documentation protocols, and access controls.

### **Lessons India Can Adopt from International Models**

Both the U.S. and EU frameworks share core elements that are notably absent in India's current legal regime. The following lessons can be drawn:

1. **Codification and Clarity:** India lacks a statutory definition of "trade secret" and standardized procedures for enforcement. Adopting a statute similar to the DTSA or the EU Directive would eliminate ambiguity and provide businesses with legal certainty.
2. **Unified Enforcement Mechanism:** The DTSA offers federal jurisdiction, and the EU Directive ensures consistency across member states. In India, cases are decided on a case-by-case basis, and outcomes often vary depending on the interpretation of contractual language and equitable relief. A centralized, codified regime could improve consistency.
3. **Procedural Safeguards:** The EU's emphasis on confidentiality during litigation is a valuable model. Indian courts currently lack rules that restrict public disclosure of trade secrets during proceedings. A legislative framework can provide mechanisms for in-camera hearings, redacted pleadings, and protective orders to preserve secrecy during litigation.
4. **Balanced Approach to Employee Rights:** The U.S. and EU frameworks permit trade secret enforcement while protecting employee mobility and whistleblower rights. Indian jurisprudence, governed by Section 27 of the Contract Act, often invalidates post-employment non-compete clauses but lacks clarity on the boundaries of confidentiality

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<sup>28</sup> European Commission, *Trade Secrets Directive Implementation Report*, [https://ec.europa.eu/growth/industry/strategy/intellectual-property/trade-secrets\\_en](https://ec.europa.eu/growth/industry/strategy/intellectual-property/trade-secrets_en) (last visited July 27, 2025).

obligations. A nuanced legislative approach can delineate enforceable restrictions without infringing on constitutional rights to trade and profession.

5. **Preventive Measures:** Both international models emphasize that companies must adopt **reasonable measures** to protect information. This includes internal protocols, limited access, contractual safeguards, and employee awareness. Indian law could benefit from a statutory requirement or guideline outlining best practices for internal protection of trade secrets.
6. **Criminal Penalties:** While the DTSA is primarily civil in nature, some U.S. laws like the Economic Espionage Act, 1996 impose criminal liability for trade secret theft. India could consider incorporating criminal penalties in egregious cases, especially those involving national security, public health, or systemic corporate espionage.

Ultimately, a hybrid model that borrows from both the U.S. and EU approaches, customized to India's socio-economic context and constitutional constraints, would enhance investor confidence, promote innovation, and bring India into closer alignment with global IP standards.

## 6. Protection of Trade Secrets Bill, 2024: Objectives and Drawbacks

India's legal framework for trade secret protection has historically been fragmented, relying on common law principles, contractual agreements, and provisions under the Indian Penal Code and Information Technology Act. The absence of a dedicated statute has led to challenges in enforcement and clarity. In response, the Law Commission of India proposed the Protection of Trade Secrets Bill, 2024, aiming to codify and strengthen the protection of trade secrets within the country.

### Objectives of the Bill

The Bill seeks to establish a comprehensive legal framework for trade secret protection by:

- **Defining Trade Secrets:** Aligning with international standards, the Bill defines trade secrets as information that is not generally known, derives economic value from its secrecy, and is subject to reasonable efforts to maintain its confidentiality.
- **Addressing Misappropriation:** It criminalizes the misappropriation of trade secrets,



providing for civil remedies such as injunctions and monetary damages.

- **Whistleblower Protections:** The Bill includes provisions to protect individuals who disclose illegal activities involving trade secrets in good faith.
- **Compulsory Licensing:** In cases of national emergencies or public health crises, the government may require the owner of a trade secret to license it to third parties to promote public welfare.

### Drawbacks and Criticisms

Despite its comprehensive approach, the Bill has faced criticism on several fronts:

- **Implementation Challenges:** The effectiveness of the Bill depends on its implementation, which requires robust infrastructure and awareness among stakeholders.
- **Balancing Innovation and Protection:** There is concern that stringent trade secret protections could hinder employee mobility and innovation, as individuals may be restricted from using their knowledge in new ventures.
- **Global Alignment:** While the Bill aligns with international standards, its success will depend on harmonization with global trade secret laws and practices.

### Relevance to Contract Law in R&D

The proposed Bill underscores the importance of contractual agreements in protecting trade secrets. It reinforces the role of non-disclosure agreements (NDAs) and confidentiality clauses in safeguarding proprietary information during R&D activities. However, the Bill also highlights the need for a balanced approach that considers the rights of both employers and employees, ensuring that protection mechanisms do not stifle innovation or mobility.

### 7. Policy and Legal Reform Proposals

India's growing knowledge-driven sectors, pharma, software, fintech, and AI, require a clear, enforceable, and globally aligned trade secrets framework. Reliance on contract law and judicial discretion is inadequate, leading to inconsistent enforcement and high litigation costs.

## **Need for Dedicated Trade Secret Legislation**

- The current absence of a statute weakens India's IP regime, discourages foreign investment, and complicates cross-border enforcement.
- A law should:
  - Define "trade secret" and its scope.
  - Provide civil/criminal remedies for misappropriation.
  - Ensure procedural safeguards (protective orders, in-camera hearings).
  - Align with TRIPS Article 39.

## **Reform Models**

- **Integration with IP Laws:** Amend copyright/design statutes, though risks conceptual conflicts since secrecy differs from disclosure-based IP rights.
- **Standalone Trade Secrets Law:** Preferred model tailored to India, modeled on DTSA (U.S.) and EU Directive. Should define misappropriation, allow reverse engineering/fair use exceptions, protect whistleblowers, and provide remedies like injunctions, damages, and punitive relief.

## **Immediate Contractual Improvements**

- **Judicial Training:** Specialized benches, confidentiality orders, and interim relief.
- **Reasonable Measures Doctrine:** Recognize internal safeguards (restricted access, passwords, employee training).
- **Cross-Border Compatibility:** Adopt bilateral treaties or model laws; courts may draw on international best practices.

## **8. Conclusion**

The evolving innovation economy highlights India's urgent need for a coherent legal

framework to safeguard trade secrets and R&D outputs. At present, protection rests primarily on the Indian Contract Act, 1872, and equitable judicial principles, which, though useful, remain fragmented and inadequate. Courts have recognized confidentiality in cases such as *American Express Bank Ltd. v. Priya Puri* and *John Richard Brady v. Chemical Process Equipment Pvt. Ltd.*, affirming fiduciary and contractual duties. However, the absence of statutory definitions and uniform procedures has resulted in inconsistent rulings, prolonged litigation, and weak cross-border enforceability.

Section 27 of the Contract Act further complicates matters by restricting post-employment non-compete clauses, mechanisms often vital for preventing misuse of sensitive information. While confidentiality is upheld during employment, reluctance to extend such protections after termination exposes R&D-driven businesses to significant risks.

Comparative international models provide valuable lessons. The U.S. *Defend Trade Secrets Act (DTSA)*, 2016 offers a federal cause of action, ex parte seizure, and whistleblower protection, while the *EU Trade Secrets Directive (2016/943)* ensures a unified definition, safeguards confidentiality during litigation, and prevents abusive litigation against employees. The absence of such mechanisms in India deters foreign investment and encourages forum shopping in cross-border disputes, as noted by Satapathy and Sapar.

To address this gap, India should enact a dedicated Trade Secrets Protection Act, defining trade secrets, providing civil remedies, ensuring procedural safeguards, and aligning with TRIPS Article 39. This would create legal certainty, foster investor confidence, and strengthen India's position in global R&D networks.<sup>29</sup>

Meanwhile, businesses must strengthen contractual practices through precise NDAs, IP clauses, and collaboration agreements, alongside internal safeguards such as access controls, employee training, and record-keeping. Legal certainty in trade secret protection is not merely academic; it is essential for innovation, ease of business, and integration into the global innovation ecosystem.

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<sup>29</sup> Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299, art. 39.