THE PROTECTION OF TRADE SECRETS BILL, 2024: AN APPRAISAL IN THE LIGHT OF CURRENT LEGAL FRAMEWORK ON TRADE SECRETS

DISSERTATION

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SUPERVISOR'S CERTIFICATE

This is to certify that the dissertation entitled **"The Protection of Trade Secrets Bill, 2024: An Appraisal In Light Of Current Legal Framework On Trade Secrets"** submitted to the National Law School of India University, Bengaluru in partial fulfilment of the requirement for LLM, is a research work carried out by Dawnnie Joe Kharmawlong under my supervision and guidance. It is further certified that no part of this study has been submitted, in whole or in part, to any university for the award of any other degree or diploma.

Dr. SULOK S. K.

Date:

Place:

CANDIDATE'S DECLARATION

I, the undersigned, hereby solemnly declare that the Dissertation entitled "**The Protection of Trade Secrets Bill, 2024: An Appraisal In Light Of Current Legal Framework On Trade Secrets**" submitted to the National Law School of India University, Bengaluru, in partial fulfilment of the requirement for LLM, is an original and bona fide research work of mine. It is further declared that no part of this study has been submitted, either in whole or in part, to any other University for the award of any degree or diploma.

I also affirm that no part of this dissertation has been created or generated using Generative Artificial Intelligence tools. Additionally, it is declared that necessary ethical clearance under the NLSIU Research Ethics Policy, wherever required, has been obtained and terms of the clearance have been complied with. All the information declared hereby is true to the best of my knowledge.

Candidate: Dawnnie Joe Kharmawlong

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LIST OF ABBREVIATIONS : -

AIR : All India Reporter

BIRPI : United International Bureaux for the Protection of Intellectual Property

Del : Delhi

DTSA : Defend Trade Secrets Act of 2016

EU : European Union

IP : Intellectual Property

IPR : Intellectual Property Rights

MRTP : Monopolies and Restrictive Trade Practices

NIB : National Innovation Bill

SC : Supreme Court

SCC: Supreme Court Cases

TRIPS : Agreement on Trade-Related Aspects of Intellectual Property Rights

WIPO : World Intellectual Property Organization

WTO : World Trade Organization

CONTENTS

Introduction: -

The Trade Secrets Bill, 2024 ("Bill") is the latest attempt to codify the law on trade secrets in India, which has been long since called upon by various stakeholders in the backdrop of the rapid advancement of technology and increasing competition in the market. This dissertation engages with the existing literature on trade secrets that have beckoned for the need of a sui generis law, to identify the gaps in our current common law framework and proposes that these gaps can only be rectified through a sui generis intervention. To make this argument, this dissertation examines the evolution of the law on trade secrets from its inception through the TRIPS Agreement towards judicial pronouncements that have adjudicated matters relating to trade secrets, previous attempts along the way to legislate this subject matter and the theoretical justifications for a law on trade secrets. By holistically engaging with these aspects of trade secrets, this dissertation shall also address concerns on whether the Trade Secrets Bill shall disrupt the balance established amongst trade secret holders, employees and competing businesses under the current regime through an assessment of the provisions of the proposed Bill. At this stage, the dissertation shall look at the scope of the proposed trade secret regime in governing upcoming technologies such as generative AI and envisage the way forward that aligns with the mounting pressure to enact this sui generis law and the object of this Bill.

Recently, the 22nd Law Commission report[5] proposes such statutory protections for trade secrets which are laid down in the backdrop of judicial precedents, s. 27 of the Indian Contract Act, 1872, principles of equity, and common law action of breach of confidence that have so far led the way in interpreting trade secret protections offered under Contract and Tort law.[6] Building from the Commission Report, we look at the manner in which the Bill purports for a trade secrets regime that prescribes compulsory licensing and government use, protects whistle blowers, and provides measures necessary against frivolous litigation that otherwise lack clarity in the current regime. By considering such aspects of the current regime alongside the proposed Bill, this dissertation aims to demonstrate whether Bill adequately addresses the lacunas in the current legal regime on trade secrets.

Literature Review: -

Law Commission of India, Trade Secrets and Economic Espionage, 22nd Law Commission Report No. 289 (2024).

The 22nd Law Commission of India published a report in tandem with the Trade Secrets Bill, 2024, which revisits the ongoing discussion on formulating a sui generis regime for trade secrets and proposes a Sui Generis law in regards to Trade Secrets. This report extensively consolidates the ongoing debate surrounding the challenges of enacting a sui generis law, and demonstrates concerns relating to the inherent nature of trade secrets, the current regime and its balanced approach and the scope of improving on the current regime through a sui generis law.

In making its argument, the Commission engages with relevant literature, global trends, and various stakeholders across the board, and finally proposes a sui generis regime that preserves the current trade secret regime in all aspects, while ensuring that provisions of compulsory licensing and government use, public interest, whistleblower protections and deterrence against frivolous litigation is included to further balance the ongoing concerns in light of the evolving complications of trade secret protection.

The Public History of Trade Secrets, by Amy Kapczynski

In "The Public History of Trade Secrets", by Amy Kapczynski[1], the author looks at trade secrets in the changing landscape of commercial law, and its evolution from a concept of fair competition towards a form of "intellectual property" to understand it better through the lens of political economy. By examining the regulatory landscape and functions of mandated product disclosures to the public, the author observes how Courts were stringent in regards to the categorical priority of the public, rejecting trade secret claims when it conflicted with the public's right to know.

The author has argued that extreme interpretations of UTSA undermine the social and political implications of its provisions in favour of economic benefits accrued from protecting corporate secrets from the public domain. Relying on the example of the Monsanto case, the author argues that the public must hold the power to determine the conditions for market access and provide from scope for public governance of business

[1] Amy Kapczynski, The Public History of Trade Secrets, 55 UC DAVIS L. REV. 1367 (2022), pp. 1367-1444. Available at: https://openyls.law.yale.edu/bitstream/handle/20.500.13051/18277/g.pdf?sequence=1&isAllowed=y (Last accessed 24 March 2025)

information and data. The argument is founded in the need for companies to disclose to the public the unethical practices that are carried out under the garb of "trade secrets', and the recovery of this knowledge to in pursuit of the greater public good.

Intellection of Trade Secret and Innovation Laws in India- Md Zafar Mahfooz Nomani and Faizanur Rahman[2]

The paper discusses the concept, origin, and legal framework of trade secrets in India, emphasizing the need for comprehensive legislation to protect trade secrets as a form of intellectual property. Trade secrets are defined as confidential business information that provides a competitive edge, and their protection is crucial for encouraging innovation and maintaining business ethics. The document highlights various mechanisms for protecting trade secrets, such as employment agreements, non-disclosure agreements (NDAs), and security systems.

It also outlines the remedies available for trade secret infringement, including injunctions and damages, and discusses defenses like general knowledge, parallel development, reverse engineering, innocent acquisition, public interest, and statutory obligations. The international legal framework, including the TRIPS Agreement and the Economic Espionage Act in the US, is examined to provide context for India's position.

The paper calls for India to adopt a statutory law on trade secrets, similar to the Uniform Trade Secrets Act in the US, to attract foreign investment and protect confidential information. The draft National Innovation Act, 2008, is mentioned as a step towards this goal, aiming to boost research and innovation through a comprehensive legal framework for trade secrets and confidential information. The document concludes by emphasizing the necessity of a central legislation on trade secrets to align with global trends and support India's economic growth.

Seven Reasons Why Trade Secrets Are Increasingly Important, David S. Almeling

[2] ntellection of Trade Secret and Innovation Laws in India', 16(4)Journal of Intellectual Property Right,(2011)Pp341-350 [ISSN 0971-7544][http://nopr.niscair.res.in/bitstream/123456789/12449/1/IJPR%2016%284%29%20341-350.pdf] (Last accessed 24 March 2025)

The article "Seven Reasons Why Trade Secrets Are Increasingly Important" by David S. Almeling discusses the growing significance of trade secrets in the modern economy. The author identifies seven key factors contributing to this trend: New Technology: Advances in digital technology make it easier to misappropriate trade secrets, as information can be stolen through hacking or by employees using digital storage devices. Changing Work Environment: Increased job mobility and a workforce that values flexibility over loyalty lead to more opportunities for trade secret theft. Increasing Value of Trade Secret Information: As the economy shifts towards knowledge and service-based industries, the value of trade secrets and other intangible assets has risen significantly.

The widespread adoption of the UTSA has provided a more consistent legal framework for protecting trade secrets, increasing awareness and reliance on trade secret law. Flexible Definition of Trade Secrets: The broad and adaptable definition of what constitutes a trade secret allows for a wide range of information to be protected, accommodating rapid technological changes. Rise of International Threats: Globalization and the rise of international business have increased the risk of trade secret theft by foreign entities, including state-sponsored espionage. Recent changes in patent law, including the America Invents Act and various Supreme Court decisions, have made trade secret protection more attractive compared to patents. The article concludes that these factors, along with the increasing importance of informational assets, suggest that trade secrets will continue to grow in significance and that trade secret litigation will likely increase in the future.

In making this argument, the author draws a road map of judicial interpretations and legislative provisions that guide the position of law and how it regards the need for statutory protections for trade secrets. I will further this discussion by identifying the gaps existing in the current framework of Indian law, and how the Trade Secrets Bill can cover it , in accordance with existing discussions.

Methodology: -

I have chosen the Doctrinal methods according to Martha Minow's classification of archetypical research types.[3] The Trade Secrets Bill, 2024 has been proposed by the 22nd

[3] Minow, M., 2013, Archetypal Legal Scholarship: A Field Guide. Journal of Legal education, 63(1), pp. 65-69. (Last accessed 24 March 2025)

Law Commission report after its deliberations with various stakeholders in the industry, despite existing protections offered through s. 27 of the Indian Contract Act, 1972, the principles of equity and common law action of breach of confidence. These protections have been interpreted by various Courts across India. By analysing landmark cases that have conceptualized trade secrets protections through the doctrinal restatement method, we will have a precise understanding of the Trade Secrets bill.

This paper will rely on primary as well as secondary sources of literature. The primary sources of research in this paper will be the Indian Contract Act, 1972, IT Act, 2000, the former Indian Penal Code, 1860, under Indian Law, and various Supreme Court and High Court cases accessed through SCC, which is a vast repository of Indian case laws. Further, reliance will be placed on existing literature published in the context of Trade Secret Protections as well as Law Commission Reports. The websites hosting secondary sources of literature relied on in this paper will be accessed through HeinOnline, JSTOR, and other repositories hosting legal scholarship pertaining to the subject matter of Trade Secrets protection. Additional reliance will be placed on existing laws governing trade secrets such as the Defend Trade Secrets Act (2016) in US, EU Directive 2016/943 and International Conventions such as Paris Convention for the Protection of Industrial Property (Paris Convention, 1883), Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS 1994), North American Free Trade Agreement (NAFTA 1994), and the General Agreement on Trade and Tariffs (GATT 1948).

Research Objective: -

The objective of this dissertation is to examine whether the proposed Trade Secret Bill, 2024 effectively addresses the existing lacunae in India's current legal regime on trade secrets . This involves as in-depth analysis the evolution of the law on trade secrets from its inception through the TRIPS Agreement towards judicial pronouncements that have adjudicated matters relating to trade secrets, previous attempts along the way to legislate this subject matter and the theoretical justifications for a law on trade secrets so as to identify the gaps in the current trade secret regime. By holistically engaging with these aspects of trade secrets, this dissertation shall also address concerns on whether the Trade Secrets Bill shall sufficiently fix these gaps or whether it will disrupt the balance

established amongst trade secret holders, employees and competing businesses under the current regime through an assessment of the provisions of the proposed Bill. The dissertation shall also look at the scope of the proposed trade secret regime in governing upcoming technologies such as generative AI and envisage the way forward that aligns with the mounting pressure to enact this sui generis law and the object of this Bill.

Research Questions: -

The primary question of inquiry in this dissertation is Whether the Protection of Trade Secrets Bill, 2024 adequately addresses the lacunas in the current legal regime on trade secrets. To answer this questions, we must first address the following questions:-

1. What is the current legal framework on trade secrets?
2. What are the lacunas in the current legal framework on trade secrets?
3. Whether the lacunas in the current trade secret regime are adequately addressed by the Trade Secret Bill, 2024?

Scope and Limitations: -

The primary limitation of this paper is the lack of empirical data that would fully capture practical implications of the Trade Secrets Bill, 2024 on its stakeholders if it is implemented. Furthermore, given the nature of trade secrets being secret to hold commercial value, the practices adopted by stakeholders such as corporate entities in their business and the extent of their reliance on trade secret protections maybe difficult to explore. Furthermore, the Trade Secrets Bill may also be subsequently amended in the event that it is enacted by the Legislature, thereby altering the applicability of the findings made in this paper.

The doctrinal approach used in this paper ensures a rigorous and comprehensive analysis of the Trade Secrets bill, 2024, despite the limitations posited above.

1. History and Evolution of Trade Secrets

The historical source of the economic value of Trade secrets dates back to the 15th century[4], whereafter Trade secrets would only go on to emerge as a distinct area of law

[4] Daniel Jütte, *The Age of Secrecy*: *Jews, Christians, and the Economy of Secrets* 1400–1800, trans. Jeremiah Riemer, Yale University Press, New haven & London (2015), p.12 (Last accessed 24 April 2025)

in the 19th century[5], although their the justifications remained largely disputed within contract theory, tort theory and property theory, proponents of trade secrets have argued its rooted in traditional principles of the market.[6] In this regard, the US is a forebearer for treating trade secrets as property.[7] The protection of trade secrets is not explicitly addressed by classical property theorists such as Locke, Hegel, and Kant. However, modern scholars have attempted to apply these theories to justify trade secrets, often framing them within the principles of unfair competition or economic efficiency. The economic justification for trade secrets often revolves around the "Incentive Theory" and "Cost-Benefit Analysis," which seek to balance the benefits of innovation against the costs of restricting information flow. Despite these justifications, the lack of disclosure in trade secrets challenges the traditional quid pro quo of IP rights, where protection is granted in exchange for public disclosure.

1.1 Theoretical justifications to Trade Secrets: -

Intellectual Property Rights confer exclusive rights to creators for inventions, literary and artistic works, so as to incentivize further innovation and competition in the market. While IPRs are protected through patents, copyrights, trademarks and designs, which require public dissemination of the intellectual property, the value of trade secrets are derived from the commercial value of its secrecy.

Numerous courts across jurisdictions have framed trade secrets within economic and philosophical justifications that purports to enforce the protection of trade secrets, evolving out of doctrines such as breach of confidence, breach of confidential relationship, common law misappropriation, unfair competition, unjust enrichment and torts related to trespass or unauthorized access to property.[8] The property theories of

[5] Newberry v. James 1817, 35 E.R. 1011. (Last accessed 24 April 2025)
[6] Ramon A. Klitzke, "Trade Secrets: Important Quasi-Property Rights", Vol. 41, (No. 2), The Business Lawyer, February 1986, pp.555-570 at p.557. (Last accessed 24 April 2025)

[7] Josef Kohler, *Philosophy of Law*, The Boston Book Company, Boston (1914), p.145. (Last accessed 24 April 2025)

[8] M. A. Lemley,..The Surprising Virtues of Treating Trade Secrets as lP RightJ' 6l Stanford Ldw Review 316 (2008). (Last accessed 24 April 2025)

Locke and Hegel have been explored by various scholars in the justification of trade secrets.[9]

The first justification of trade secrets as property arose out of a dispute before a court in the United Kingdom, wherein it was opined as follows[10]-"If he invents or discovers, and keeps secret, a process of manufacture, whether a proper subject for a patent or not, he has not indeed an exclusive right to it as against the public, or against those who in good faith acquire knowledge of it; but he has a property in it" This position was similarly held in another judgment in the Supreme Court of the United States.[11]

1.2 Pre TRIPS

Under the Paris Convention Article 10bis had been added pursuant to the 1900 Revisions, which depicted acts of unfair competition, that was strictly limited to dishonest acts that attracted a competitor's market, such as acts that induce a competitor's employees to breach their contracts were considered unfair trade practice.[12] Any consideration of acts that were not inherently fraudulent or dishonest were also rejected.[13]

Prior to the TRIPS Agreement that linked trade secrets to unfair competition, the report by BIRPI contained examples of unfair trade practices that were associated to trade secrets and know-how, that described obtaining business secrets or trade secrets by a competitor through espionage or bribery of employees, and the using or disclosure without authorization of secret technical know-how of a competitor.[14]

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[9] Refer Jeanne L. Schroeder, "Unnatural Rights: Hegel And Intellectual Property", Vol.60, (No.4), University of Miami Law Review, (2006), pp.453-503 at pp.453-503, available at https://repository.law.miami.edu/cgi/viewcontent.cgi?article=1338&context=umlr, (accessed on 24 April 2025)
). Also, Eric R.Claeys, "Private Law Theory and Corrective Justice in Trade Secrecy", Vol. 4, (Issue 2, Art. 2), Journal of Tort Law, (2011), pp.1-64 at pp.1-64, available at https://www.law.gmu.edu/assets/files/publications/working_papers/1114PrivateLawTheory. pdf, (accessed on 01/03/2025). Also, Michael Risch, "Why Do We Have Trade Secrets?", Vol.11, (Issue 1), Marquette Intellectual Property Law Review, (2007), pp.1-76 at pp.1-76, available at https://scholarship.law.marquette.edu/iplr/vol11/iss1/1/, (accessed on 24 April 2025).

[10] Peabody v. Norfolk, 98 Mass. 452, 458 (1868).

[11] Kewanee Oil Co. v. Bicron Corp., 416 U.S. 470, 493 (1974).

[12] Nuno Pires de Carvalho, The TRIPS Regime of Antitrust and Undisclosed Information, Kluwer Law International, Netherlands (2008), p.195-199. (accessed on 26 April 2025)

[13] Ibid

[14].Model Law For Developing Countries On Marks, Trade Names, And Acts Of Unfair Competition, International Bureaux for The Protection of Intellectual Property(BIRPI), 1964, p.78 (accessed on 24 April 2025)

1.3 TRIPS Agreement : -

The TRIPS Agreement included trade secrets within its purview under Article 39, whereby 'Undisclosed Information' had replaced 'trade secrets', to avoid any reference to existing legal systems which create the notion of exclusive proprietary rights.[15] Such protection is granted under Article 39 through the principles of unfair competition as reference under Article 10bis of the Paris Convention.

Under Article 39.2, the information to be protected as secret must not be generally known and readily accessible within the relevant industry, has commercial value as a consequence of the secrecy and such reasonable steps ought to be taken by the person lawfully in control of the information to keep it a secret.[16] The extent of such secrecy was deliberated and finalized as "readily accessible", in accordance with the analysis of the Supreme Court of Switzerland,[17] thereby establishing the relative secrecy as opposed to absolute secrecy as a necessary ingredient as the opposite would place a liability on the information recipient.[18] Similar concerns arose over misappropriation standards, wherein a balanced approach considering principles based in property as well as unfair competition was preferred to ensure broad scope of applicability across various jurisdictions without conflicting with their existing regimes, in line with the concerns of members such as India and US.

An interpretation of Article 39 of TRIPS tells us that Member States have the requisite discretion to implement Article 39 in line with their existing regimes. Reference made to 'natural' and 'legal' persons allow Member States to determine the parties that fall under the purview of this definition. The interpretation of relative secrecy under Article 39(2) precludes the notion of public domain to the general public at large, and instead references only the people working in similar trade. Additionally, reasonable measures to protect ones information is left to be determined by the respective jurisdictions of the

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[15] Nuno Pires de Carvalho, *The TRIPS Regime of Antitrust and Undisclosed Information,* Kluwer Law International, Netherlands (2008), p.218-219.

[16] Id at p. 214

[17] Ibid.

[18] UNCTAD- ICTSD, Resource Book on TRIPS and Development, Cambridge University Press, Cambridge (1st edn, 2005), p.523.

States.[19] On the matter of remedies, as well, the TRIPS Agreement does not stipulate exhaustive remedies to enforce trade secrets, it does provide for enforcement of rights[20] through civil and administrative procedures that Member States are obligated to provide.

1.4 Remarks

This section traces the evolution of trade secrets by summarily looking at its early recognition in the 15th century and subsequent emergence as a distinct legal concept by the 19th century. By looking at the theoretical justifications of property offered to trade secrets, and its economic justifications , we find that scholars and courts alike, were particularly concerned with framing a reference point for trade secrets that justify its protection. In engaging with these facets of trade secret history, we find that the concerns of that time did not consider compulsory licensing and government use, public interest, whistleblower protections and frivolous litigation as the law on subject itself was only gaining momentum. However, it is on the same vein that these international developments would lay down the foundation for a sui generis Trade Secret law.

Further, as demonstrated and settled in existing literature, it can be seen that TRIPS Agreement provides the necessary flexibility to adopt and interpret its provisions within the jurisdictions of Member States, regardless of whether such Member State has adopted the principles of property or unfair competition to uphold and enforce trade secret protection. It is this flexibility that the Law Commission in its 22nd Law Report has considered when drafting the provisions of the Trade Secret Bill. The approach taken by the Law Commission in this regard shall be discussed in detail under Section 4 of this dissertation. Nevertheless, it can be inferred from herein that a sui generis law for Trade Secrets may be enacted as it falls within the scope of the Member States to decide the same.

2. Current Regime of Trade Secrets in India: -

India, following the UK model, has historically protected trade secrets through common law principles of equity and breach of confidence, without specific legislation. However, the absence of a dedicated legal framework has created ambiguity and inconsistency in

[19] Peter- Tobias Stoll *et.al* (Eds.), *WTO-Trade Related Aspects of Intellectual Property Rights,* Max Planck Institute for Comparative Public and International Law, Martinus Nijhoff Publishers, Leiden(2009), p.641.
[20] Agreement on Trade-Related Aspects of Intellectual Property Rights (signed 15 April 1994, entered into force 1 January 1995) 1869 UNTS 299, art 39(2). (accessed on 27 April 2025)

the protection of trade secrets, particularly in the context of employment disputes and third-party misappropriation. The Indian legal system has relied on judicial precedents, often citing English and US cases, to address trade secret issues. Despite this, the lack of a statutory framework has been identified as a significant gap in India's intellectual property regime, as highlighted in the One Hundred and Sixty-First Report on the Review of the Intellectual Property Rights Regime in India by the Parliamentary Standing Committee on Commerce.

In recent years, there has been growing recognition of the need for a comprehensive legal framework to protect trade secrets in India. This need is driven by both international obligations under TRIPS and the demands of domestic industries, particularly in sectors like Ayurveda and Micro, Small, and Medium Enterprises (MSMEs), where trade secrets play a crucial role in maintaining competitive advantage. The proposed Trade Secret Bill aims to address these gaps by providing a clear statutory basis for the protection of trade secrets, defining key concepts such as misappropriation, and establishing remedies for breaches. The Bill is expected to align India's trade secret regime with global standards, fostering innovation and economic growth while ensuring compliance with international obligations.

It is understood so far that trade secret protection in India is based on the common law approach, largely inspired by the principles of English law. While such protections were only enforced in accordance with the terms of a contract, confidentiality clauses and negative covenants mostly restrained the employee from misusing the confidential information by divulging such information or using it to compete with their former employer. Despite the earlier position that trade secrets were not to be considered Intellectual Property, Indian courts have since diverged from this understanding to include trade secrets as IP.[21]

Foremostly, as noted in the last section the guiding principles of enforcing trade secrets have been laid down under Article 39 of TRIPS, as discussed in the previous section. It is within the facet of these guiding principles that Member States choose to enforce trade secrets as per their requirements. As such, the use and application of Trade secrets have evolved over time, depending on the manner in which jurisdictions of Member States have decided to regulate them. Generally speaking, trade secrets are protected through

[21]Konrad Wiedemann GmbH vs. Standard Castings Pvt. Ltd, [1985](10) IPLR 243.

Agreements containing confidentiality clauses, Non-Disclosure Agreements, Non-solicitation clauses and non-compete clauses. Such Agreements help prevent disclosure of confidential information to third parties. Let us contextualize the protection given to trade secrets under Indian jurisdiction:-

2.1 Statutory Protection of Trade Secrets: -

Indian courts have long since upheld trade secret protections on the basis of principles of equity, common law action of breach of confidence and contractual obligation in line with Section 27 of the Indian Contract Act, 1872.[22] Under this section, all agreements restraining trade are void, unless specified. Accordingly the Law Commission of India in 1958 proposed for the modification of this section to include an exception that such restraint was reasonable to the interests of the parties and the general public.[23] Such a recommendation was made keeping in mind that trade was still in its developing stages in India and that such accommodation could be made for reasonable restrictions in promotion of trade secret law in India.[24]

Under the RTI Act, 2005, public access to state held information is prohibited where trade secrets and commercial confidential information is concerned,[25] unless it is demonstrated that disclosure is necessary for a larger public interest. Accordingly, the Supreme Court has held that building plans form public records[26], as well as transparency being utmost priority in government tenders.[27]Further, Section 11 provides for third parties to be notified before the disclosure of their confidential information. Under the erstwhile Indian Penal Code, 1860, in cases of misappropriation courts have been hesitant to classify trade secrets as property for criminal liability,[28] despite provisions under Section 408,415,418, and 420 being widely interpreted for imposing criminal liability on misappropriation of property. In the current BNS, 2023, the sections have been substituted with Sections 316(4), 318, 318(3), and 318 (4), however it can be safely presumed that courts may refuse to entertain any claim founded on trade secrets being considered property. Similarly, under the IT Act, 2000, Section 72 deals with

[22] Section 27 of the Indian Contract Act, 1872.
[23] The Law Commission of India, 13th Report, Ministry of Law and Justice (1958), para 55.
[24] Ibid.
[25] Section 8(1)(d), The Right to Information Act, 2005
[26] Ferani Hotels Pvt. Ltd. v. State Information Commissioner (MANU/SC/1088/2018).
[27] State Of Jharkhand And Anr. vs Navin Kumar Sinhga And Anr. (AIR 2008 Jhar 19)
[28] Navigators Logistics Ltd v. Kashif Qureshi &Ors, MANU/DE/3355/2018.

breach of confidentiality and privacy, [29] however, much like with IPC, very few cases invoke these provisions before court.

2.2 Judicial approach to Trade Secrets :-

Reading the judicial decisions of Indian Courts in the adjudication of matters of trade secrets and misappropriation is necessary in order to determine whether the principles developed under Common law have been applied properly in the Indian context, and whether such application of Common law has lined up with the scope envisaged by the TRIPS Agreement.

In India, courts have defined trade secrets on numerous occasions. In one case,[30] the Hon'ble High Court defined trade secrets as such formulae, technical know-how, or peculiar mode or method of business adopted by an employer which is unknown to others. In another case,[31] the Delhi High Court on a similar concern noted that the concept of trade secrets as developed and evolved by the plaintiff is the outcome of the work performed by the plaintiff upon publicly available material, however, such confidentiality is derived from the use of his intellect that shapes the concept protected by trade secrets. Similarly, the Delhi High Court in another case held that the database compiled by an organization could fall within the purview of copyright protection and its unpermitted use could amount to infringement in that area of law.[32]

Courts have similarly relied on their interpretation of such Agreements under the Indian Contracts Act, 1872, whereby an agreement which restrains a servant from competing with his employer subsequent to the termination of the Agreement may be allowed by Courts, provided that such restrictions are within reasonable limits.[33] This observation

[29] Information Technology Act, 2000, Sec.72:Save as otherwise provided in this Act or any other law for the time being in force, if any person who, in pursuance of any of the powers conferred under this Act, rules or regulations made thereunder, has secured access to any electronic record, book, register, correspondence, information, document or other material without the consent of the person concerned discloses such electronic record, book, register, correspondence, information, document or other material to any other person shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to one lakh rupees, or with both.

[30] *American Express Bank Ltd* v *Priya Puri* (2006) III LLJ 540 (Del), Zee Telefilms Ltd. And Film And Another v. Sundial Communications Pvt. Ltd, 2003 (5) Bom.C.R 404

[31] Anil Gupta v. Kunal Dasgupta, 97 (2002) DLT 257.

[32] Burlington Home Shopping Pvt Ltd v Rajnish Chibber, 61 (1995) DLT 6.

[33] Singh Avtar, Law of Contract and Specific Relief, 9th edn (Eastern Book Company, Lucknow), 2005, pp. 260-261.

was held by the Calcutta High Court in Brahmaputra Tea Co. v. E. Scarth[34] which was already settled in law in similar cases by the Supreme Court,[35] observing that an injunction issued against a party restraining him competing with his employer is subject to the restrictions of time, nature of employment, and area, and a wide and unreasonable restriction cannot be applied to protect the interests of the employer. Once again, in the case of Ambiance India Pvt. Ltd. v. Naveen Jain[36] , the Delhi High Court opined that the agreement between parties which prohibits the former employee from seeking employment with any customer of the employer, former or prospective, was held to be void under Section 27 of the Indian Contract Act, 1872, and therefore any relief sought for through an order of ad interim injunction until disposal of the suit could not be granted on such grounds. The Supreme Court has also held that any restraint that is perpetual in respect of the use of knowledge and experience gained through previous engagement cannot be enforced upon the termination of the Agreement.[37]

The above decisions of the respective courts indicate that an employer may restrain his employee during the term of the Agreement, but upon termination, such restraint if any, has to be within reasonable measures that protect the interests of the employer and prevent the exploitation of trade secrets. Contrarily, however the Calcutta High Court upheld the restrictive clause in an employment Agreement which restrained the employee from misusing or revealing the confidential information and trade secrets acquired during the tenure of his employment,[38] indicating that the approach to be considered when weighing in on restraint of trade under S. 27 of the Indian Contract Act, must be one borne out of reasonability and determined by the Court in consideration of the facts of the case.

Even in the absence of contracts, courts have attributed the liability for misappropriation where the circumstances reasonably lead to implied confidentiality[39] or where such misappropriation is a result of inducement by a third party.[40]

[34]Brahmaputra Tea Co v E Scarth (1885) 11 Cal 545.
[35]Niranjan Shanker Golikari v Century Spinning & Manufacturing Co Ltd (1967) 2 SCR 378:AIR 1967 SC 1098.
[36] Ambiance India Pvt Ltd v Naveen Jain, 122 (2005) DLT 421.
[37] Sandhya Organic Chemicals Pvt Ltd v. United Phosphorous Ltd, AIR 1997 Guj 177.
[38] Gopal Paper Mills Ltd v Surendra K Ganeshdas Malhotra, AIR 1962 Cal 61.
[39] Anil Gupta and Anr. V. Kunal Dasgupta and Ors. 97(2002) D.L.T 257.
[40] Homag India Private Ltd v. Mr Ulfath Ali Khan, MANU/KA/1569/2012

In reference to Indian cases, courts have not attempted to define secrecy and whether such information so contested was common knowledge readily available in the public domain. In various cases[41] where restraint was sought against the use of customer details by the former employee, concerns were relayed as to whether such protection if granted would prevent the former employee from dealing with the customer following the expiration of the employment agreement. Keeping this concern in mind, courts have accordingly considered that trade secrets could not be deemed as property, and distinguished its position from that of US, citing that trade secrets have not been dealt with as property in India as equated with English Law.[42] This public domain exclusion is also noted in the case of Emergent Genetics India Pvt. Ltd. v. Shailendra Shivam and Ors,[43] where the Court held that such information in respect of hybridization techniques could not be considered as confidential as it would stifle ongoing farming techniques, as the document only contained elimination and attribution of different DNA strains.

Alongwith the cases above, a catena of other cases demonstrate in the breadth of the interpretation laid down by Indian courts that without a statute, courts have carefully ruled out subject matter considered as common knowledge or public domain, that aligns with the TRIPS obligations and practices followed in the UK and US.

2.3 Relief Granted : -

By bringing the disclosure of trade secrets within the purview of breach of contract in the manner seen above, the remedies made available then to the aggrieved party include an action on account of use of confidential information, damages and an injunction to prevent further misuse of trade secrets. In order for the court to consider such an action, the plaintiff must demonstrate that such information was of confidential nature, necessary steps were taken to protect the information from being disclosed such as by placing an obligation of confidentiality upon the recipient of such trade secret, and such information has not become a part of public knowledge. Interim injunction may only be granted subject to circumstances and nature of the confidential information that

[41] Navigators Logistics Ltd. v. Kashif Qureshi & Ors., MANU/DE/3355/2018, American Express Bank Ltd v Priya Puri (2006) III LLJ 540 (Del),
[42] Dr. Claudio De Simone &Anr. v. Actial Farmaceutica, MANU/DE/0841/2020.
[43] 2011(47) P.T.C 494(Del).

determine the value and period of time for which such information ought to be protected.[44]

For the purposes of injunction, the Code of Civil Procedure , 1908 provides scope to provide temporary injunctions.[45] most injunctions granted against misappropriation of trade secrets have been interim in nature, based on the prima facie evidence produced before court.[46] The Court has also considered the application of Order XXXIX, Rule 7[47] in trade secret cases, which is usually granted in copyright and trademark cases, whereby local commissioners were directed to seize product being manufactured by the defendant, along with mirror copies of the computer hard disks as such manufacture of products was a violation of express confidentiality clause.[48] In another case, the Court upheld the award of an arbitrator which directed the defendant to pay royalty to the plaintiff where the defendant had licensed the know-how from the plaintiff, as the subject matter of the Agreement concerning such license covered use of non-patented know-how such as the selection of raw materials, specifications and configurations, alongwith information related to testing and polishing.[49]

2.4 Previous Attempts at a sui generis legislation: -

The draft of the National Innovation (NI) Bill, 2008 was published amidst rising demand for a stronger regime to protect trade secrets,[50] as the foremost attempt of the Government of India to protect confidential information. The draft NI Bill defined confidential information, and stipulate that confidentiality obligations ought to be aligned with contractual terms and conditions, casting the onus on parties to contract with each other and outline their respective rights.[51] However, this Bill was not tabled in Parliament and ultimately shelved.

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[44] *Thomas Marshall* v *Gunile* (1978) 3 All ER 193, 203.
[45] Order XXXIX, the Code of Civil Procedure, 1908.
[46] John Richard Brady and Ors.v. Chemical Process Equipments P, A.I.R 1987 Delhi 372. See also Anil Gupta v. Kunal Dasgupta, 97 (2002) DLT 257, Krishan Murgai v. Superintendence Company Of India 1980 A.I.R 1717.
[47] ORDER XXXIX, Rule 7 of the Code of Civil Procedure, 1908
[48] Vestergaard Frandsen A/s &Ors v. M Sivasamy & Ors , MANU/DE/4825/2009.
[49] National Research Development Corporation v. Silicon Ceramics Ltd. 1997 I.V.A.D Delhi 369.
[50] Chandni Raina, Trade Secret Protection in India: The Policy Debate, New Delhi: Centre for WTO Studies (CWS), Indian Institute of Foreign Trade, 2015, p. 2, available at https://wtocentre.iift.ac.in/workingpaper/Trade%20Secret%20Protection%20in%20India-%20The%20policy%20debate.pdf (accessed on 13/04/2025).
[51] Section 8, draft NI Act

2.5 Remarks: -

In the last section, we learned that TRIPS has provided ample scope to Member States to determine for themselves the method with which they shall protect undisclosed information. Such broad flexibility to enforce and protect trade secrets enable such Member States to consider the need for sui generis legislation in that regard. We also contextualize the lack of discourse surrounding compulsory licensing, government use, whistleblowers protection and frivolous litigation in that era. In this section, we see that that the common law approach in accordance with the restraint of trade principle under the Indian Contract Act, has been successful in addressing concerns of trade secret protection in line with the provisions under the TRIPS Agreement, however, we realize that the judicially led trade secrets regime in regards to surrounding compulsory licensing, government use, whistleblowers protection and protections against frivolous litigation is underdeveloped

While, premature concerns may emanate as a result of contrarian interpretations of the same subject matter in dispute, courts have largely ruled against post -employment restraints, favouring employees as a general practice to favour employment mobility. For instance, in Niranjan Shankar the Supreme Court enforced a negative covenant in an employment contract citing that it was not violative of Section 27 of the Indian Contract Act, 1872, as the employee had left employment before the term of the Agreement had elapsed, whereas in another case,[52] the Supreme Court held that such a restraining clause cannot be valid post the termination of the Agreement. Subsequent interpretations of such negative covenants have also tilted in the favour of employees, as seen above. Additionally on the matter of relief, Indian courts have demonstrated a balanced approach that limits the injunction of the trade secrets for the duration of the proceedings. Despite the concerns being balanced out as hereunder, multiple stakeholders have raised distinct concerns that trade secrets lack clarity and required adequate protection that ought to be introduced through a sui generis legislation. Earlier attempts of legislating trade secrets such as NI Bill has also not been fruitfulWe can conclude from this section that the current regime is nascent insofar as key areas such as compulsory licensing , government use, whistleblower protections and deterrence against frivolous litigation is concerned- existing literature on the above subject matters

[52] Superintendence Co. of India v. Krishnan Murgai, 1980 A.I.R 1717.

have indicated increased relevance in an era where the existing regime cannot offer provisions that are a central concern in this dissertation. We can conclude from a reading of this section that the current regime has given little emphasis towards compulsory licensing , government use, whistleblower protections and deterrence against frivolous litigation. Let us now examine how the Bill proposes to tackle these issues.

3. Trade Secret Bill, 2024: Key Provisions

The Commission Report considered responses from multiple stakeholders in addition to the engagement with existing literature on the subject of whether a sui generis law on Trade Secrets was necessarily the way forward in the Trade Secrets regime. One position was that Indian courts have sufficiently addressed the matter of Trade Secrets under the existing common law framework that have been identified in the earlier sections of this paper. However, a closer glance at the proposed Bill shows us that certain provisions such as Whistle Blower Protections, Compulsory Licensing & Government Use, Public Interest can only be adequately defined and addressed within a sui generis framework. Where such provisions are defined in relation to trade secrets and the misappropriation thereof, it only logically follows that trade secrets and misappropriation ought to be explicitly defined under the same regime. Hence, to maintain the same balance envisaged by Indian Courts within the current regime, it should only follow that the definition for such sui generis provisions ought to be adopted from the current regime. Let us understand the approach taken by the Commission in such regard. Along the same vein, the procedure under the current extant framework ought to retained by adopting the same framework as proposed by Indian courts under the current regime.[53]

The Commission hence proposes for a sui generis regime on Trade Secret law that largely relies on the wisdom of Indian courts that robustly developed the common law regime within Indian jurisdiction. The scope of Trade secrets law is envisaged in a way that preserves the balanced approach for which Indian courts have been lauded, yet broadens the scope of protection and exception that cater to the interests demanded in

[53] Sterlite Technologies Limited v..lnupan Singh & Or.r., CS (OS) 349/2022 (Delhi High Coun) : 2022 SCC Online Del 2864; Sanofi Winthrop lndustries & lnr. v. Kirti lJ. Maheshwari &,Izr., CS(OS) 226512014

this day and age. Let us now examine the provisions tabled by the Commission in the Trade Secrets Bill: -

3.1 Definitions

Trade Secrets- In regards to the definition of trade secrets, the Commission considered a broader definition which creates room for judicial interpretation that contextualizes emerging issues and developments across industries. In accordance with the TRIPS Agreement, the criteria of secrecy, commercial value and reasonable steps have been suggested as the qualifying criteria for protection under the proposed statute, which in so doing prevents the exclusion of several categories of information requiring protection.

Misappropriation- In defining misappropriation, the Commission considered that only bad faith acts must attract liability, and not bona fide acquisition and disclosure be subject to liability as in the instances of independent discovery, reverse engineering or anything that is a result of an honest commercial practice, as such a restriction would wholly undermine existing IP regimes that encourage public disclosure and timebound rights, thereby leading to a monopoly that harms competition, further research and development and ultimately public interest.

Restrictive Covenants and Doctrine of inevitable disclosure- As per Section 27 of the Indian Contract Act, 1872, the use of restrictive covenants that prevent trade is prohibited, thereby any such negative covenants and post-employment restraints within contracts cannot be permitted in accordance with the current legal framework.

In regards to the doctrine of inevitable disclosure, the Commission made notable observations that such a doctrine has not been applied by Indian Courts. Instead, the position that the employer cannot prevent an employee to join a competitor as it may lead to the use of trade secrets as a result of the use of the intellectual skills by the employee is proffered by Indian Courts, unless the employer can demonstrate that some tangible material such as documents, emails, etc. was taken by the employee or the facts and circumstances show that the former employer's trade secrets have been used by the employee at the behest of the competitor. Hence, no presumption can be made in regards to such misuse of trade secrets, and such presumption would undermine the principle of restraint of trade.

3.2 Exceptions: -

Whistle blower protection- While Whistle Blower Protections have been provided under existing statute,[54] such protection is contingent to the allegations of corruption or wilful misuse of power against any public servant. The Commission suggests that such provision be adopted within the statute to encourage such whistle-blowers to come forward. This suggestion[55] is made against the backdrop of whistle-blower provisions that have been adopted by other countries such as the US[56] and EU Member States.[57]

Compulsory Licensing and Government Use – The Commission has also proposed for the inclusion of a Compulsory Licensing and government use clause which stipulates the exception of issues pertaining to public health and national security that require the disclosure of trade secrets by the lawful holder to a third party with strict obligations to maintain confidentiality.[58] The Commission identifies this as a potential issue by referring to the voluntary licensing of trade secrets surrounding vaccines had been found to be grossly inadequate during COVID-19 to address the scale at which supply of vaccines was stifled due to existing trade secret protections. Such an event ought to be prevented even in instances where production methods or skills which are protected as trade secrets may be vital to rapid manufacturing and distribution of vaccines, [59] which can be addressed by ensuring that the state intervene in the disclosure of trade secrets in cases of emergency.

Public Interest- In line with the 'public interest' exception covered out across various jurisdictions and the existing Indian regime, the Commission found it necessary to include a public interest exception.[60] This position is in line with the position of Indian courts as well as found in the previous section.

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[54] Whistle Blowers Protection Act, 2014.
[55] Protection of Trade Secrets Bill 2024, s 5(a).
[56] 18 USC 1833
[57] Directive (EU) 2019/ 1937 of the European Parliament and of the Council of23 October 2O l9 on The Protection of Persons Who Report Breaches of Union Law, available at. https://eur-ex.europa.eu/legalcontenVen/TXT/?uri=CELEX%3A320 I 9L I 937.
[58] Olga Gurgula and John Hull, "Compulsory licensing of trade secrets: ensuring acces to COVID- l9 vaccines
via involuntary technology transfer" l6 Journal of Intellectual [Properly Law, & Practice 1242 (2021\, available
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[59] David S. Levine and Joshua D. Sarnoff, "Compelling Trade Secret Sharing" 74 Hastings Lau Journal 98? (2023\, qvailable at https://repository. uchastings.edu/hastings lawjournal/vol74/iss4/2
[60] Protection of Trade Secrets Bill 2024, s 5(b).

Remedies- The Commission also concerned itself with the remedies that ought to include interim, ex-parte and permanent injunctions in addition to damages, surrender and destruction of misappropriated material without restricting its scope to any criminal action available under the existing statutory protections discussed in the previous section. Notwithstanding such action, an aggrieved defendant facing groundless threats of legal proceedings may find appropriate remedy under the Bill[61], in line with similar protections offered under other IP laws.

Procedure- The Commission also considered existing procedure in regards to the limitation period and application of commercial courts act, 2015, and aligned with the current legal regime, while suggesting for provisions that maintain the confidentiality of proceeding in court, so as to inspire confidence in the process.

4. Analysis: -

The evolution of trade secret protection, its enforcement through Article 39 of TRIPS along with the codification of trade secret laws across various Member States such as US and South Korea demonstrate a global tendency towards a sui generis regime for trade secrets. Despite earlier resistance towards a sui generis regime, increasing demand for a statute has led to proposition of the Trade Secret Bill, against the backdrop of India's reliance on common law principles, law of contract and statutory provisions- a regime albeit balanced before the courtroom, however difficult to follow in light of modern technological challenges and business advancements. The concern for a sui generis legislation has been surmounting for awhile. [62]

4.1 Academic scholarship: -

Academic scholarship has addressed these concerns over the past few years as well. Md Zafar Mahfooz Nomani argues for the adoption of a statutory framework for trade seecrets similar to the Uniform Trade Secrets Act in the US. Prashant Reddy T. argues that codification of trade secrets law would offer an opportunity to reform the law and address Indian-specific challenges instead of following foreign precedent. [63] Tania

[61] Protection of Trade Secrets Bill 2024, s 10.

[62] India and United States Joint Statement on the Trade Policy Forum, 20 *October 2016.*

[63] Prashant Reddy T., "The Other IP Right': Is It Time to Codify the Indian Law on Protection of Confidential Information?",Vol.5, Journal of National Law University Delhi, 2018, pp.1-21, available at https://journals.
sagepub.com/doi/full/10.1177/2277401718787951

Sebastian calls for a regime change in consonance with external pressures as well as internal indecisiveness in addressing matters before Indian courts. Naveen Gopal, on the other hand, similarly addresses this concern in his thesis and finds that in the event that the government decides to enact legislation in this regard, then certain principles ought to be considered.

Thereafter, the Commission's position on pushing for a sui generis legislation aligns with the existing regime as demonstrated was necessary to maintain a balanced approach on adjudicating matters of trade secrets. Given that the current trade secret regime is in alignment with TRIPs, the need to substantially replace any of the existing common law principles and statutory measures is uncalled for. The balanced approach demonstrated by the Commission in its Bill provides sufficient room for the current regime to remain in effect while introducing statutory exceptions such as Compulsory Licensing, Government Use, Public Interest, Whistle blower protections, and malicious litigation. For this purpose, it is argued that it is necessary to define trade secrets and misappropriation so as to outline the scope of such exceptions.

4.2 Technological advancements :-

Keeping up with scientific and technological advancements is also a concern of the hour. With rapid development in technology and software, processes tend to fall outside the scope of patentability and therefore end up protected through trade secrets. Since there is no disclosure requirement for trade secrets, a concern in regards to information asymmetry arises whereby the general public may not have access to the information it may so require. Such concerns cannot be addressed under the current regime, where the scope of public interest in today's day and age is disputed in an action seeking disclosure of confidential information. Amy Kazynski raises similar concerns in her paper, where she discusses the Monsanto case which, under the UTSA regime which prevented disclosure of confidential information on favouring economic benefits of corporate entities instead.[64] She argues that such information ought ot be available to the public in order to identify unethical practices that are carried out under the garb of "trade secrets", for the greater good. For this purposes the Compulsory licensing provision may be invoked in emergencies and issues of national security, as identified in the case of

[64] Amy Kapczynski, The Public History of Trade Secrets, 55 UC DAVIS L. REV. 1367 (2022), pp. 1367-1444. Available at : https://openyls.law.yale.edu/bitstream/handle/20.500.13051/18277/g.pdf?sequence=1&isAllowed=y

COVID-19 vaccines. Further, provisions of disclosure in lieu of the greater public interest would enable swifter action on trade secret disclosure that has a legitimate interest to the public.

4.3 Generative AI and Trade Secrets : -

A unique concern in today's day and age is the use of generative AI that leads to the inevitable disclosure of trade secrets. While this matter has been discussed in recent literature[65], contextualising it in the context of the trade secret regime would be integral as a part of the general discourse on this subject matter. The use of Generative AI tools such as ChatGPT, Claude AI and DeepSeek by employees can lead to the inevitable disclosure of trade secrets that may be misappropriated by the respective tool. In the event that the AI technology incorporates this information into its training data and outputs, the trade secrets could become 'readily accessible and 'generally known'[66] losing its legal protection. Users may deliberately attempt to prompt Generative AI tools to reveal trade secrets which may be used as training data. In such instance any action would require a Court to demonstrate whether obtaining information in such a manner would be tantamount to 'misappropriation'[67] or whether such information would be obtained lawfully.

Another concern arising out of use of Generative AI would be whether it could render certain trade secrets as readily accessible by collating publicly available data to generate outputs replicating proprietary information. Furthermore, the concern of whether such access or configuration of data could be tantamount to reverse engineering thereby undermining the current trade secret regime.

A preliminary view of the possible ramification of Generative AI on trade secrets indicate there is need for much concern in developing the jurisprudence surrounding Generative AI technologies and trade secrets. It can be seen from the reference above that current trace secret regime is inadequate to address this issue. On the other hand the proposed Bill could allow for scope to seek disclosure of training data by Generative AI tools on grounds of public interest, especially where concerns relating to misinformation, dissemination is concerned. Similar issues have arisen with respect to

[65] C David S Levine, 'Generative Artificial Intelligence and Trade Secrecy' (2023) 3 Journal of Free Speech Law 559. See also Camilla A Hrdy, 'Trade Secrecy Meets Generative AI' (2024) accessed [30-04-2025]
[66] Section 2(f), Trade Secret Bill, 2024
[67] Section 2(d), Trade Secret Bill, 2024

Copyright law and Generative AI, in the Delhi High Court seeking relief on grounds of copyright infringement amongst other claims. It is therefore imperative to realize and adopt measures to prevent trade secret misappropriation on all fronts.

Conclusion and Suggestions

The introduction of the Trade Secret Bill could have far-reaching implications for Indian industries. By providing a robust legal framework, the Bill may encourage businesses to invest in research and development, secure in the knowledge that their proprietary information is protected. It may also facilitate international trade and collaboration, as foreign investors and partners often seek assurances regarding the protection of confidential information. However, the effectiveness of the Bill will depend on its implementation and enforcement, as well as its ability to balance the interests of businesses, employees, and the public.

The emergence of Generative AI tools however raise concerns with respect to the evolving landscape, as a result of the use of such platforms by employees and other trade secret holders, leading to loss of commercial viability of these secrets in the event that such data is available to a third party or competitor. If AI models absorb trade secrets into their learning data than such information could lose its value under Article 39(2) of the TRIPS Agreement. While such steps may be taken by organizations to prevent the use of gen AI tools, it is imperative that a robust regime is developed to accommodate these concerns. Some propositions worth considering are the notification of Rules adjacent to the trade secret bill to address the use and dissemination of trade secret related information, to help navigate loss of data to public available information. Further, on the matter of reverse engineering, an exception may be carved out keeping in mind the incentive to protect innovation for intellectual property holders in other forms of IP is similarly shared for trade secret owners.

Despite these issues that ought to be addressed, the Trade Secret Bill does make forward strides in addressing ongoing concerns of and briding the gaps in compulsory licensing and government use, and public interest under the current trade secret regime. While the current trade secret regime is well founded in common law principles, the way ahead has to factor in broader ramifications of trade secret disclosure in the interest of the public as well as malicious litigation against employees. Such practices are also aligned with other countries.

Further research ought to be conducted to understand Generative AI and trade secret related consequences. Additionally, empirical research in this regard would engage this discourse within the intersection of Generative AI in the evolving techno- regulatory landscape.

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