The Scientific Temper
OCTOBER 2026 Vol. 17 (10): 7073-7078
ISSN: 0976-8653, E-ISSN: 2231-6396
DOI: 10.58414/SCIENTIFICTEMPER.2026.17.10.2562
A WEB OF SCIENCE JOURNAL

RESEARCH ARTICLE

Situation in India in Absence of the Codified Trade Secret Law

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ABSTRACT

India has separate laws for patents, copyright, trademarks and designs. It has no separate law for trade secrets. This paper looks at what happens because of this gap. It explains the laws that are used today to protect trade secrets. These are contract law, the rule of confidence made by judges, civil court procedure, criminal law, the IT Act and copyright law. Each of them covers only a part of the problem. The paper then shows how this affects businesses, employees, important sectors and India's trade with other countries. Indian law already has clear rules for government secrets, personal data and stock market information. Business secrets do not have such rules. From 15 July 2026, the India–UK trade agreement requires India to protect secret business information. The Law Commission prepared a draft Bill in 2024, but Parliament has not passed it. The paper finds that the present system is unclear, costly and uneven. It ends with suggestions for now and for a future law.

***Keywords*:** *Trade secrets; breach of confidence; Section 27 Indian Contract Act; Information Technology Act; India–UK CETA; Law Commission 289th Report.*

INTRODUCTION

A business often earns money from what it knows. This may be a formula, a computer code, a list of customers or a way of making a product. This knowledge is useful only as long as it stays secret. Such knowledge is called a trade secret.

The United States, the European Union, the United Kingdom, Japan and China have special rules for trade secrets (Defend Trade Secrets Act of 2016, 2016; Directive [EU] 2016/943, 2016; Trade Secrets [Enforcement, etc.] Regulations 2018, 2018). India does not. India is a member of the World Trade Organization. So, it must protect "undisclosed information" under Article 39 of the TRIPS Agreement (Agreement on Trade-Related Aspects of Intellectual Property Rights [TRIPS Agreement], 1994). India has chosen to do this without a separate law.

This paper asks simple questions. What is the position in India today without such a law? Who is protected, and how well? Who suffers because of the gaps?

The paper is based on a study of laws, court decisions, the Law Commission's 289th Report, trade agreements and other writings.

WHAT IS A TRADE SECRET?

Article 39(2) of TRIPS gives three conditions. The information must be secret. It must have business value because it is secret. And the owner must take reasonable steps to keep it secret (TRIPS Agreement, 1994, art. 39[2]). Indian courts follow the same idea. The Delhi High Court has said that a trade secret may be a formula, technical know-how or a special way of doing business that others do not know (American Express Bank Ltd. v. Priya Puri, 2006). The Bombay High Court has given some tests. It asks how many people know the information, what steps were taken to protect it, and how much it would cost others to develop it

Received: 5th October, 2026 **Accepted: 7th October, 2026** **Published: 28th October, 2026**

(Bombay Dyeing & Manufacturing Co. Ltd. v. Mehar Karan Singh, 2010).

A trade secret is different from a patent. It is not registered. It has no fixed time limit. It lasts as long as it stays secret. Also, the owner cannot stop a person who finds the same secret honestly, or by studying a product. So, the law does not treat a trade secret as property. It only protects it against wrongful acts. This is why trade secrets need their own rules.

India has not made such a law for a long time. After TRIPS, India changed its other IP laws. But it left trade secrets to judge-made law. In 2008, a draft National Innovation Bill had a chapter on secret information. It never reached Parliament (Department of Science and Technology, Government of India, 2008). One worry was that a strong law might stop employees from changing jobs freely (Raina, 2015). In 2017, the government asked the Law Commission to study the issue. The Commission gave its report in 2024.

HOW TRADE SECRETS ARE PROTECTED TODAY

Contract

Businesses first use written agreements. These include non-disclosure agreements and secrecy clauses in job contracts. If a person breaks such a clause, the owner can claim money. The owner can also ask the court to stop the person (Indian Contract Act, 1872, §§ 73–74; Specific Relief Act, 1963, §§ 38, 41–42).

But a contract binds only the people who sign it. Suppose an employee leaves and gives the secret to a rival company. The rival company did not sign the contract, so it is not bound. There is also Section 27 of the Contract Act. It says that an agreement which stops a person from doing a lawful job or business is void (Indian Contract Act, 1872, § 27). The Supreme Court has held that a clause which stops an employee from working after leaving the job is void. A clause that applies only during the job may be valid (Superintendence Co. of India (P) Ltd. v. Krishan Murgai, 1981; Niranjan Shankar Golikari v. Century Spinning & Manufacturing Co., 1967). So an employer cannot stop an ex-employee from joining a rival. It can only stop the ex-employee from using real secrets.

Breach of confidence

Sometimes there is no written contract. Then courts use a rule called "breach of confidence". This rule comes from English cases such as *Coco v. A.N. Clark* (Coco v. A.N. Clark [Engineers] Ltd., 1969). It means that a person who receives information in trust must not misuse it. The Delhi High Court used this rule in *John Richard Brady*. There, secret drawings were shared in trust and then used to build a rival machine (John Richard Brady v. Chemical Process Equipment Pvt. Ltd., 1987). The rule also applies to others who receive the information knowing that it is secret (Zee Telefilms Ltd. v. Sundial Communications Pvt. Ltd., 2003). But the rule is not fixed. Each judge applies it in his or her own way. There is no clear test and no clear rule on how much money to award.

Court procedure

Courts use the Code of Civil Procedure to protect secrets during a case. They can stop the other side from using the secret. They can send an officer to visit a place and collect evidence (Code of Civil Procedure, 1908, Order XXVI, Rule 9; Order XXXIX, Rules 1–2, 7). They can also accept documents in a sealed cover. They can allow only a small group of people to see secret papers. This group is called a "confidentiality club". The Delhi High Court's IPD Rules, 2022 allow such clubs (High Court of Delhi, 2022). But all courts in India do not follow the same practice. Also, the Commercial Courts Act, 2015 lists trademarks, copyright, patents and designs, but not trade secrets (Commercial Courts Act, 2015, § 2[1][c][xvii]).

Criminal law

The Bharatiya Nyaya Sanhita, 2023 punishes theft, cheating and criminal breach of trust (Bharatiya Nyaya Sanhita, 2023, §§ 2[21], 303, 314, 316, 318). But these crimes are about physical things that can be moved. The old Penal Code also said this (Indian Penal Code, 1860, § 22). Information is not a physical thing. If an employee steals a hard disk, it is theft. But if the employee only copies a formula and leaves the original, it may not be theft. There is no crime called "theft of trade secrets" in India. The US Trade Representative's 2025 report again pointed out this gap (Office of the United States Trade Representative [USTR], 2025); subsequent citations: (USTR, 2025).

The IT Act

The IT Act, 2000 punishes copying data from a computer without permission. It also punishes some leaks of secret records (Information Technology Act, 2000, §§ 43, 66, 72, 72A). This helps when a secret is taken from a computer. It does not help when a person remembers the secret or writes it on paper. The Act does not even use the words "trade secret".

Copyright and other laws

Copyright can protect computer code and some databases (Burlington Home Shopping Pvt. Ltd. v. Rajnish Chibber, 1995). But copyright protects only the form of expression. It does not protect

ideas or methods. A simple list also may not get copyright, because some creativity is needed (Eastern Book Co. v. D.B. Modak, 2008). The RTI Act and the Competition Act stop government bodies from disclosing trade secrets. But they give no remedy against a private person who steals them (Right to Information Act, 2005, § 8[1][d]; Competition Act, 2002, § 57).

Table 1: Summary

Law	What it covers	Main problems
Contract	Breaking secrecy agreements	Binds only those who sign; Section 27 stops non-compete clauses after the job
Breach of confidence	Information shared in trust	No clear test; no fixed remedy
Court procedure	Stay orders, evidence collection, sealed covers	Practice differs between courts; trade secrets not named in Commercial Courts Act
Criminal law (BNS)	Theft of physical items	Information is not a physical thing; no special crime
IT Act	Copying from computers	Does not cover secrets taken in other ways
Copyright, RTI, Competition Act	Code; protection from government disclosure	No protection for ideas; no remedy against private persons

A CLEAR CONTRAST

Indian law knows how to protect secret information when it wants to. The Official Secrets Act, 1923 protects government secrets. The Digital Personal Data Protection Act, 2023 protects personal data. It has clear duties, a Board and heavy fines. SEBI rules protect price-sensitive information about listed companies (Official Secrets Act, 1923, § 5; Digital Personal Data Protection Act, 2023, §§ 8, 33; SEBI [Prohibition of Insider Trading] Regulations, 2015, regs. 2[1][n], 3). Each of these laws says what is protected, who has duties, and what happens if the rules are broken. Today, a customer's phone number is protected by a special law. A company's secret formula is not.

EFFECTS OF THE PRESENT SITUATION

On businesses

The first problem is uncertainty. There is no fixed meaning of "trade secret" in law. There is no fixed meaning of "reasonable steps". So results differ. In *Cigma Events*, the Delhi High Court refused to help. The company had not shown that its customer information had special value (Cigma Events Pvt. Ltd. v. Deepak Gupta, 2024). In *Arjan Dugal*, the same court protected a list of about 6,000 customers. It allowed the list to be filed in a sealed cover (Arjan Dugal v. Shubham Gandhi, 2025; Mohini, 2025). A business cannot easily know whether its information will be protected.

The second problem is cost. The owner must file its case under many laws at the same time. It must also describe its secret clearly. Courts have refused help when the owner could not say exactly what the secret was (Ambiance India Pvt. Ltd. v. Naveen Jain, 2005; Venkateshwarlu Guduru v. Siddhardha De Bathula, 2025). Big companies can pay these costs. Small ones often cannot.

The third problem is delay. In *Navigators Logistics*, a company said its customer data was stolen. Its case was rejected in 2018. A larger bench brought it back only about six years later (Navigators Logistics Ltd. v. Kashif Qureshi, 2018). By then, the data was of little use.

The fourth problem is that wrongdoers are not afraid. There is no special crime, and courts rarely award money. Often, the worst result for a wrongdoer is a court order to stop. So companies try to protect themselves. They watch employees closely and add non-compete clauses that the law does not allow. This can go too far. In *UBS Business Solutions v. Nisheet Singh* (2026), an employer asked to search cloud accounts linked to an ex-employee. The Bombay High Court said no, because there was no link between those accounts and the employer's data (UBS Business Solutions v. Nisheet Singh, 2026; Parmaar, 2026).

On employees

Courts protect the right of employees to work. In *Varun Tyagi v. Daffodil Software* (2025), the Delhi High Court refused to enforce an unfair non-compete clause (Varun Tyagi v. Daffodil Software Pvt. Ltd., 2025). An employee's general

skill and knowledge are not trade secrets (American Express Bank Ltd. v. Priya Puri, 2006). But employees do not know this in advance. Wide clauses and legal notices can scare them from changing jobs. People who report wrongdoing, called whistleblowers, also have no clear protection. A clear law would help employees as much as employers.

On important sectors

IT companies handle data of foreign clients. They usually depend on contracts under foreign law, not Indian law. Medicine and farm chemical companies have the same problem for their know-how. Their test data is also handled by government policy, not by a clear law (TRIPS Agreement, 1994, art. 39[3]; Reddy & Sandhu, 2007). Start-ups and small businesses suffer the most. Their main assets are often ideas and data, and they cannot afford long cases. AI companies hold training data and models that can be copied in minutes. The Law Commission said that small businesses, start-ups and new technology are key reasons for a new law (Law Commission of India, 2024).

On proof and the courts

Misuse of a secret is usually hidden. So owners must depend on indirect and computer evidence. Such evidence must follow the rules for electronic records under the Bharatiya Sakshya Adhiniyam, 2023 (Bharatiya Sakshya Adhiniyam, 2023, §§ 61–63). It is also hard to prove how much loss was caused. There is no rule allowing the court to award a fair licence fee instead. Each court answers these basic questions in its own way.

INDIA AND THE WORLD

India has said that its judge-made law is enough to meet TRIPS. This view is possible, but it is now under pressure. The India–UK trade agreement came into force on 15 July 2026 (Press Information Bureau, Government of India, 2026). Its IP chapter requires India to protect secret business information from being taken, used or disclosed unlawfully. It still allows people to find the same secret honestly or by studying a product. It also requires courts to keep secrets safe during a case (Rana & Jafri, 2026). Such a promise is best kept through a clear Indian law. A clear law would also help bring foreign technology to India under programmes like Make in India.

Other countries show that these problems can be solved. The US law gives clear meanings, allows seizure of stolen material in serious cases, gives money for loss or a fair licence fee, and protects whistleblowers (Defend Trade Secrets Act of 2016, 2016, 18 U.S.C. §§ 1833[b], 1836[b], 1839). The EU law protects the right of workers to change jobs. It also requires courts to keep secrets safe during a case (Directive [EU] 2016/943, 2016, arts. 3–5, 9, 14).

THE LAW COMMISSION'S DRAFT BILL

In March 2024, the Law Commission gave its 289th Report. It included a draft Protection of Trade Secrets Bill, 2024 (Law Commission of India, 2024). The Bill uses the TRIPS meaning of trade secret. It says trade secrets are not property. It keeps an employee's general skill outside its scope. It allows people to find the same secret honestly. It protects whistleblowers. It allows courts to stop misuse and award money. It also asks courts to keep secrets safe during a case (Alliance Center for Intellectual Property Rights, 2025). More than two years later, the Bill has not been placed before Parliament (Aryan, 2026). So it is only a guide. It is not the law.

SUGGESTIONS

Steps for now

1. **Same court rules everywhere.** All High Courts should have rules for sealed documents and confidentiality clubs, like the Delhi High Court.
2. **Sealed details.** The owner should be allowed to describe the secret in general words in the case papers, and give full details in a sealed cover.
3. **Limits on searches.** Courts should allow a search only when there is a clear link with the secret, as in *UBS*. A neutral expert should carry it out.
4. **Better business habits.** Businesses should list and mark their secrets, limit who can see them and use clear agreements. Industry bodies can give model agreements to small businesses.

Steps for a new law

1. **Pass the Bill.** Parliament should pass the Bill, keeping in mind India's promise in the India–UK agreement.
2. **Explain "reasonable steps".** The law should give a simple list of steps that suits both big and small businesses.
3. **Clear court process and remedies.** The law should allow sealed details, limit unfair searches, and allow money based on loss, the wrongdoer's gain or a fair licence fee.
4. **Add trade secrets** to Section 2(1)(c)(xvii) of the Commercial Courts Act.
5. **Make theft of trade secrets a crime,** either in this law or in a separate law.

6. **Keep Section 27 as it is.** The law should say clearly that an employee's general skill and knowledge are free to use.

CONCLUSION

Today, trade secrets in India are protected only in part. They are protected only after the harm is done. And they are protected mainly for those who can pay for long court cases. Contract binds only those who sign it. Breach of confidence depends on the judge. Criminal law does not clearly cover information. The IT Act covers only computers. Copyright covers only the form of expression. Court practice differs from place to place.

Because of this, businesses face uncertainty, cost and delay. Employees face unclear threats. Small businesses are the least able to protect themselves. Through the India–UK agreement, India has now promised to protect secret business information. Indian law already protects government secrets, personal data and stock market information with clear rules. Business secrets deserve the same. The Law Commission has already prepared the draft. Now Parliament needs to act.

Acknowledgement

The authors thank Parul Institute of Law, Parul University, Vadodara, for its support and for giving them a good place to do this research. The authors also thank the teachers and fellow research scholars of the Institute for their helpful talks and suggestions on this topic.

The authors are thankful to the Law Commission of India. Its 289th Report on *Trade Secrets and Economic Espionage* was very useful for this study. The authors also thank all the writers whose work is cited in this paper.

The authors have no conflict of interest. This research did not receive any special grant from any funding body. Any mistakes are the authors' own.

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