

# The Law Commission recommends whistleblower protection and suggests potential amendments to mandate test data disclosure

written by King Stubb & Kasiva | March 22, 2024



The Law Commission of India, under the esteemed leadership of Justice Ritu Raj Awasthi, recently released a meticulously researched report on the Protection of Trade Secrets;[\[1\]](#) this action represents a significant leap towards fortifying intellectual property rights. This comprehensive document, beyond addressing gaps in current legal frameworks, unveils specific findings that could potentially shape future strategies for trade secret protection within India.[\[2\]](#)

## **Historical Unveiling of Trade Secret Protection: The Journey Begins**

Tracing back to the establishment of a distinguished panel under the chairmanship of Justice Ritu Raj Awasthi, this groundbreaking report finds

its origins. The panel, which included legal luminaries such as Prof. (Dr.) Anand Paliwal and Prof. D.P. Verma, along with Dr. Rajiv Mani and Mr. M. Karunanithi, undertook an exhaustive examination regarding trade secret protection in India. The Law Commission's crucial oversight in the formation of this panel communicates volumes about the gravity and complexity of our current issues.

## **The Evolution of Trade Secret Protection in India: A Legal Odyssey**

Over the years, India has evolved its approach to intellectual property rights: landmark legislations such as the Trade Marks Act of 1999, Copyright Act of 1957, Patents Act of 1970 and Designs Act, 2000, serve as our legal protection's bedrock. Yet a dedicated law addressing trade secrets is notably absent from this landscape necessitating an examination into existing laws.

Acknowledging this void, the Law Commission proposes enacting specialized legislation to comprehensively address unique challenges associated with trade secret protection. The report aims alignment with international standards; its goal is to create a robust legal framework that specifically caters to trade secrets' nuanced nature.

## **Recommendations: Whistleblower Protection in Focus**

The Law Commission's recommendations prioritize robust whistleblower protection within the proposed legislation; notably, they underscore the pivotal role whistleblowers play in uncovering unlawful acts or professional misconduct tied to trade secrets. This emphasis on a need for an environment fostering fear-free individual disclosures remains critical. It is not merely suggested but rather imperative towards ensuring public trust and corporate accountability.

The new law seeks to establish definite rules that protect the identity of whistleblowers and ensure they are shielded from any negative consequences arising due to the information they disclose. This strategy, in sync with global best practices, stands ready for a substantial contribution toward cultivating an environment within businesses marked by transparency and accountability.

## **Mandating Test Data Disclosure: A Paradigm Shift in Trade Secret Protection**

The Law Commission's findings underscore another noteworthy aspect, specifically amendments that mandate test data disclosure. This proposal emerges at a crucial juncture: sectors where data exclusivity and patent linkage intersect with public health concerns. The report proposes a strategy of enforcing mandatory disclosure under particular circumstances, to strike an intricate balance; one between safeguarding trade secrets and boosting public health initiatives.

The Commission, delving into global agreements such as the TRIPS Agreement and the Doha Declaration on Public Health, positions its recommendations within a broader framework; this approach addresses domestic concerns while also aligning with international obligations.

## **Procedural Nuances and the Commercial Courts Act, 2015**

The Law Commission's report, focusing on procedural considerations, suggests applying the Commercial Courts Act of 2015<sup>[3]</sup> to suits that involve trade secret misappropriation. This recommendation underscores a necessity for expedited procedures; it aligns with an evolving nature in trade secret litigation where swift resolution is paramount.

The report underscores the importance of implementing procedural measures: specifically, it advocates for setting limitations on suit-filing periods and instituting confidentiality protocols. One such measure is introducing "confidentiality clubs", a concept validated by legal precedents; its purpose being to grant restricted access to sensitive court filings.

## **Trade Secret Board/Registry: A Balancing Act**

The report delves into a particularly contentious proposition: the initiation of a Trade Secret Board, functioning as an official registry for trade secrets. While the Ministry of Law and Justice supports this concept, it is interesting to note that reservations are expressed by the Commission, which anticipates potential drawbacks. The central question revolves around whether registration should be mandatory or optional, raising concerns about holders fearing exposure of their secretive information. The Ministry of Law and Justice advocates for the establishment of a Trade Secret Board, a proposal that incites controversy within the report. However, it faces resistance from the Commission due to potential pitfalls being cited. Essential issues concerning this suggestion are twofold: should registration be mandatory or voluntary? This question is further magnified by pointing out how holders might balk at disclosing trade secrets out of fear they may become exposed themselves, an argument for mandatory registration duly noted in this discourse.

Aligning with the fundamental prerequisite for trade secret protection, maintaining the confidentiality of underlying information, the Commission adopts a cautious stance. The report posits that introducing a registry might inadvertently expose valuable trade secrets, thereby challenging the task of safeguarding sensitive information.

## **Confidentiality Measures and Legal Precedents: Striking a Balance**

The Law Commission underscores the necessity of incorporating provisions for confidentiality in proceedings related to trade secret misappropriation. The report draws on legal precedents and advocates specifically for the inclusion

of 'confidentiality clubs,' as seen in *Amica Financial Technologies Pvt Ltd v. Hip Bar Pvt*, a decision made by Madras High Court. [\[4\]](#)

Legal precedents[\[5\]](#) define confidentiality clubs as entities necessitating a meticulous balancing act to confirm the real risk of a party exploiting sensitive information for collateral purposes. The Commission underscores its nuanced and balanced approach[\[6\]](#) to trade secret litigation by emphatically advocating for integration of these measures via rules under the suggested Act.

## **Data Exclusivity and Patent Linkage: Navigating Complex Terrain**

The Law Commission, with strategic discernment, proposes the exclusion of data exclusivity from the envisaged legislation concerning trade secrets. It posits that while elements such as data exclusivity and patent linkage may impact the implementation of compulsory licenses, their incorporation should not impede regulatory authorities from authorizing drugs during instances of public health crises.

In consonance with the overarching principles delineated in the UN High-Level Panel Report on Access to Medicines and the WIPO Development Agenda, the Commission firmly advocates for this position. The proposed legislation, by refraining from imposing constraints that could potentially impede public health initiatives, not only aims at safeguarding trade secrets but also prioritizes the paramount objective of public welfare.

## **Conclusion: Forging a Future-Ready Legal Framework**

The exhaustive report on the Protection of Trade Secrets from the Law Commission not only recognizes challenges posed by evolving intellectual property rights, but also outlines a visionary legal framework to address them. The findings and recommendations underscore India's commitment across various areas like whistleblower protection, amendments mandating test data disclosure; all with an overarching aim towards fostering innovation, fair competition and transparency.

As the proposed legislation evolves, it elicits eager anticipation among industry stakeholders regarding its impending implementation. This report stands as a testament to India's proactive efforts in harmonizing its legal framework with international standards and addressing the distinctive complexities associated with trade secret protection. In an era marked by rapid technological progress and intensifying competition, the envisaged legal framework is poised to play a pivotal role in shaping the landscape of intellectual property rights in our nation's future.

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[\[1\]](#) Report by the Law Commission of India, Protection of Trade Secrets ([https://www.livelaw.in/pdf\\_upload/law-commission-report-no-289-526935.pdf](https://www.livelaw.in/pdf_upload/law-commission-report-no-289-526935.pdf))

[2] Srividhya Ragavan, "The Significance of the Data Exclusivity Debate and its Impact on Generic Drugs," 1(1) Journal of Intellectual Property Studies 139 (2017)

[3] Commercial Courts Act, 2015 (4 of 2016)

[4] Amica Financial Technologies Pvt. Ltd. v. Hip Bar Pvt. Ltd., O.A. No. 794/2021 in C.S. No. 117 of 2021 (Comm.Div.) (Madras High Court)

[5] Sterlite Technologies Limited v. Anupam Singh & Ors., CS (OS) 349/2022 (Delhi High Court)

[6] Sanofi Winthrop Industries & Anr. v. Kirti J. Maheshwari & Ors., CS(OS) 2265/2014 (Delhi High Court)

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