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With this thought, we hereby present to you

# **"PROTECTING INTELLECTUAL PROPERTY RIGHTS WITH NEGATIVE COVENANT: DIGITAL NON-DISCLOSURE AGREEMENTS"**

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## **ABSTRACT**

This paper delves into the critical realm of intellectual property protection through an examination of the role played by digital Non-Disclosure Agreements (NDAs) in India. In the ever-evolving landscape of innovation and technology, safeguarding intellectual property rights has become paramount. Legal instruments, such as NDAs, have undergone a digital transformation to adapt to the fast-paced nature of information exchange in the digital age. The study aims to assess the efficacy of digital NDAs in protecting intellectual property across various industries. It explores the relationship between digital NDA and intellectual property, and the legal frameworks that govern their intersection. By analysing the strengths and limitations of digital NDAs, the research seeks to provide insights into their role as custodians of innovation. The paper involves case analysis of secondary data on execution of NDA for intellectual property disputes. The paper hypothesizes that, while digital NDAs have streamlined the process of securing confidential information, their execution and its effectiveness may be contingent on factors such as legal framework, jurisdictional variations, and evolving legal precedents. By critically evaluating these factors, the research aims to contribute to a better understanding of the evolving landscape of intellectual property protection in the digital era. The findings of this study have practical implications for businesses, legal professionals, and policymakers involved in governing the intellectual property regulation.



## **"PROTECTING INTELLECTUAL PROPERTY RIGHTS WITH NEGATIVE COVENANT: DIGITAL NON-DISCLOSURE AGREEMENTS"**

Protecting intellectual property (IP) rights has become the top priority in the world of innovation and technological development. The rise of digital ecosystems has led to the need for legal protections that are strong enough to protect the confidential data and trade secrets. The inclusion of Non-Disclosure Agreement (NDA) as one of the tools for protecting secrets, along with the discussion on the effectiveness of digital NDAs in safeguarding the rights of property.<sup>1</sup>

### **I. What is Non-Disclosure Agreements?**

One popular tool for safeguarding a business's interests is a covenant not to compete. From the employer's point of view, a business may suffer if important personnel, pricing lists, client lists, proprietary or sensitive data, or trade secrets are lost. Non-compete clauses may restrict an employee's future job options or their ability to use connections or information acquired while working for a company<sup>2</sup>. The terms and conditions under which one party (the disclosing party) communicates private information with another (the receiving party) are outlined in a legally enforceable contract known as a non-disclosure agreement.<sup>3</sup> The primary purpose is to maintain the confidentiality of the disclosed information, preventing its unauthorized use or dissemination. These agreements serve as a vital tool for businesses engaging in collaborations, partnerships, or any exchange where sensitive information is shared.

### **II. Non-Disclosure Agreements safeguard Intellectual Property Rights**

At their core, NDAs function as a shield against unauthorized disclosure of confidential information. By delineating the responsibilities and obligations of the parties involved, NDAs create a legal framework that instills trust and ensures that sensitive information remains confidential. Non-Disclosure Agreements (NDAs) are critical instruments in safeguarding intellectual property (IP) rights, serving as legal bulwarks against the unauthorized disclosure

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<sup>1</sup> "Safeguarding Innovation: The Crucial Role of Intellectual Property Protection for Indian Startups (Part 1: Understanding Intellectual Property and It), LINKEDIN (April 23, 2025), <https://www.linkedin.com/pulse/safeguarding-innovation-crucial-role-intellectual-k0tge/>.

<sup>2</sup> Angie Davis, Eric D. Reicin & Marisa Warren, Developing Trends in Non-Compete Agreements and Other Restrictive Covenants, JSTOR, <https://www.jstor.org/stable/26410764> (last visited April 30, 2025).

<sup>3</sup> What is Non-Disclosure Agreement (NDA)? | Definition from TechTarget, TECHTARGET, <https://www.techtarget.com/whatis/definition/non-disclosure-agreement> (last visited May 4, 2025).



or use of proprietary information.<sup>4</sup> In a globe where innovation and creativity are extremely important to stay competitive, businesses, entrepreneurs, and creators need to secure their IP rights above all else. The versatility of NDAs for safeguarding and supporting intellectual property rights. The core of any NDA is the establishment of confidential information. This often involves trade secrets, proprietary technologies, works of art, and other forms of intellectual property. Through differentiating what contains protected data, NDAs bring about shared knowledge between both parties, as a result, ensuring that private data is secured from illegal access or use.

In the area of intellectual property, businesses usually exchange some confidential information with the other party during their partnerships, negotiations or collaborations. NDAs serve as contracts that put a stop to the latter party from the unauthorized use or disclosure of the given intellectual property for their own good or for essential purposes of others. This not only safeguards the immediate business interests of the disclosing party but also contributes to the overall protection and promotion of innovation. One of the primary functions of an NDA in the context of intellectual property is to establish the parameters for the use of the disclosed information. This involves stating the reason for sharing the information and restricting its use to that specific situation. For example, if a company is sharing proprietary technology with a potential partner for joint research and development, the NDA would restrict the use of that technology solely for the agreed-upon collaborative project. The NDA are necessary in when two companies get into a joint venture to develop a new product and exchange their own trade secrets and technologies. When a corporation licenses or transfers its technology, software, or other IP to another entity. If you are presenting your work or invention to potential manufacturers or suppliers for manufacturing or distribution. When enlisting the help of contractors, development teams, or consultants to assist with the conception, refining, or commercialization of your innovation. It is generally beneficial to have relevant parties (patent attorneys, patent agents, or patent search firms) sign an NDA prior to filing a patent application<sup>5</sup>. Participants in certain innovation challenges, or start up competitions may be asked to reveal details about their innovations or business plans.<sup>6</sup> The duration of confidentiality is another crucial aspect of NDAs in the protection of intellectual property.

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<sup>4</sup> Here's Everything You Need To Know About a Non-Disclosure Agreement (NDA), INC42 MEDIA, <https://inc42.com/glossary/non-disclosure-agreement/> (last visited May 4, 2025).

<sup>5</sup> Ibid

<sup>6</sup> Origiin Team, Non-Disclosure Agreement (NDA) and IP Protection, ORIGIIN, <https://origiin.com/non-disclosure-agreement-nda-and-ip-protection/> (last visited May 4, 2025).

Intellectual property rights often endure for extended periods, and NDAs reflect this reality by specifying the length of time during which the confidential information must be kept secret. Whether it's a trade secret with indefinite protection or a specific project-related innovation with a limited lifespan, the agreement ensures that the confidentiality obligation aligns with the temporal scope of the intellectual property.

Moreover, NDAs play a vital role in addressing the challenges posed by the digital era. With the ease of electronic communication and data storage, intellectual property can be vulnerable to unauthorized access and distribution. NDAs adapted to the digital landscape often include provisions addressing the protection of electronic data, ensuring that confidential information remains secure in an age of rapid technological advancement. Enforcement mechanisms within NDAs add teeth to the protection of intellectual property<sup>7</sup>. In the event of a breach, the injured party can seek remedies such as injunctive relief, monetary damages, or specific performance. These measures offer a party whose intellectual property rights have been violated to address the violator as well as serve as a warning for all potential infringers thus minimizing unauthorized use or disclosures.<sup>8</sup>

At the same time, NDAs contribute to a culture of trust in intellectual property-related collaborations. When parties know that their intellectual property is safeguarded by a legally binding agreement, they are more inclined to engage in open and transparent discussions. This, in turn, promotes innovation and facilitates the exchange of ideas, technologies, and creative works, as parties feel secure that their intellectual property rights are being respected. The use of NDAs is particularly beneficial to young businesses and small enterprises that are in high need of protecting their IP in the early stages. The reason for that is they often face stiff competition and a single innovative idea may trigger a significant change. NDAs provide them with a means to engage with potential investors, partners, or collaborators without the constant fear of losing control over their valuable intellectual property.<sup>9</sup>

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<sup>7</sup> Intellectual Property Challenges in the Digital Age, GIPC, <https://www.globalipconvention.com/blog/intellectual-property-challenges-in-the-digital-age> (last visited May 4, 2025).

<sup>8</sup> Protecting Your Intellectual Property, FASTERCAPITAL, <https://fastercapital.com/startup-topic/Protecting-Your-Intellectual-Property.html> (last visited May 4, 2025).

<sup>9</sup> Morgan Smith, "Understanding Sharia: The Intersection of Islam and the Law," *Council on Foreign Relations* available at: <https://www.cfr.org/background/understanding-sharia-intersection-islam-and-law> (last visited December 3, 2025).

Through identifying acceptable manners in which confidential information can or cannot be used and disclosed, Non-Disclosure Agreements (NDAs) serve as a tool for the protection of intellectual property rights. These agreements are versatile tools, adapting to the dynamic landscape of innovation, collaboration, and digital communication. By defining the scope of protected information, specifying the purpose and duration of confidentiality, incorporating enforcement mechanisms, and fostering a culture of trust, NDAs contribute significantly to the preservation and promotion of intellectual property in the contemporary business landscape.

### **III. Legal Recognition of Electronically Agreed NDAs**

The digital era has brought about a paradigm shift in the way agreements are formed. With the widespread use of electronic communication, the legal recognition of electronically agreed NDAs has become essential. This fragment is all about the development that the law is experiencing in the acceptance and enforcement of electronic NDAs. The aspect that the digital consent of Non-Disclosure Agreements (NDAs) is a huge step forward in the methods people and enterprises protect data was not provided much attention by anyone before. The changing heart of communication with technology is such that legal systems have had to be flexible and thus have more relaxed with the proviso that electronically signed NDA papers are carrying the same legal weight as written ones.<sup>10</sup>

The trend to digital contracts is powered by their convenience and efficiency in that they provide. Thanks to the new digital platforms and digital signatures, the parties have the ease to discuss, sign and save NDAs online. Alongside accelerating the speed of trade deals, this change does also cause the legal system to change and to appear new and fresh. Many nations of the world acknowledge the fact that electronically agreed NDAs are legal and have signed them as contracts, thus, leading to enforceability by law. The secret to this recognition is that the regulations have to be strictly followed and adherence to the rules ensures the agreements become legal, secure, and authentic.<sup>11</sup>

Electronic signatures are perhaps the most critical among the way legal consent or recognition is given by parties. Nowadays electronic signatures have evolved from simple scanned paper

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<sup>10</sup> Ancha, Is eSign Legally Valid & Enforceable in India?, LEEGALITY, <https://www.leegality.com/blog/legal-enforceability-of-esign> (last visited May 4, 2025).

<sup>11</sup> Vinod Kothari Consultants, Moving Towards Digital India: Are E-Agreements Valid?, VINOD KOTHARI CONSULTANTS, <https://vinodkothari.com/2019/10/validity-of-e-agreement-and-e-signature/> (last visited May 5, 2025).



signatures to advanced cryptographic solutions that provide secure and verifiable ways of signing documents online. Countless countries have approved laws on electronic signature or approved international standards like E-SIGN Act in the United States or the eIDAS Regulation in the European Union that set the legal status of electronic signatures on a par with traditional handwritten signatures.<sup>12</sup> The conclusion that a scribed NDA agreement becomes a valid contract is only a tip of the iceberg. In this case, the electronic version of NDA is the agreement between the two potential signers and not only that but also must be the contract that is accessible, and if necessary, in a form that can be easily reproduced in the future. In addition, the agreement must remain unaltered and tamper-evident for the entirety of its life cycle, and thus, the contents of the agreement will not be changed at all before and after the time of execution.<sup>13</sup> In the meantime, the legal recognition of the use of electronic contracts based on the behaviour of the parties not only facilitates legal compliance, but also prompts the user of the equipment to conduct electronic transactions. However, the same change can turn out to be a major obstacle to the implementation of electronic notifications, e-contracts, e-signatures, and e-records due to the new/modified laws, under the related categories covering your business operations.<sup>14</sup>

At the same time, recognition of electronically agreed NDAs avoids the slow and cumbersome nature of traditional paper-based contracting but on the other side it also introduces security and fraud concerns. Security risks are mainly addressed in the legal framework which imposes certain obligations to the parties signing the contract to adopt some protective measures against unauthorized access, modification, or tampering of the electronically signed documents. In order to promote cross-border recognition and enforcement of electronically agreed NDAs, international initiatives and agreements, such as the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Electronic Commerce, offer a framework for nations to align their legal approaches to electronic transactions.<sup>15</sup>

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<sup>12</sup> Michelle Davidson, Everything You Need to Know about Electronic and Digital Signatures, Globalsign, <https://www.globalsign.com/en/blog/electronic-signatures-vs-digital-signatures> (last visited May 6, 2025).

<sup>13</sup> Electronic Signature Laws & Regulations – The European Union, ADOBE, <https://helpx.adobe.com/content/help/en/legal/esignatures/regulations/european-union.html> (last visited May 6, 2025).

<sup>14</sup> Pinta N. S. Simamora, Grenaldo Ginting, Cindy Mariam Magdalena Rantung, Pingkan Dewi Kaunang, Putri Maha Dewi, Legal Implications of Electronic Contracts in Civil Law: A Case Study in the Digital Era, *Jurnal Smart Hukum* (JSH) 3(3):224-232, [https://www.researchgate.net/publication/390017248\\_Legal\\_Implications\\_of\\_Electronic\\_Contracts\\_in\\_Civil\\_Law\\_A\\_Case\\_Study\\_in\\_the\\_Digital\\_Era](https://www.researchgate.net/publication/390017248_Legal_Implications_of_Electronic_Contracts_in_Civil_Law_A_Case_Study_in_the_Digital_Era) (last visited May 6, 2025).

<sup>15</sup> “Electronic Commerce | United Nations Commission On International Trade Law,” <https://uncitral.un.org/en/texts/ecommerce> (last visited May 20, 2025).

While the legal recognition of electronically agreed NDAs in India, the validity of E-Agreements under the Indian Contract Act of 1872 hinges on the fundamental principles outlined in Section 10. This clause states that when there is a legitimate consideration, a legitimate goal, and the voluntary assent of competent parties, an agreement becomes a contract. The same rules apply to contracts made online, which include the requirement that the parties be of legal age and give their free and informed permission. The parties' intentions are important, and with click-wrap agreements, the user's "I Agree" checkmark binds them to the terms of the contract.

Contracts made electronically are expressly validated by Section 10A of the Information Technology Act of 2000. It states that contracts communicated, accepted, or revoked electronically shall not be unenforceable solely due to the use of electronic forms or means. After execution, an e-agreement is considered an electronic record under the IT Act, defined as data generated, stored, or sent in an electronic form.<sup>16</sup> The Act also defines electronic signatures and digital signatures, with Section 5 conferring legal recognition to electronic signatures, satisfying requirements for authentication specified in other laws<sup>17</sup>.

States differ in their acceptance of electronic agreements and signatures under stamp laws. Electronic documents may not be specifically covered by many state stamp laws, however some, such as the Maharashtra Stamp Act of 1958 or as per applicable state stamp act, explicitly consider electronic records in the definition of "instrument." In Maharashtra E-Registration and E-Filing Rules of 2013 further mandate electronic signatures or biometric thumbprints, providing legal validity to e-contracts and e-signatures<sup>18</sup>. Provisions pertaining to electronic contracts with digital signatures may be found in the Indian Penal Code, the Banker's Book of Evidence Act of 1891, and the Reserve Bank of India Act of 1934. However, the particular state stamp duty rules determine whether or not electronic records fall under their purview. The Evidence Act of 1872 governs the admission of electronic agreements as evidence. Electronic records are included in the definition of evidence in Section 3, and Section 65B (1) states that data from printed or stored electronic documents can be admitted in court without the original. In as much as Section 85B creates the impression that an electronic record with high protection

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<sup>16</sup> Rachit Garg, "Validity and enforceability of electronic contracts" *iPleaders*, 2023, <https://blog.ipleaders.in/validity-and-enforceability-of-electronic-contracts/> (last visited February 4, 2024).

<sup>17</sup> Supra 10

<sup>18</sup> Ibid

hasn't been tampered with from a particular point of time, Section 47A allows for the view of the Certifying Authority as to establishing the opinion on electronic signatures to be relevant.<sup>19</sup>

India's legal provisions regarding E-Agreements and E-Signatures constitute a complete set of regulations on the recognition and admissibility that provide the entire gamut of the topic. The provision of these legal points is indispensable in the evolution of the world of electronic, technology-driven contracts since they help in ensuring uninterrupted, frictionless execution and enforceability of contracts while at the same time being the agent of the peoples' security. In addition, the introduction of the contracts through electronic media also points to a societal change that goes beyond the legal considerations. With the world becoming increasingly digitalized and businesses widespread, the technology to carry out the transactions and agreements electronically is acting beyond the point of efficiency. They are imperative for maintaining an edge over competitors and being flexible enough to respond to market changes.<sup>20</sup> The legal recognition of electronically agreed NDAs represents a crucial adaptation of legal systems to the digital age. One of the most important steps in proper legal proceedings is the recognition of the electronic forms of NDA. The use of electronic signatures and the setting up of laws that ensure that electronic signed agreements are authentic, unchangeable, and safe have facilitated both the corporate and personal worlds in keeping their data away from the view of others. With the increase of technology, there might still be other ways that will come up, leading to new legal provisions concerning the status of electronic agreements, and possibly reiterating NDAs as the primary way of keeping information confidential in the modern business world and beyond<sup>21</sup>.

#### **IV. Remedies for Breach Electronically Agreed Non-Disclosure Agreements**

The effectiveness of NDAs is confirmed during the event of a violation of monetary damages, injunction The available remedies authenticating the corresponding rights and the absence of unauthorized users are presented here from the legal point of view that defines in detail

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<sup>19</sup> Aditya Mehta, Arjun Sreenivas & Swagata Ghosh, "Section 65B of the Indian Evidence Act, 1872: Requirements for admissibility of electronic evidence revisited by the Supreme Court | India Corporate Law," <https://corporate.cyrilamarchandblogs.com/2020/07/section-65b-of-the-indian-evidence-act-1872-requirements-for-admissibility-of-electronic-evidence-revisited-by-the-supreme-court/> (last visited May 20, 2025).

<sup>20</sup> E-Contracts and Its Validity in India, INDIA LAW OFFICES, <https://www.indialawoffices.com/legal-articles/e-contracts-and-validity-india> (last visited May 6, 2025).

<sup>21</sup> Rachit Garg, Validity and Enforceability of Electronic Contracts, IPLEADERS (2023), <https://blog.ipleaders.in/validity-and-enforceability-of-electronic-contracts/> (last visited May 6, 2025).



breaches of voltage and energy through unauthorized parties. In India, the cures for betraying a digitally made NDA are multilateral through both the Indian Contracts Acts and also exclusive sections related to electronic commerce. A digital way of structuring NDAs in combination with an electronic signature that later gets violated by any of the parties necessarily gives the aggrieved party the legal right to several remedies, which in this case, are.

1. **Specific Performance:** One of the remedies that can be sought in case of a breach of an NDA, regardless of the method of transmission, is a specific performance. This legal remedy entails the defaulting party being compelled by the court to fulfill its contractual obligations. In the context of an NDA, this could involve preventing further disclosure or use of confidential information and ensuring compliance with the terms outlined in the agreement.<sup>22</sup>
2. **Injunctions:** The injured party may seek injunctive relief to immediately stop the breaching party from continuing the unauthorized disclosure or use of confidential information. Injunctions can be powerful tools to prevent further harm and protect the interests of the party whose information is at risk. Courts in India have the authority to issue interim or permanent injunctions, depending on the circumstances of the breach.<sup>23</sup>
3. **Monetary Damages:** One typical remedy accessible under contract law is compensation for the losses incurred as a result of the violation. To recoup losses brought on by the improper use or publication of private information, the harmed party may pursue monetary damages. The goal of the damages granted is to put the non-breaching party in the same situation as if the breach had never happened.<sup>24</sup>
4. **Termination of Agreement:** In some cases, the NDA itself may include provisions allowing the injured party to terminate the agreement in the event of a breach. This termination could trigger further legal consequences outlined in the agreement, such as the return or destruction of confidential information.
5. **Liquidated Damages:** NDAs may also include provisions specifying predetermined damages, known as liquidated damages, in case of a breach. This predetermined amount is agreed upon by the parties during the formation of the contract and serves as

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<sup>22</sup> Pareekshit Bishnoi, Breach of Confidentiality Maintenance Covenants Amid 'Work from Home' During COVID-19: Concerns and Remedies, BAR & BENCH – INDIAN LEGAL NEWS (2020), <https://www.barandbench.com/columns/breach-of-confidentiality-maintenance-covenants-amid-covid-19-concerns-and-remedies> (last visited May 7, 2025).

<sup>23</sup> Akshay, Enforceability of Non-Disclosure Agreements in India, IPLEADERS (2017), <https://blog.ipleadere.in/enforceability-of-non-disclosure-agreements/> (last visited May 07, 2025).

<sup>24</sup> Legal Remedies for Breach of Non Disclosure Agreements, FASTERCAPITAL, <https://fastercapital.com/content/Legal-Remedies-for-Breach-of-Non-Disclosure-Agreements.html> (last visited May 8, 2025).

compensation for any potential harm caused by the breach. Indian courts generally uphold liquidated damages clauses if they are reasonable and proportionate to the anticipated loss.<sup>25</sup>

- 6. Negotiation and Settlement:** Parties involved in a breach of an electronically agreed NDA may choose to enter into negotiations for a settlement before resorting to legal action. Settlement negotiations can lead to mutually agreed-upon terms for resolving the dispute, potentially avoiding the time and expense of a court proceeding.
- 7. Criminal Action:** In certain situations, the breach of an NDA may involve actions that also constitute criminal offenses, such as theft of trade secrets or unauthorized access to computer systems. In such cases, the aggrieved party can file a criminal complaint, and law enforcement agencies may pursue the matter through criminal proceedings.<sup>26</sup>
- 8. ADR Mechanisms:** Disputes resulting from the violation of an electronically negotiated NDA can be settled more quickly and affordably via the use of Alternative Dispute Resolution (ADR) procedures like arbitration or mediation. Many NDAs include clauses specifying ADR as the preferred method for dispute resolution.<sup>27</sup>

It is important to note that the specific remedies available will depend on the terms of the NDA, the nature of the breach, and the governing law. When dealing with electronically agreed NDAs in India, the Information Technology Act, 2000, and the rules framed thereunder, especially the Information Technology (Certifying Authorities) Rules, 2000, and the Information Technology (Electronic Service Delivery) Rules, 2011, play a crucial role in validating electronic contracts and signatures.

Remedies available to a person in India in the case of a breach of electronically agreed NDAs include the following: specific performance, injunctive relief, monetary damages, termination of the agreement, liquidated damages, negotiation and settlement, criminal action, and ADR mechanisms. The specificity of the breach and the objectives of the grievant are the factors to consider in determining the most feasible solution. It is recommended that parties, prior to the signing of electronically agreed NDAs, make the remedies and dispute resolution mechanisms clear in the agreement in order to avoid ambiguities and make the agreement enforceable in the event of a breach.

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<sup>25</sup> Staff Desk, Consequences of Breaking an NDA, VAKILSEARCH | BLOG (2022), <https://vakilsearch.com/blog/nda-breaking-consequences/> (last visited May 12, 2025).

<sup>26</sup> *ibid*

<sup>27</sup> Abdullah, Arbitration Is Not Always Necessary for Dispute Resolution in Non-Disclosure Agreements, LINKEDIN, <https://www.linkedin.com/pulse/arbitration-always-necessary-dispute-resolution-abdullah-shamim> (last visited May 12, 2025).

## V. Issues in Execution of Electronically Agreed Non-Disclosure Agreements

Execution of NDAs though esteemed is not free of challenges. Specifically, this part unravels the root of problems which can be found in the text of the contract, no clear identification of what is confidential, and bargaining over the coverage of the protection. Being aware of these issues and proposing solutions is the key to a successful NDA implementation. Although the adoption of Electronically Agreed Non-Disclosure Agreements (NDAs) in India seems to be very promising in terms of time and cost, it is highly problematic, unfortunately. As the computer system develops further, guaranteeing that the electronically agreed NDAs are legally protected, secured, and enforceable is becoming more and more essential. Many difficulties may come up during the performance and implementation of such contracts in the Indian legal environment.

- 1. Authentication and Identity Verification:** A major challenge in the implementation of electronically agreed NDAs is to make sure that the meeting was authentic. In India, electronic signatures can be used almost everywhere, but the use of the wrong identity can cause several problems. One way to strengthen the identification process that will also be secure is to confirm the signatories being real people through reliable methods of authentication that they know and control thus preventing them from being involved in fraudulent activities.
- 2. Legal Recognition and Compliance:** Among the documents of the party, as well as the public records of the country, the electronic signatures are considered as the principal evidence. However, it is important for the parties to know the legal requirements and never overstep the boundaries of the law which are very clearly specified to ensure the confidentiality of the NDA.<sup>28</sup>
- 3. Data Security and Privacy Concerns:** Even the simple electronic transfer of the business confidential information involves a real threat of the potential security breach and intrusion of privacy. Not only do the parties engaged in electronically agreed NDAs have to secure the encryption of the files entrusted to the other side but the storage location of the files has to be protected also. Such consciousness on their part is necessary bearing in mind the present scenario where data privacy and protection are gaining prime importance in India as a result of the new Personal Data Protection Bill.

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<sup>28</sup>Uncovering Hidden Pitfalls: A Deep Dive into 5 Challenges of Non-Disclosure Agreements (NDAs), LEXISNEXIS, <https://www.lexisnexis.com/community/insights/legal/b/thought-leadership/posts/challenges-with-non-disclosure-agreements> (last visited May 13, 2024).



- 4. Understanding and Acceptance of Electronic Contracts:** In addition to the legal status, it is possible that people and businesses do not know or are reluctant to accept the electronic agreement's enforceability when it comes to NDA. It is essential to make sure that each party has the right knowledge of the electronic contracts and agrees to use them as a means of preventing disputes in relation to the conclusion of the contract.<sup>29</sup>
- 5. Technical Challenges:** On the other hand, such interruptions as failures of systems, hitches, incompatibilities in the system, may hinder the flawless execution of electronically agreed NDAs. Parties need to ensure that the electronic platforms used for creating, signing, and storing NDAs are reliable and capable of handling potential technical challenges without compromising the integrity of the agreement<sup>30</sup>
- 6. Cross-Border Recognition:** In cases involving parties from different jurisdictions, challenges may arise concerning the cross-border recognition of electronically agreed NDAs. While international initiatives and agreements may facilitate recognition, parties should be aware of potential issues related to jurisdictional differences and seek legal advice to address these concerns.<sup>31</sup>

The execution of Electronically Agreed Non-Disclosure Agreements in India comes with its set of challenges. Addressing issues related to authentication, legal recognition, data security, awareness, technical challenges, record-keeping, cross-border recognition, and adaptation to the changing legal landscape is crucial for the smooth implementation and enforcement of electronically agreed NDAs. Parties should proactively mitigate these challenges through careful planning, adherence to legal requirements, and the adoption of secure and reliable electronic platforms. Seeking legal advice to navigate these complexities can also be instrumental in ensuring the effectiveness of electronically agreed NDAs in the Indian context.

## VI. Conclusion

The part of the digital NDAs in the whole business evolution as the main guarantors cannot be underestimated. As exploring the detail of digital NDAs role in the protection of IP sharing, in the resolution of the key hurdles in the execution of IP rights, and in the sci-fi way of prediction about risks surpassed, companies will be able to innovative ideas and not to lose the spirit of partnership and trust. The gadgets reprogram the way we perform the business processes, and

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<sup>29</sup> Ibid

<sup>30</sup> Supra 14

<sup>31</sup> Supra 10

so the usefulness of the digital NDAs will stay foremost for the potentiality of innovation and IP protection. 'Non-Disclosure Agreements' (NDAs) are basically legal tools that play a fundamental role in keeping the confidential information and intellectual property (IP) of parties secure and undisclosed by law. These pacts are increasingly a must-have to shield intellectual property rights since they secure the non-disclosure and protection of virtually all information, trade secrets, and other critical data. Companies do not want their competition to succeed by learning the secrets that the NDA was deliberately designed to cover, and it is also true that such a move stunts the growth and innovation of them.

Non-disclosure agreements provide a much-needed shelter of intellectual property rights. They outline in a legally binding document what information is and what is not properly shielded, hence discouraging the save of the secret information from exposure. These arrangements are indispensable in numerous kinds of situations, ranging from employment and business collaborations to IP-related transactions. By marking the limits of the information and defining the possible punishments for the violation of the set limits, NDAs significantly contribute to the maintenance of the integrity and value of intellectual property. Therefore, the security of the innovations and the proprietary data is guaranteed. The legal acknowledgement of the electronically agreed NDAs represents a major achievement in making technological advancements a necessity to the traditional terms of reference of the law. COVID-19 pandemic posed a challenge to countries all over the world and urged them to find mainly digital solutions for the new business environment. Legal matters have not remained indifferent to the situation and potential digital tools and /or agreements for executing legal contracts are going to be taken into account when assessing the validity of the contracts. The entire world has caught a disease that keeps changing and the biggest part of this epidemic that we are facing today is the fact the people are constantly changing as well. A pandemic, in particular, can significantly increase the importance of the digital economy, including electronic signature benefits in terms of legal recognition, which in most cases is equivalent to paper. The confirmation allows for rapid and smooth NDAs that can be signed and executed when necessary, thus freeing companies from the constraints and limitations of the physical world of the legal agreements.

Digital NDAs are still as effective as they were through the traditional paper-and-pen method if only the provisions to be applied in case of a breach of the NDA are the same. If an electronically signed NDA is violated, the possession that has been hurt by the other party is not without a fair number of legal remedies. Such means of redress by the injured party might

include injunctive relief, monetary damages, and specific performance. In the event of a violation of the exclusive right to disclose confidential data causing you massive financial losses the protection of injunctive relief becomes of great concern. Therefore, the court can issue an injunction, because of the breach of the NDA, and hence the magnitude of the damage may be decreased. Monetary damages can be paid as a result of the violation of the agreement, and case-specific performance may make the other party be bound to fulfill his responsibilities to the contract. However good the electronic system of the conclusion of the NDA may be, there are points in their implementation that should be subject to more scrutiny. One of the main questions is the enforceability of the electronic signatures contract in international courts. Different legal requirements concerning signing an agreement with electronic signatures as well as variances in legal standards across different countries of the international agreements might bring about complexity in negotiations. Moreover, the unsegmented potential for fraud and security and authenticity of the electronic signatures are still a significant and determining issue. Thus, to ensure that the digital format of an NDA is trustworthy and resistant to any kind of violation, proper technological restrictions and legislative rules that are ready to confront potential threats are necessary.

Moreover, the pragmatic nature of implementing digital NDAs has its own set of problems. One of the most important things in this work is to make sure that each party is well aware of the agreements and their confidentiality extent, because without this none of the parties will be able to make the right decisions. Usually, it is necessary to communicate and educate the parties about the terms of the agreement. These agreements, which are electronic in form, have the potential to cause confusion, or to be overlooked, mainly when the participants are not legally or technically orientated. In summary, digital NDAs containing restrictive covenants are indispensable instruments for protecting the intellectual property rights of companies in the contemporary business world. They not only provide an innovative and fast method of consolidating the secrecy of the information but also the legal provisions assure its enforceability. However, the success of these contracts is based on the presence of resilient legal means and the solution of the problems of practical and jurisdictional nature. Solving these problems makes the digitally agreed NDAs continue to be the mainstay of intellectual property protection in the modern world. Technology changes, and therefore the legal and regulatory frameworks that help in executing and enforcing these important agreements must adapt as well.