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Phone : +91 73059 14348 – info@iledu.in / Chairman@iledu.in



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THE ENFORCEABILITY OF NON COMPETE CLAUSES IN EMPLOYMENT CONTRACT

AUTHOR – ADITYA M. RODE, LLM STUDENT AT DECCAN EDUCATION SOCIETY'S, SHRI. NAVALMAL FIRODIA LAW COLLEGE, PUNE

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ABSTRACT:

"In a rapidly evolving employment landscape, non-compete clauses have become both a shield for employers and a contentious battleground for employees." Non-compete clauses, often embedded within employment contracts, are designed to restrict employees from working with competitors or starting competing ventures for a specified period after leaving an organization. These clauses have been a subject of legal contention globally, with their enforceability tied to the historical evolution of employment law and business practices. In India, non-compete clauses must navigate the limitations imposed by the Indian Contract Act, 1872, particularly Section 27, which declares agreements in restraint of trade as void. While these clauses aim to protect legitimate business interests such as trade secrets and client relationships, they often clash with the fundamental right to livelihood and the principle of free consent. This paper examines whether India's legal framework effectively balances employers' business interests and employees' right to livelihood in enforcing non-compete clauses. Overly broad non-compete clauses may violate employees' right to work, requiring clearer guidelines and safeguards for fair enforcement. The paper recommends potential reforms, such as clearer guidelines for enforceability, employee safeguards against unreasonable restrictions, and judicial scrutiny of unfair clauses. The objective is to analyze the legal framework governing non-compete clauses in India, draw comparisons with international practices, and propose measures to ensure their fair and equitable application.

Keywords: Non-compete Clauses, Employment Contracts, Indian Contract Act, Section 27, Employee Rights, Business Interests, Global Perspectives, Legal Framework, Fairness.

1. Introduction

Employment contracts often contain restrictive covenants, particularly non-compete clauses, which prevent employees from joining competitors or starting similar businesses after leaving their jobs. Employers argue that these clauses protect trade secrets, confidential information, and client relationships. However, from the employee's perspective, such restrictions can hinder career mobility and limit economic freedom.

The enforceability of non-compete clauses varies across jurisdictions. In countries like the United States and the United Kingdom, courts

generally enforce these clauses if they are reasonable in terms of geographic scope, duration, and necessity to protect legitimate business interests. In contrast, Indian law, under Section 27 of the Indian Contract Act, 1872, invalidates agreements that restrain trade or profession, with limited exceptions like the sale of goodwill. Indian courts view post-employment non-compete clauses as an unreasonable restraint on the fundamental right to livelihood under Article 19(1)(g) of the Constitution.

This paper explores the legal challenges surrounding non-compete clauses by analyzing

the Indian legal framework in comparison with international practices. It examines judicial attitudes in key jurisdictions and evaluates landmark precedents to highlight the legal, economic, and ethical implications of these clauses.

2. Standard Form Contracts and Their Role in Employment Agreements

Employment contracts are frequently presented as **standard form contracts**, where the terms and conditions are pre-drafted by the employer, leaving employees with minimal scope to negotiate. These contracts typically include restrictive covenants, such as **non-compete clauses**, **non-solicitation clauses**, and **confidentiality agreements**, which aim to protect the employer's commercial interests. However, they also raise concerns about fairness, as employees are often compelled to accept these terms as a condition of employment, limiting their ability to negotiate or challenge them.

A. Importance of Standard Form Contracts in Employment

a. efficiency:

Standard form contracts provide a **uniform and consistent framework** for managing employment relationships. They reduce administrative burdens and ensure that all employees are bound by similar legal obligations, thereby promoting consistency across the organization. This streamlined approach is particularly beneficial for large corporations that hire employees in significant numbers.¹⁴⁶

b. employer protection:

These contracts serve as a crucial tool for **protecting an employer's legitimate business interests**, such as **trade secrets**, **proprietary technology**, and **client relationships**. Non-compete and confidentiality clauses prevent departing employees from using or disclosing

sensitive information that could harm the employer's competitive position.¹⁴⁷

c. employee challenges:

Employees often face significant **disadvantages** when presented with standard form contracts. Given the **unequal bargaining power** between employers and employees, most workers have little choice but to accept the terms without modification. This can restrict **career mobility**, **professional development**, and **economic freedom**, particularly when non-compete clauses prevent them from working in their field for a specified time or geographic area after leaving the job.¹⁴⁸

B. Legal Challenges with Standard Form Contracts

a. free consent and unequal bargaining power:

Under **Section 10 of the Indian Contract Act, 1872**, a valid contract requires **free consent**—meaning all parties must enter the agreement voluntarily and without coercion, undue influence, or misrepresentation. However, in the employment context, the **disparity in bargaining power** undermines this principle. Employees often lack the leverage to negotiate terms, making the apparent consent more **illusory than genuine**.¹⁴⁹

Courts in India and other jurisdictions recognize this power imbalance. For instance, the **Supreme Court of India** has emphasized that contracts restricting an individual's right to livelihood must be **reasonable** and **justified**. In **Niranjan Shankar Golikari v. Century Spinning & Manufacturing Co. Ltd. (1967)**, the Court upheld restrictions during

employment but viewed **post-employment restraints** as **unenforceable** under **Section 27** of the Indian Contract Act.¹⁵⁰

b. reasonableness and public policy:

¹⁴⁷ Catherine L. Fisk, *Working Knowledge: Employee Innovation and the Rise of Corporate Intellectual Property, 1800-1930* 87 (2009).

¹⁴⁸ Amit Bindal, *Standard Form Contracts and the Law of Employment in India*, 53 *J. Indian L. Inst.* 421, 425 (2011)

¹⁴⁹ *Indian Contract Act, 1872*, (S.10).

¹⁵⁰ *Niranjan Shankar Golikari v. Century Spinning & Mfg. Co.*, AIR 1967 SC 1098 (India)

¹⁴⁶ Randy E. Barnett, *Contracts: Cases and Doctrine* 193 (6th ed. 2021).

Globally, courts apply the **doctrine of reasonableness** to determine the enforceability of non-compete clauses. In countries like the **United States** and **United Kingdom**, these clauses are enforceable if they are:

- **reasonable in scope** (geographic and temporal limits).
- **necessary to protect** a legitimate business interest.
- **not contrary to public policy** or **unduly restrictive** of an individual's right to earn a livelihood.

Conversely, **Indian courts** adopt a **pro-employee stance**, where **post-employment** non-compete clauses are generally considered **void** under **Section 27**¹⁵¹. Indian jurisprudence reflects a commitment to protecting **economic freedom** and **right to livelihood** under **Article 19(1)(g)** of the **Constitution of India**.¹⁵²

c. judicial interpretation of standard form contracts:

- Courts in India and abroad scrutinize standard form contracts to prevent the abuse of dominant positions by employers and other stronger parties, ensuring fairness and protecting weaker parties, such as consumers and employees. Judicial interpretation of such contracts primarily focuses on principles like **reasonableness, unconscionability, and adherence to public policy**. For Instance
- **Central Inland Water Transport Corporation v. Brojo Nath Ganguly (1986)**: The **Supreme Court of India** held that **unconscionable terms** in standard form contracts may be struck down if they violate **public policy** or **natural justice**.¹⁵³
- **Superintendence Company of India v. Krishan Murgai (1980)**: The Court ruled

that **post-employment** non-compete clauses violate **Section 27** unless they protect an employer's legitimate interests during the employment period.¹⁵⁴

3. Legal Framework Governing Non-Compete Clauses in India

Non-compete clauses in employment contracts are primarily governed by **Section 27** of the **Indian Contract Act, 1872**, which renders agreements restraining trade **void and unenforceable**. Despite their widespread use, Indian courts have consistently interpreted these clauses **strictly**, prioritizing the **right to livelihood** over **business interests**, except in limited circumstances such as the **sale of goodwill**.

A. Section 27 of the Indian Contract Act, 1872

Section 27 states:

*"Every agreement by which anyone is restrained from exercising a lawful profession, trade, or business of any kind is void."*¹⁵⁵

This provision makes **non-compete clauses** prima facie **unenforceable** in India, as they impose a restriction on an individual's ability to engage in lawful employment or business. The law reflects India's policy favoring **economic freedom** and **free competition**, recognizing that post-employment restrictions may unfairly hinder a person's **right to livelihood** under **Article 19(1)(g)** of the **Constitution of India**

While **non-compete clauses** during **employment** may be valid, **post-employment** restraints are generally considered void, except for specific statutory exceptions such as agreements related to the **sale of goodwill**.

B. Judicial Interpretation in India

Indian courts have consistently **struck down** post-employment non-compete clauses, emphasizing that such restrictions violate **Section 27** of the **Indian Contract Act**. However,

¹⁵¹ Indian Contract Act, 1872, § 27 Indian Contract Act, 1872, (S.27)

¹⁵² Constitution of India, art. 19(1)(g)

¹⁵³ Central Inland Water Transport Corp. v. Brojo Nath Ganguly, AIR 1986 SC 1571 (India)

¹⁵⁴ Superintendence Co. of India v. Krishan Murgai, AIR 1980 SC 1717 (India).

¹⁵⁵ Indian Contract Act, 1872, § 27

courts have recognized limited circumstances where these clauses may be enforced, especially when they protect **confidential information, trade secrets, or goodwill.**

a. protection of trade secrets

Indian courts allow reasonable **confidentiality clauses** during and after employment to protect **trade secrets** and **sensitive business information.** However, these clauses must not operate as a blanket **restraint on future employment.**

b. goodwill in business sale

Non-compete clauses are permissible when linked to the **sale of business goodwill,** provided they are **reasonable** in terms of **geography, duration, and business scope.**

Key Case Laws

a. Niranjan Shankar Golikari v. Century Spinning & Mfg. Co. Ltd. (1967)

The **Supreme Court of India** upheld a **non-compete clause during employment,** ruling that such clauses do not violate **Section 27** if they protect the employer's **legitimate business interests.** However, the Court emphasized that **post-employment** restrictions are **void and unenforceable** under **Indian law.**¹⁵⁶

b. Percept D'Mark (India) Pvt. Ltd. v. Zaheer Khan (2006)

The **Supreme Court** reiterated that **post-employment** non-compete clauses are **unenforceable,** as they conflict with **Section 27.** The Court emphasized that **freedom of trade** is a **fundamental right** under **Article 19(1)(g)** of the **Constitution of India,** and any clause unreasonably restricting it is invalid.¹⁵⁷

4. Comparative Analysis: International Approaches to Non-Compete Clauses

Non-compete clauses are treated differently across jurisdictions, reflecting a balance

between **employer interests** and **employee rights.** While some countries permit such clauses if **reasonable,** others impose **strict prohibitions** to safeguard labor mobility and economic freedom.

A. United States: The Reasonableness Approach

In the **United States,** non-compete clauses are **enforceable** if they meet the **reasonableness** standard. Courts assess the following factors:

- **Duration:** The time period for which the restriction applies.
- **Geographic Scope:** The geographical range of the restriction.
- **Legitimate Business Interest:** Whether the clause protects trade secrets, confidential information, or client relationships.

Enforceability varies **state-by-state:**

- **California:** Prohibits non-compete clauses under **California Business and Professions Code §16600,** except in cases of **business sales** or **partnership dissolution.**
- **New York** and **Texas:** Allow reasonable non-compete clauses if they protect **legitimate interests** without **unduly restricting** the employee's career.¹⁵⁸

Key Case:

IBM v. Visentin (2011):

A U.S. court upheld a non-compete clause where **IBM** demonstrated a **legitimate business interest** in protecting **confidential information.** The court emphasized that the clause's **duration** and **geographic scope** were **reasonable.**¹⁵⁹

B. United Kingdom: The Proportionality Test

In the **United Kingdom,** non-compete clauses are enforceable if they meet the **proportionality**

¹⁵⁶ *Niranjan Shankar Golikari v. Century Spinning & Mfg. Co. Ltd.*, AIR 1967 SC 1098 (India)

¹⁵⁷ *Percept D'Mark (India) Pvt. Ltd. v. Zaheer Khan*, (2006) 4 SCC 227 (India)

¹⁵⁸ *BDO Seidman v. Hirschberg*, 93 N.Y.2d 382 (1999)

¹⁵⁹ *IBM Corp. v. Visentin*, 2011 WL 672025 (S.D.N.Y. 2011)

test. Courts apply the **doctrine of restraint of trade**, requiring that:

- **Legitimate Business Interest:** Courts assess whether a restrictive clause genuinely protects **trade secrets, client relationships, confidential information, or goodwill**. Employers and businesses cannot impose restraints solely to limit competition or restrict an individual's freedom to contract.
- **Necessity and Proportionality:** The restriction must be **reasonable in scope, duration, and geographic application**. If a clause is excessively broad—such as a global non-compete restriction for an extended period—courts may deem it unenforceable.
- **Judicial Modification – The Blue Pencil Test:** If a clause is too restrictive, courts may either **strike it down entirely** or **modify it** to make it reasonable. This principle, known as the **Blue Pencil Test**, allows courts to remove or modify unenforceable parts of a clause while preserving its valid portions.

Example: Niranjan Shankar Golikari v. The Century Spinning & Mfg. Co. (1967)

– The Supreme Court of India upheld a reasonable non-compete clause during the employment period but noted that post-employment restrictions must be carefully justified.

Example: Nordenfelt v. Maxim Nordenfelt Guns & Ammunition Co. Ltd. (1894) (UK)

– The House of Lords upheld a restraint on trade clause but narrowed its scope to what was necessary to protect business interests.

Key Case:

- *Herbert Morris Ltd v. Saxelby* (1916):
- The House of Lords held that **non-compete clauses** must be **necessary** and **proportionate** to protect **legitimate interests**. The court emphasized that

protecting skill or experience alone is **insufficient** to justify such restraints.¹⁶⁰

C. European Union: Strict Regulation

In the **European Union (EU)**, non-compete clauses face **strict regulation** to protect **employee mobility** and **market competition**. While the **EU Market Abuse Regulation (MAR)** prohibits **excessive** restrictions, member states allow **limited** non-compete clauses if:

- **Compensation:** Employees are typically entitled to **financial compensation** during the restrictive period.
- **Proportionality:** Clauses must be **reasonable** in **scope, geography, and duration**.

Examples of National Approaches:

- **Germany:** Non-compete clauses are enforceable for up to **two years** post-employment if **adequate compensation** (at least **50% of prior salary**) is provided.
- **France:** Requires **written agreements, justified business interests, and compensation** for enforceability.

5. Balancing Employer Interests and Employee Rights

The enforcement of **non-compete clauses** requires a delicate balance between protecting **employer interests** and safeguarding **employee rights**. Courts worldwide assess these clauses based on **reasonableness, public policy, and fundamental freedoms**, ensuring that neither party is unfairly disadvantaged.

A. Employer's Right to Protect Business Interests

Employers argue that **non-compete clauses** are crucial to safeguarding their investments and maintaining a competitive edge. The primary justifications include:

1. Protection of Trade Secrets

- Employers seek to prevent former employees from sharing

¹⁶⁰ *Herbert Morris Ltd. v. Saxelby*, [1916] 1 AC 688 (HL) (UK)

proprietary information, confidential business strategies, or technical know-how with competitors.

- Courts assess whether the information is truly confidential or **general industry knowledge**, which cannot be restricted.

2. Preserving Customer Goodwill

- Companies impose restrictions to stop employees from **poaching clients or leveraging existing business relationships** for personal gain.
- Courts ensure that such clauses are not excessive and do not unfairly limit competition.

3. Investment in Employee Training

- Companies invest significant resources in **specialized training** and argue that employees should not immediately use those skills for rival businesses.
- Courts uphold these restrictions **only if** the training is highly specialized and not general industry knowledge.

Judicial Criteria for Enforceability

Courts tend to uphold non-compete clauses when they meet the following conditions:

Narrowly Tailored: The restriction must be **reasonable in terms of geography, duration, and scope** to avoid excessive hardship.

Necessary for Protecting Business Interests: The clause must serve a **specific and legitimate** business need rather than just preventing competition.

Courts may apply the **Blue Pencil Test** to modify overly broad clauses rather than striking them down entirely.

B. Employee’s Right to Work and Economic Freedom

From the employee’s perspective, **non-compete clauses** can impose significant restrictions on their career and financial stability. Key concerns include:

1. Limit Career Mobility

- Employees may find it difficult to switch jobs **within their industry**, forcing them to work in unrelated fields.
- This restriction can be particularly harsh for specialized professionals.

2. Hinder Professional Growth

- Employees may be **prevented from applying their skills and expertise**, slowing their career progression.
- In some cases, broad restrictions **stifle innovation** by discouraging employees from joining startups or launching their own ventures.

3. Financial Hardship

- If a **non-compete clause is too broad or lengthy**, employees may face **prolonged unemployment** due to the lack of viable job options.
- Courts are particularly cautious when such restrictions disproportionately impact an individual’s **livelihood and economic freedom**.

Judicial Interpretation and Trends

- **India:** Under **Section 27 of the Indian Contract Act, 1872**, post-employment non-compete clauses are generally **unenforceable** as they are seen as a restraint on trade. However, courts may enforce them during employment.

- **United States:** The enforceability of non-compete clauses varies **by state**. While states like California **ban them outright**, others **enforce them if they are reasonable**.
- **United Kingdom:** The **Unfair Contract Terms Act, 1977**, ensures that restrictions must be **justified and proportionate** to be valid.

Conclusion: Striking a Balance

Courts strive to **balance the legitimate interests of employers and the rights of employees** by ensuring that non-compete clauses are:

Justified by **genuine business needs** Not excessively restrictive on **career opportunities** **Reasonable and proportionate** in scope, time, and geography

Thus, while employers have the right to protect their investments, **courts ensure that such restrictions do not unreasonably hinder employees' ability to earn a livelihood**.

Indian courts, for instance, prioritize the **right to livelihood** under **Article 19(1)(g)** of the **Constitution of India**, invalidating **post-employment non-compete clauses** as **unreasonable restraint**¹⁶¹

6. Challenges in Enforcing Non-Compete Clauses

The enforceability of **non-compete clauses** presents **legal, practical, and ethical** challenges across jurisdictions. Rapid changes in the global workforce and evolving legal frameworks further complicate enforcement.

A. Globalization and Remote Work

- **Cross-Border Employment:** With **remote work** and **international mobility**, enforcing non-compete clauses across **jurisdictions** becomes challenging due to **conflicting legal frameworks**.

- **Jurisdictional Ambiguity:** Determining **which country's laws apply** in cross-border employment relationships leads to **uncertain enforcement** outcomes.

Example: An employee working remotely for a U.S.-based company while living in India may fall under **Indian law**, where **post-employment non-compete clauses** are **void**

B. Lack of Employee Bargaining Power

- **Inequality of Power:** Employees, especially in **standard form contracts**, often lack the bargaining power to **negotiate** or **refuse** restrictive clauses.¹⁶²
- **Economic Pressure:** Many employees accept these clauses due to **financial dependency** or **limited job alternatives**.

Indian courts recognize this power imbalance and have emphasized protecting **employee rights** under **Article 19(1)(g)** of the **Constitution**.¹⁶³

C. Judicial Subjectivity

- **Inconsistent Interpretations:** Courts globally apply **differing standards** when assessing whether a **non-compete clause** is **reasonable**.
- **Case-Specific Outcomes:** Judicial interpretations vary based on **industry, geographic reach, and business necessity**, leading to **unpredictable decisions**.

For instance, while **U.S. courts** focus on a **reasonableness test**, **Indian courts** treat most post-employment restraints as **void ab initio** under **Section 27** of the **Indian Contract Act**.

7. Recommendations and Reforms

A balanced approach to **non-compete clauses** requires legislative clarity, fair compensation, and stronger judicial standards.

A. Legislative Clarity in India

¹⁶¹ Constitution of India, art. 19(1)(g)

¹⁶² Restatement (Second) of Contracts §188 (Am. L. Inst. 1981).

¹⁶³ Constitution of India, art. 19(1)(g)

- **Statutory Guidelines:** Introduce **clear legal standards** governing **non-compete clauses** to resolve ambiguity under **Section 27**.
- **Define Reasonableness:** Establish criteria for permissible restrictions considering:
 - **Duration** of the restriction.
 - **Geographic scope** of limitation.
 - **Legitimate business interests** (e.g., trade secrets, client protection).

B. Compensation for Employees

- **Adopt the EU Model:** Introduce **mandatory compensation** for employees during the restricted period to mitigate economic hardship.
- **Incentivize Fair Agreements:** Compensation encourages employers to **narrow the scope** of non-compete clauses.

Example: Under **German law**, non-compete clauses are valid if the employer pays at least **50% of the employee's salary** during the restricted period.¹⁶⁴

C. Encourage Trade Secret Protection Instead of Non-Compete Clauses

- **Focus on Confidentiality:** Employers should **prioritize confidentiality agreements** and **non-solicitation clauses** rather than imposing broad **non-compete** restrictions.
- **Enhanced Protection:** Strengthen **intellectual property** and **trade secret** protections to deter **misuse** of proprietary information.

D. Judicial Guidelines for Reasonableness

- **Standardized Test:** Courts should adopt a **consistent framework** to assess whether a non-compete clause is **reasonable**.

• Key Factors for Assessment:

- **Duration** of the restriction (shorter periods are more enforceable).
- **Geographic Scope** (local restrictions are more acceptable than global ones).
- **Nature of the Industry** (highly specialized industries may justify broader restraints).
- **Employee's Role** (senior-level employees may be subject to stricter conditions).

8. Conclusion

Non-compete clauses in employment contracts serve an important role in protecting employer interests, but they must not **unreasonably restrict an employee's right to work**. In India, **post-employment non-compete clauses remain largely unenforceable** under Section 27 of the Indian Contract Act, while other countries adopt a **reasonableness approach**. Reforms in India should focus on **balancing business interests with fundamental rights**, ensuring fair and transparent employment agreements.

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