THE FUTURE OF NON-COMPETE AGREEMENTS IN INDIA: ENFORCEABILITY, ETHICS AND GLOBAL INFLUENCE

Roushan Kumar Ojha, B.A. LL.B. (Hons.), Mangalayatan University

ABSTRACT

Non-compete agreement is a debatable topic for many years on the basis of its legality and with a question of how ethical it is. In India, such agreements are typically prohibited under Section 27 of the Indian Contract Act. This paper studies how non-compete clauses are changing in India. It looks at whether they can be enforced, whether they are fair, and how international laws are affecting Indian practices. Indian courts usually do not allow restrictions on employees after leaving their job. However, they do allow some limits while the person still works, especially if it protects important company secrets or business information.

The paper looks at important Indian court cases and compares them with how other countries like the United States and Europe handle non-compete clauses. In those places, the court decides based on fairness how long the restriction lasts and whether the employees are paid during the restrictions. It also discusses ethical issues like whether these contracts violate a person's right to work, their freedom to choose a job, and the unfair power of employers may have over employees. Additionally, it further examines how non-compete agreements can restrain competitiveness in the market by preventing skilled professionals from entering and starting competitive businesses or rival businesses, which may reduce innovation and limit consumer choice. As the Indian economy becomes more open and digital, and with changes in labour laws, it is important to take a fresh look at whether non-compete agreements should be allowed.

This paper proposes the creation of a detailed law that fairly protects both companies and workers. It recommends learning from other countries' laws while respecting the Indian Constitution. The paper adopts a doctrinal and comparative approach, offering legal, ethical, and policy-based insight into the future of non-compete agreements in India.

Keywords: Non-Compete agreement, Restraint of Trade, Public policy, Enforceability

INTRODUCTION

In today's fast-paced professional world, job boundaries are no longer bound by geography or long-term loyalty to one employer. For example, imagine Riya, a talented software engineer in a rapidly growing Indian ed-tech startup. After two years working and helping the same startup with their most successful and prominent projects, Riya receives an attractive job offer from a global competitor of that company. This new role offers a high salary, international exposure, and a better growth environment. But when she told them with excitement about their current employer, they reminded her about the non-compete agreement, which she signed when she joined the company. According to the clause cited in that agreement, she can not work for a direct competitor of that company within India for the next year. Suddenly, her dream opportunity hangs in the balance.

Nowadays, this situation is real for many professionals in India. The growth of job mobility, driven by globalization, start-up culture, and remote work, has made non-compete agreements a more important and debated part of employment contracts.

Definition of Non-Compete Agreement

A non-compete is a clause or a separate agreement that limits an individual from working for a competitor, starting a similar business, or participating in any activities that compete with their current or former business. This restriction lasts for a specific time and applies to a specific or limited geographical area. According to the point of view of employers, these agreements or clauses are necessary to safeguard their secrets of trade, confidential data, private information, and customer base. However, employees often see them as an obstacle to career growth and personal freedom.

In India, the enforceability and relevance of non-compete agreements have sparked an intense debate. This comes as the economy shifts towards a more knowledge-driven and innovation-focused environment. The Indian legal system, especially *section 27 of the Indian Contract Act,1872*[1] *and Article 19(1)(g) of the Indian Constitution*[2] *treat it as restrictive conventions because it violates the individual right to earn their livelihood.*

[1] The Indian Contract Act, 1872,Sec.27
[2] India Const.art.19,cl.1(g)

Still, employers in industries like technology, pharmaceuticals, finance, and consulting argue that without some restrictions, they risk losing valuable intellectual property, competitive edge, and hard-earned market reputation. Consequently, non-compete agreements, despite their legal ambiguities, continue to appear in employment contracts, resulting in uncertainty and ambiguity.

NCA Vs. NDA

It is important to distinguish between Non-Compete agreement and Non-Disclosure agreement, and other contracts that protect business interests. An NDA mainly stops an employee or business partner from sharing confidential information, trade secrets, and proprietary knowledge with unauthorized people or groups. While both NDA and NCA seek to protect a company's competitive edge, they function differently. An NDA prevents the leaking of sensitive information, no matter where the employee works. In contrast, a non-compete limits where or with whom an employee can work.

Non-Compete Vs. Non-Solicitor agreement

Similarly, the non-solicitor differs from non-compete agreements in both scope and intent. Non-solicitation clauses stop employees from taking clients, customers, or colleagues when they leave a company. Unlike a non-compete, they do not completely block someone from joining their competitor. Instead, they aim to reduce the impact on former employers' business relationships. While non-competes can be viewed as a wide restriction on career movement, non-solicitation agreements provide a more balanced approach by focusing on specific actions after employment ends.

In today’s quickly changing economic and legal environment, we can not overlook the importance of non-compete agreements. The Indian economy is experiencing an unprecedented growth in start-ups, technological innovation, and global partnerships. As employees look for better chances and companies work to maintain, the conflict between personal freedom and business protection becomes more intense. Developments abroad also impact the discussion in India. For example, the recent change in policy in the United States, including the Federal Trade Commission’s plan to ban most non-compete agreements, has triggered conversation around the world, including in India, about the future of these restrictive contracts. In India, the issue is made more complex by inconsistent court rulings and unclear

laws. Courts have upheld certain non-compete clauses during employment or for high-level executives with access to confidential information, while rejecting others that apply after employment ends. Additionally, with the growth of start-up culture, remote work, and global hiring trends, traditional reasons for supporting non-compete clauses are being re-evaluated.

This research paper aims to examine the legality, ethical aspects, and further direction of non-compete agreements in India. It looks into whether these agreements find the right balance between protecting business interests and ensuring an individual's right to work and grow professionally. The paper mainly focuses on employment-related non-compete agreements in the Indian private sector. It pays special attention to industries where these clauses are common. The study includes relevant comparisons with practices around the world to see how India's approaches compare to international trends.

LEGAL STATUS OF NON-COMPETE AGREEMENT IN INDIA

The legal status of non-compete agreements in India is a complicated and changing topic. It sits at the crossroads of contract law, economic freedom, and ethical issues. Essentially, this discussion arises from the long-standing idea that individuals should be free to enter into contracts and participate in trade, business, or their profession without unfair limits. This balance is captured in section 27 of the Indian Contract Act 1872, which serves as the foundation for the legal conversation about non-compete clauses in India.

Section 27 of the Indian Contract Act said that

"*Every agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void*."[3]

At first glance, this provision seems to completely ban any agreement that stops a person from working in their chosen trade or profession. Unlike places like the United States or the European Union, where "reasonable" limits in terms of time, location, or scope might be allowed, Indian Laws take a stricter approach.

However, even with this strictness, Indian courts have, over time, found some specific exceptions to this broad restriction. Before exploring those exceptions, it is important to

[3] Supra 1

understand the historical foundations of this principle.

HISTORICAL CONTEXT

The ban on restraint of trade is not only part of Indian Law but also has its roots in English Common Law. The concept dates back to 15th-century England when courts began to oppose agreements that limited a person's ability to engage in trade or earn a living. *The case of Dyer's case is often referenced as it was the first time the English Courts ruled that such restraints were against public policy.*

Indian contract law, which draws heavily from the common law, adopted this principle during the colonial period. When the Indian contract law was passed in 1873, section 27 was specially created to idea that agreements restricting trade and businesses are against public policy and it not enforceable.

The reason behind this approach is to protect an individual's right to make a living, encourage competition, and stop monopolistic practices. The historical view reflects India's strong commitment to ensuring that no contracts unfairly limit economic opportunities and personal growth.

General Bar on Restraint of Trade

The legal interpretation of section 27, over the years, has strengthened the general ban on restraint of trade in India. This means that any clause, whether in any employment contract, partnership deed, or service agreement, that tries to limit a person from working, trading, or doing business is usually considered void. It is important to note that Indian courts make a distinction between restraining orders during employment and restraint after employment ends. While reasonable limitations during the employment period are generally upheld to protect the employer's valid business interest, non-compete clauses after employment have repeatedly been struck down by courts as violating section 27.

For Example, in case of Niranjan Shankri Vs. Century Spinning and Manufacturing Co. Ltd., the Supreme Court of India supported the validity of a non-compete agreement during the period of employment. The court argued that such limits are necessary to maintain order and protect confidential information. However, in this case, Gujarat Bottling co. vs Coco cola co. The court confirmed that post-employment restraints are generally void unless they fit into

recognized exceptions under the Law[4]. The strict interpretations of section 27 fit with India's broader constitutional goal of ensuring freedom of occupation under Article 19(1)(G) of the Indian constitution, which guarantees the right to pursue any profession or carry on any trade or business [5].

So while businesses may want to use non-compete agreements to safeguard proprietary information or prevent unfair competition, the Indian legal system prioritizes the individual's rights to economic freedom and livelihood over restrictive contract terms.

Judicial Interpretation Over The Years

Superintendence Co. of India v. Krishan Murgai

In this case, the Supreme Court ruled that post-employment restrictive covenants are invalid under section 27 of the Indian Contract Act. The court states that reasonable restrictions given during employment can be acceptable, but limitation after termination hinders the person's basic right to earn a living and are therefore invalid. The judgment reaffirmed the strict interpretation of section 27 regarding post-employment non-compete clauses.[6]

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

In this case, the Supreme Court held that a contract preventing someone from practicing their profession, even partly, after the contract ends, is void under section 27 of the Indian Contract Act 1872. The court stated that restrictions after the contract, including those in sports and entertainment, cannot be enforced. These restrictions violate a person's right to earn a livelihood and their professional freedom, no matter how reasonable they are[7].

V.F.S Global Services Pvt. Ltd. vs. Mr. Suprit Roy

In this case, it was determined that the "garden leave clause", which allows the company to require a manager to refrain from working for the three months after his employment ends, is classified as a restraint of trade and is regulated by section 27 of the Indian Contract Act.

[4] Niranjan Shankri Vs. Century Spinning, 1967 SCR (2) 378
[5] Supra 2
[6] Superintendence Co. of India v. Krishan Murgai 1981 (2) SCC 246
[7] *Percept D'Mark (India) Pvt. Ltd. v. Zaheer Khan* 2006 (4) SCC 227

The honorable Supreme Court and various High Courts have consistently maintained that negative covenants can only be enforced if they are reasonable.

The covenants aimed to safeguard the legitimate business interests of the purchaser. Even in the scenario mentioned, the restraint must not exceed what is necessary to protect the relevant interest.[8]

Exceptions to Non-Compete Clauses in Employment Contracts

In India, including a non-compete clause in an employment contract is common. However, there are exceptions to their enforceability after employment ends. The courts often view these clauses as limits on individuals' right to earn a living.

First, if a non-compete clause is vague, overly broad, or lasts too long, it is likely not enforceable. The court prefers clear terms that are reasonable in scope and duration.

Second, non-compete clauses that only aim to stop competition, without protecting valid business interests such as trade secrets or confidential information, usually won't hold up.

Lastly, if the clause creates hardship for the employee or feels unfairly harsh, it is probably not enforceable. It's about finding a balance between protecting business interests and not unfairly limiting someone's career opportunities.

Stance of Post-Employment Non-Compete Clauses

In India, enforcing post-employment non-compete clauses can be tricky. The main point comes from the Indian Contract Act 1872, especially section 27, which states that any agreement preventing someone from working in a lawful profession, trade, or business is void. This means that after leaving a job, your employer cannot stop you from working in your field or joining a competitor, as such restrictions are viewed as barriers to your economic freedom and right to earn a living.

However, the situation isn't entirely straightforward. Indian courts have made exceptions under certain conditions. For instance, if an employer can show that the non-compete clause is fair and necessary to protect their business interests, such as keeping trade secrets or confidential

[8] *V.F.S Global Services Pvt.Ltd. vs. Mr.Suprit Roy* 2008 (2) BomCR 446

information safe, they may have a valid case. Typically, they are examined for their length, geographical area, and activities they restrict.

In summary, while post-employment non-compete clauses are mostly unenforceable in India, but with some exceptions.

Ethical Dimension of Non-Compete Agreements

In today's fast-moving job market, changing jobs and seeking new opportunities is a common part of professional life. Non-compete agreements have become a highly controversial topic. At first glance, NCA may seem like just another legal tool that employers use to protect their business interests. However, they raise serious ethical questions when we look closer. Do these agreements unfairly limit a person's freedom? Or do they need it to protect their secret information and ensure fair competition?

1. **Individual Freedom vs. Employer Protection**

   The debate over NCAs revolves around the balance between a person's freedom and an employer's need for security. Everyone has the right to decide where they work, how they build their careers, and how they make a living. When NCA doesn't allow an individual to work somewhere or start a business, it impacts their freedom directly. However, businesses have valid concerns as well. Employers are spending time, money, and resources to train their employees. They also share some confidential information with them, which is crucial for staying competitive. If employees take that information to rival companies, it could hurt the business. The question is, where do we draw the line? How much restriction is too much?

2. **Right to Livelihood vs. Business Confidentiality**

   The right to livelihood goes beyond a legal definition; it is a fundamental human need. People work to support themselves and their families. For many, their job is their only source of income. When NCA stops someone from working in the field for months or even years after leaving a job, it creates financial issues.

   Consider a software engineer who is barred from working in the IT sector for two years because of an NCA. This is not just a contractual clause; it directly impacts their ability

to earn money, pay bills, and advance in their career. Companies do have a legitimate interest in safeguarding their trade secret and confidential information. However, should that come at the expense of an individual's fundamental right to work? Many think other legal measures, like Non-Disclosure Agreements, can protect business confidentiality without significantly harming someone's livelihood.

3. **Moral Legitimacy of Employer Restriction**

The right to a job is more than just a legal term; it is a basic human need. People work to take care of themselves and their families. For a lot of people, their job is their only source of money. When NCA stops someone from working in the field for months or even years after they leave a job, it causes money problems. Think about a software engineer who can't work in IT for two years because of an NCA. This is more than just a clause in a contract; it has a direct effect on their ability to make money, pay bills, and move up in their careers. It's normal for businesses to want to protect their trade secrets and private information. But should that come at the cost of someone's basic right to work?

Global case studies in non-compete reform

United Kingdom

Certain restrictions imposed after employment ends can be legally enforceable, provided they align with the criterion of reasonableness. This implies that the restrictions should serve to protect the legitimate interests of the employer or buyer. Important factors in determining the validity of a non-compete clause include assessing the risks associated with the inappropriate use of confidential information and confirming that the scope of the covenant is not excessively broad beyond what is necessary to safeguard those interests.

United States of America

The FTC's ruling to prohibit the majority of non-compete agreements across the country, affecting both employees and independent contractors, marks a significant turning point. This development embodies a wider reconsideration of labor market interactions that promotes increased worker mobility and competition.

Australia

Australia is contemplating major changes to its non-compete laws. The government plans to publish a discussion paper examining the possibility of new regulations, similar to what is happening in the US and UK. Although definite changes are yet to be established, it is evident that Australia is aligning with the worldwide push for increased flexibility in the labor market.

Canada

Ontario's Working for Workers Act, enacted in 2023, bans non-compete clauses for the majority of employees, with exceptions for executives and specific business arrangements. This law represents a notable shift from conventional practices, as it prioritizes worker rights and enhances economic mobility.

Ireland

Ireland has also progressed with the Competition (Amendment) Act 2022, which was enacted in December 2023. This law grants the Competition and Consumer Protection Commission (CCPC) the authority to invalidate non-compete agreements considered unjust or that hinder innovation.

New Zealand

In a move to update its labor laws, New Zealand has revealed intentions to assess its employment legislation in 2024. This assessment may involve considering limitations on non-compete agreements, highlighting the nation’s dedication to conforming to international best practices.

What implications does this have for global companies?

For companies, the worldwide shift towards protecting workers and enhancing mobility brings both obstacles and prospects. Global businesses need to reconsider their longstanding reliance on non-compete clauses, particularly in countries with rapidly evolving regulations.

More equitable methods may gain popularity. These alternatives involve securing trade secrets through non-disclosure agreements or ensuring client retention via non-solicitation provisions.

Grasping and adjusting to the changing regulatory framework is vital for firms operating on an international scale. With the U.S. FTC's notable ruling potentially establishing a benchmark, the time of stringent non-compete agreements might be drawing to a close. As more nations

emphasize safeguarding worker rights and encouraging economic mobility, companies face a more intricate regulatory landscape.

To stay competitive, companies should concentrate on compliance and employee retention strategies that resonate with the transforming global landscape, while adopting a fresh perspective that promotes innovation and economic vitality.

Recent Updates On Non-Compete Agreement

Infosys Non-Compete Clause

In 2022, news about Infosys' non-compete clause circulated widely across India. The clause restricted departing employees from joining a competitor if they had worked with the same client for six months. Furthermore, the new contract included a provision that barred employees from accepting jobs with clients they had engaged with in the twelve months leading up to their departure from Infosys for six months. TCS, IBM, Accenture, Wipro, and Cognizant are identified as competitors of Infosys. A Pune-based non-governmental organization, NITES, complained to the central labor ministry regarding Infosys, requesting the elimination of the clause. Infosys characterized it as a common business practice in various regions globally, intended to protect sensitive information. The company stated that such measures are essential for ensuring information confidentiality, preserving customer relationships, and protecting other valid business interests. Infosys clarified that these requirements are fully communicated to all job candidates before their employment and stressed that they do not hinder employees from seeking career advancement and opportunities in other organizations.[9]

FTC ON NON-COMPETE AGREEMENTS

The Final Non-Compete Clause Rule, or "FTC Rule," was introduced by the US Federal Trade Commission on April 23, 2024, and it completely changed the American labor market. A nationwide prohibition on non-compete clauses in employment ties is put into effect by this

[9] Ashish Dash, The Infosys non-Compete Clause Saga: An Analysis, https://law.nirmauni.ac.in/the-infosys-non-compete-clause-saga-an-analysis/

historic rule. Section 5 of the Federal Trade Commission Act established the FTC Rule, which forbids organizations under FTC jurisdiction from implementing new non-compete agreements after the Effective Date. After it takes effect, the FTC Rule is expected to have a significant effect on American labor and company practices. The FTC's action comes after a similar one in 2021 when Ontario, Canada, outlawed non-compete agreements. The aforementioned developments underscore the expanding global discourse surrounding the function of non-compete agreements.

Future of Non-Compete Law In India

In parallel with the advancement of technology and globalization, the modern workplace is evolving as well. There is an increase in job changes, an upsurge in new businesses being formed, and professionals are often taking on new and self-started positions. In this setting, Non-Compete Agreements (NCAs) — contracts that prevent workers from engaging with competitors or starting similar businesses post leaving their jobs — Are becoming more popular in India. However, India still has no clear guidelines on how these agreements should be treated after the working relationship is severed, which means there is an acute need for legal reform on NCAs in India.

Why India Needs Legislative Reform

The Indian Contract Act of 1872, Section 27, states that restricting individuals from practicing their profession is an invalid agreement except in specific situations, such as goodwill. This blunt interpretation fails to grasp the realities of contemporary employment relations. Courts tend to disregard NCAs, particularly *post-employment* NCAs, regardless of mutual consent to their terms. Nevertheless, a large number of businesses continue to incorporate such clauses into their agreements, resulting in anxiety and a lot of uncertainty for workers and a host of legal complications. To become a center for global innovation, India must balance business and personal freedoms with a modern policy that protects both to the necessary degree, and provides equitable safeguards for both sides. Employees must not feel bound after leaving employment, and employers should not dread secret proprietary information being carried away by former employees.

Suggesting a Statutory Framework

One of the most balanced approaches would be to create a new statutory framework for NCAs.

These could be modeled on more balanced approaches, such as in Germany or California. Consider the following:

- Time-bound restrictions: There must be a reasonable time limit, such as 6–12 months after employment, for NCAs to be enforced.

- Compensated NCAs: An employer can only enforce restrictions on ex-employees if they pay during the restricted period. This ensures the employee receives income instead of going unpaid.

- Reasonableness Test: Any NCA should be confined to what is considered reasonable in terms of scope, geography, and duration. It must defend valid business interests, including but not limited to confidential information or client relations.

Balancing Responsibilities and Rights

A revised law must safeguard both perspectives. Workers ought to have the opportunity to access a livable wage, develop professionally, and have mobility within the marketplace. At the same time, businesses need to be permitted to protect confidential information as well as thwart industrial espionage. Clear definitions on the "when" and "how" of the enforcement of NCAs will prevent misuse and frivolous lawsuits.

Role of Courts, Legislature, and Civil Society

It is the responsibility of the legislature to formulate laws that will cater to current needs. It would be much less difficult for courts to interpret laws if they did not have to work with outdated principles. At the same time, the whole of civil society — in this case, the trade unions, business associations, and even think tanks — must influence this debate. They can take up the challenge of formulating laws that can defend workers' rights while promoting economic development.

Conclusion

Innovations, enhanced mobility, and global connections all play a role in the transformation of employment, thus necessitating a re-evaluation of non-compete agreements (NCA) in the Indian context. Although Section 27 of the Indian Contract Act declares post-employment

restrictions to be void, there exists a disparity between the increasing application of NCAs, the need for guarding business interests, and the constitutional right to practice one's profession, which supports the NCA.

The research has examined the ethics and enforcement of NCAs, as well as discussed international models addressing similar challenges and their respective solutions. It is evident that India's absence of comprehensive statutory regulations adversely affects both employers and employees in a competitive landscape. Without reforms, business NCAs may become ineffective and instead function as tools of coercion to ensure adherence.

The principles of reasonableness, transparency, and equilibrium ought to characterize the legal framework that India should aim for. A professional landscape with protected interests can be established when there is professional autonomy along with reasonable limitations enforced through sufficient executive or judicial mechanisms. There is a pressing need to reconceptualize NCAs as India progresses toward a high-growth, innovation-driven economy, and to shift the discussion from mere legal requirements to a matter of social and economic importance.