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ENFORCEABILITY EMPLOYMENT AGREEMENT IN INDIA

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Abstract

Employment agreements are a cornerstone of the employer–employee relationship, often containing restrictive covenants such as non-compete, non-solicitation, confidentiality clauses, and employment bonds. While these clauses aim to protect an employer’s legitimate business interests including trade secrets, client relationships, and proprietary information their enforceability in India remains a complex legal issue. This research paper examines the enforceability of such restrictive covenants under Indian law, with a particular focus on Section 27 of the Indian Contract Act, 1872, which renders any agreement in restraint of trade void. Through an analysis of judicial precedents, including landmark judgments such as *Niranjan Shankar Golikari v. Century Spinning* and *Percept D’Mark v. Zaheer Khan*, the paper explores the distinction between restraints during employment and that post-termination. The study highlights the evolving judicial stance toward the reasonableness, necessity, and proportionality of such clauses. It also critically evaluates the enforceability of employment bonds and the implications of confidentiality and non-solicitation agreements. The paper concludes with practical recommendations for drafting enforceable employment agreements and suggests a need for legislative clarity to balance the rights of employers and employees in India’s rapidly changing employment landscape.

Keywords- Employment Agreement, Restrictive Covenants, Section 27, Indian Contract Act, Non-Compete Clause etc.

Introduction

Employment agreements play a crucial role in defining the legal and professional relationship between employers and employees. These agreements not only outline the terms of

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employment, such as job responsibilities, remuneration, and working conditions, but also include clauses that aim to safeguard the employer's proprietary interests. Among the most commonly used clauses are restrictive covenants, which include non-compete, non-solicitation, confidentiality agreements, and employment bonds. These covenants are typically designed to prevent employees from using the employer's confidential information or goodwill to the advantage of competitors or to the detriment of the employer, especially after the termination of employment.

The purpose of these restrictive clauses is to protect vital business interests such as trade secrets, client databases, internal business strategies, and trained workforce, all of which can give a business its competitive edge. For instance, a non-compete clause may prohibit a former employee from working with a rival firm in the same industry for a specified period and within a certain geographic area. Similarly, a non-solicitation clause may prevent an ex-employee from poaching clients or other employees after leaving the company. Employment bonds may require the employee to work for a minimum duration or pay compensation if they leave early, especially in cases where the employer has invested in training or relocation.

However, the enforcement of such restrictive covenants in India raises serious legal and ethical concerns. Indian law, under Section 27 of the Indian Contract Act, 1872, declares all agreements in restraint of trade void to the extent of such restraint. This creates a significant conflict between the employer's right to protect their business interests and the employee's constitutional right to livelihood and freedom of profession, as guaranteed under Article 19(1)(g) of the Indian Constitution.

This tension becomes particularly evident when restrictive clauses continue to bind the employee even after the termination of employment. Courts in India have historically been cautious in upholding such restraints, especially post-employment restrictions, viewing them as potentially exploitative or contrary to public policy. While some restraints may be enforceable if they are shown to be reasonable and necessary to protect a legitimate business interest, overly broad or arbitrary restrictions are usually struck down.

This paper seeks to explore this legal and ethical tension by critically analyzing the enforceability of restrictive covenants in Indian employment agreements. It examines key judicial precedents, evolving legal interpretations, and the balance that must be struck between protecting employer interests and preserving employee rights in a liberal economy.

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Legal Framework in India

- 1. Indian Contract Act, 1872 – Section 27-** Section 27 of the Indian Contract Act, 1872, lays down a general rule against restraint of trade. It states: *“Every agreement by which anyone is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void.”* This provision establishes a broad prohibition against contracts that limit an individual’s ability to earn a livelihood. The underlying rationale is to promote economic freedom and free trade, discouraging monopolistic practices and protecting the individual's right to choose their occupation. The origins of Section 27 can be traced back to English common law, which initially allowed reasonable restraints. However, Indian law adopted a stricter approach. Unlike English law where partial restraints may be allowed if reasonable, Indian courts have generally interpreted Section 27 rigidly, rendering even partial restraints void unless they fall within recognized exceptions (e.g., sale of goodwill). As legal scholars and commentators have noted, this strict interpretation reflects India's public policy commitment to ensuring that individuals are not unfairly restricted in their professional autonomy, particularly in a developing economy where employment opportunities may already be limited.
- 2. Constitutional Provisions-** The enforceability of restrictive covenants in employment agreements must also be examined in light of the Constitution of India. Article 19(1)(g) guarantees to all citizens the fundamental right to practise any profession, or to carry on any occupation, trade or business. However, this right is not absolute. Under Article 19(6), the State may impose reasonable restrictions in the interest of the general public or for the protection of the interests of the State. While employment agreements are private contracts and not direct restrictions by the State, courts have consistently held that the spirit of Article 19(1)(g) must be respected even in contractual arrangements. A clause in a private employment contract that imposes post-employment restrictions can be challenged if it effectively deprives an individual of their right to work or earn a livelihood. Indian courts have, thus, often examined whether a particular restraint is “reasonable” and whether it serves a legitimate business interest without unduly harming the employee’s right.

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- 3. Public Policy / Fundamental Rights-** Beyond statutory provisions, courts also consider whether restrictive covenants violate public policy, which is a broader principle under contract law. In India, courts have consistently held that overly broad, vague, or unreasonable restrictive covenants—especially those extending beyond the term of employment—are void as being contrary to public policy. The rationale is that freedom to work is essential to personal dignity, and no agreement should deprive a person of the means to earn a livelihood. Post-termination non-compete clauses, in particular, are viewed with suspicion unless the employer can demonstrate a clear and compelling interest, such as the protection of trade secrets or confidential information. Even then, the scope, duration, and geographic extent of the restraint must be narrowly tailored. Courts have refused to enforce blanket bans that prevent employees from working in the entire industry or profession. Therefore, public policy in India strongly leans in favour of employee mobility and economic freedom, and discourages agreements that can lead to professional servitude or unfair bargaining outcomes.

Judicial Precedents & Key Case Law

- 1. Niranjan Shankar Golikari v. Century Spinning & Manufacturing Co. Ltd. (1967)-** Distinction between during-employment restrictions vs post-employment. Restrictions during service (e.g. exclusivity) allowed; post-termination restraints are treated with more scrutiny.
- 2. Percept D'Mark (India) Pvt. Ltd. v. Zaheer Khan (2006)-** Non-compete clause / right of first refusal extending beyond the term held void.
- 3. Employment Bonds: Vijaya Bank & Anr. v. Prashant B. Narnaware (2025)-** Supreme Court clarified about employment bond requiring minimum tenure and liquidated damages; whether such bond violates Section 27 or is valid under certain conditions.
- 4. Recent Delhi High Court Judgment (2025) –** Strict scrutiny of post-employment restraints (NDA, etc.) requiring demonstration of legitimate proprietary interest.

Doctrines / Tests Applied by Courts

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- **Reasonableness**

Courts assess whether the restraint is reasonable in scope (geographical, temporal), necessary to protect legitimate business interests (trade secrets, confidential info), not oppressive on the employee.

- **Scope and Duration-** E.g., if non-compete is for 2 years over whole India may be too broad.
- **Legitimate Interest-** Mere desire to prevent competition not sufficient; must show some proprietary/confidential information, or goodwill etc.

Recent Trends & Key Takeaways

- Courts increasingly require a narrow tailoring of restrictive clauses. Broad blanket restrictions are being struck down.
- Enforceability depends heavily on factual demonstration: risk of misuse of confidential info, nature of business, bargaining power, whether employee had real choice.
- Liquidated damages / bonds: SC judgment in 2025 shows stricter scrutiny; amount should not be punitive.

Problems & Open Issues

- Lack of clear statutory guidelines on how “reasonable” duration/geographic scope is defined.
- Employees often have weak bargaining power; standard form contracts could impose harsh restraints.
- Enforcement: even if clause valid in law, practical difficulties in getting injunctions etc.
- Conflict with newer labour/competition law dimensions (e.g. non-poaching agreements / competition act implications).

Comparative Perspective (Optional Section)

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- How India's law compares to UK, US, Singapore etc. in terms of non-compete enforceability. Some jurisdictions allow stronger post-termination restraints if consideration is given; India much more restrictive.
- Helps underline India's unique emphasis on right to livelihood and Section 27.

Conclusion & Recommendations

- For enforceability, employer agreements must: Be limited in time, geography;
- Protect legitimate business interest (trade secrets, client relationships etc.);
- Not impose unnecessary hardship on employee;
- Have balanced consideration and not be unfair or oppressive.
- Suggest legislative reform to clarify standard for "reasonable restraints".
- Employers should draft restrictive covenants carefully; avoid overbroad non-compete; ensure employees understand terms; possibly provide compensation / incentive for restraint.

References Section 27, Indian Contract Act, 1872

- Article 19(1)(g), Constitution of India
- *Niranjan Shankar Golikari v. Century Spinning* (1967)
- *Percept D'Mark v. Zaheer Khan* (2006)
- *Vijaya Bank & Anr. v. Prashant B. Narnaware* (2025)
- Recent Delhi High Court decisions on post-employment restraint review (2025)

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