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NON-COMPETE CLAUSES IN INDIA: LEGAL FRAMEWORK, JUDICIAL INTERPRETATION, AND POLICY EVOLUTION

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Abstract

Non-compete clauses occupy a delicate space between contractual autonomy, constitutional liberty, and competition regulation in India. Section 27 of the *Indian Contract Act, 1872* renders restraints on trade void, yet courts distinguish between invalid post-employment prohibitions and legitimate protections for goodwill and confidential information. This paper traces that evolution through landmark precedents from *Niranjan Golikari v. Century Spg. & Mfg. Co. Ltd.*¹ to *Percept D'Mark (India) Pvt. Ltd. v. Zaheer Khan*³, examines judicial recognition of trade-secret safeguards as lawful exceptions, and analyses the Competition Commission of India's approach to ancillary non-competes in mergers under its 2017 Guidance Note¹⁰ and 2020 Amendment Regulations¹¹. It concludes that Indian law is shifting toward a proportionality-based model that preserves fair competition while safeguarding proprietary interests.

Keywords: Section 27 ICA 1872; Non-Compete Clauses; Confidential Information; Competition Commission of India; Trade Secrets

I. Introduction

Non-compete clauses—also known as restrictive covenants—appear frequently in employment, shareholder, franchise, and merger agreements. They seek to prevent a party from engaging in competing activity during or after a contractual relationship, thereby protecting trade secrets, confidential information, goodwill, and proprietary business interests. Yet their enforceability in India is limited. The right to pursue any lawful profession, trade, or business under Article 19(1)(g) of the Constitution requires that any restriction meet the reasonableness test of Article 19(6). Courts therefore construe contractual restraints on professional liberty narrowly.

II. Statutory Framework under the Indian Contract Act, 1872

Section 27 of the *Indian Contract Act, 1872* provides:

“Every agreement by which anyone is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void.”

The language is absolute—voiding both total and partial restraints—except where the restriction falls within the single statutory exception concerning the **sale of goodwill**. This approach departs from English common law’s “rule of reason,” adopting instead a bright-line rule favouring market freedom. The statutory bar is reinforced by constitutional protection of occupational liberty under Article 19(1)(g).

III. Judicial Interpretation of Non-Compete Clauses

Indian jurisprudence distinguishes between **during-employment restraints**, which are generally valid, and **post-employment restraints**, which are void. In *Niranjan Shankar Golikari v. Century Spg. & Mfg. Co. Ltd.*¹, the Supreme Court upheld a negative covenant barring an employee from working for competitors during his five-year contract, holding that such a clause merely ensured fidelity during service.

By contrast, in *Superintendence Co. of India v. Krishan Murgai*², a two-year post-employment restriction was struck down as an unlawful restraint of trade; the Court refused to import a “reasonableness” test into Section 27. The ruling in *Percept D’Mark (India) Pvt. Ltd. v. Zaheer Khan*³ reaffirmed this absolute approach, holding that post-term covenants were void unless they protected goodwill or trade secrets.

III-A. Protection of Trade Secrets and Confidential Information

Although Section 27 invalidates restraints on trade, Indian courts have consistently recognized that **confidentiality and trade-secret obligations** stand apart from prohibitions on competition. These duties flow both from contract and from equity: they protect property, not restrict livelihood.

In *Burlington Home Shopping Pvt. Ltd. v. Rajnish Chibber*⁴, the Delhi High Court restrained a former employee from misusing a confidential customer database, holding that the list was proprietary information whose unauthorized use breached an implied duty of confidence.

Similarly, in *Diljeet Titus, Advocate v. Alfred A. Adebare & Ors.*⁵, the Court held that client lists and drafts prepared under an advocate's supervision belonged to the firm and were protected by continuing confidentiality under **Rule 17 of the Bar Council of India Rules** and **Section 126 of the Indian Evidence Act, 1872**.

The Calcutta High Court in *Embee Software Pvt. Ltd. v. Samir Kumar Shaw*⁶ extended the principle to proprietary software, enjoining ex-employees from using confidential technology to solicit clients.

Together these cases illustrate that **protection of trade secrets is not a restraint of trade**. Employers may not prohibit competition per se, but they may lawfully prevent the exploitation of confidential information gained during employment. This principle underpins modern use of NDAs, IP-assignment clauses, and limited non-solicitation covenants—each enforceable as a legitimate protective mechanism consistent with Section 27.

IV. Exceptions: Sale of Goodwill and Commercial Reasonableness

Section 27's sole statutory exception permits restraints that are ancillary to the **sale of goodwill**, provided they are reasonable in duration, territory, and scope. In *Affle Holdings Pte Ltd. v. Saurabh Singh & Ors.*⁷, the Delhi High Court upheld a 36-month non-compete clause linked to the sale of business goodwill. Conversely, *Le Passage to India Tours & Travels Pvt. Ltd. v. Deepak Bhatnagar*⁸ struck down a five-year global restraint as disproportionate.

Commercial non-competes between parties of equal bargaining power have received greater tolerance. In *Gujarat Bottling Co. Ltd. v. Coca-Cola Co.*⁹, the Supreme Court sustained a limited non-compete in a bottling agreement, reasoning that it was necessary to protect franchise interests.

Merger Control and Competition Commission Perspective

The **Competition Commission of India (CCI)** has provided regulatory clarity on non-compete clauses in merger transactions. Its **2017 Guidance Note on Non-Compete Clauses in Combination Transactions**¹⁰ stated that such restraints are permissible when they are "*directly related and necessary to the implementation of the combination.*" The CCI indicated that durations of **two to three years**, confined to the same product or geographic market, are generally reasonable.

With the **2020 Amendment to the Combination Regulations**¹¹, the CCI removed the obligation to pre-justify non-compete clauses in merger filings, shifting to a **self-assessment regime** while retaining authority to challenge excessive restraints under Sections 3 and 4 of the *Competition Act, 2002*.

This approach aligns with the **European Union's Notice on Ancillary Restraints**¹², which similarly permits non-competes proportionate to the transferred business. Indian practice thus reflects a pragmatic, convergence-based understanding that ancillary, transaction-specific restraints—when proportionate—preserve investment value and do not violate the policy of free competition underlying Section 27.

V. Garden Leave Clauses and Modern Alternatives

Because post-employment non-competes are largely unenforceable, Indian employers use **garden leave** provisions during notice periods to protect sensitive data. The employee remains on payroll but is asked not to perform duties or join competitors until termination takes effect.

In *VFS Global Services Pvt. Ltd. v. Suprit Roy*¹³, the Bombay High Court invalidated a clause extending beyond employment. However, in *M/s Kuoni Travel (India) Pvt. Ltd. v. Ashish Kishore*¹⁴, a three-month paid garden leave was upheld as reasonable since the employee was still drawing salary and benefits.

Such clauses, when limited and paid, operate as lawful tools distinct from post-employment restraints. Combined with NDAs and non-solicitation agreements, they represent a balanced method of safeguarding legitimate business interests without violating Section 27.

VI. Conclusion and Policy Perspective

Indian law on non-compete covenants reflects a delicate equilibrium between **freedom of occupation** and **protection of proprietary interests**. Courts distinguish between valid in-term restraints and void post-employment restrictions, yet accept reasonable covenants tied to goodwill, trade secrets, or transaction value.

Recent CCI guidance and global merger-control parallels mark a gradual move from rigid prohibition to **contextual proportionality**, balancing public policy with commercial necessity.

The jurisprudence thus evolves from “restraining competition” toward “preserving confidentiality and goodwill”—a principle increasingly vital in India’s knowledge-driven economy.

Footnotes

1. *Niranjan Shankar Golikari v. Century Spg. & Mfg. Co. Ltd.*, (1967) 2 SCR 378 (India).
2. *Superintendence Co. of India v. Krishan Murgai*, (1981) 2 SCC 246 (India).
3. *Percept D’Mark (India) Pvt. Ltd. v. Zaheer Khan*, (2006) 4 SCC 227 (India).
4. *Burlington Home Shopping Pvt. Ltd. v. Rajnish Chibber*, 1995 SCC OnLine Del 746 (India).
5. *Diljeet Titus, Advocate v. Alfred A. Adebare & Ors.*, 2006 SCC OnLine Del 551 (India); Bar Council of India Rules, r. 17; Indian Evidence Act, No. 1 of 1872, § 126 (India).
6. *Embee Software Pvt. Ltd. v. Samir Kumar Shaw*, 2014 SCC OnLine Cal 17374 (India).
7. *Affle Holdings Pte Ltd. v. Saurabh Singh & Ors.*, 2015 SCC OnLine Del 6765 (India).
8. *Le Passage to India Tours & Travels Pvt. Ltd. v. Deepak Bhatnagar*, 2014 SCC OnLine Del 259 (India).
9. *Gujarat Bottling Co. Ltd. v. Coca-Cola Co.*, (1995) 5 SCC 545 (India).
10. Competition Comm’n of India, *Guidance Note on Non-Compete Clauses in Combination Transactions* (2017).
11. Competition Comm’n of India (Procedure in regard to the Transaction of Business relating to Combinations) Amendment Regulations, 2020 (India).
12. Comm’n of the European Communities, *Notice on Ancillary Restraints*, 2005 O.J. C 56/24.
13. *VFS Global Servs. Pvt. Ltd. v. Suprit Roy*, 2007 SCC OnLine Bom 1083 (India).
14. *M/s Kuoni Travel (India) Pvt. Ltd. v. Ashish Kishore*, 2007 SCC OnLine Bom 1604 (India).