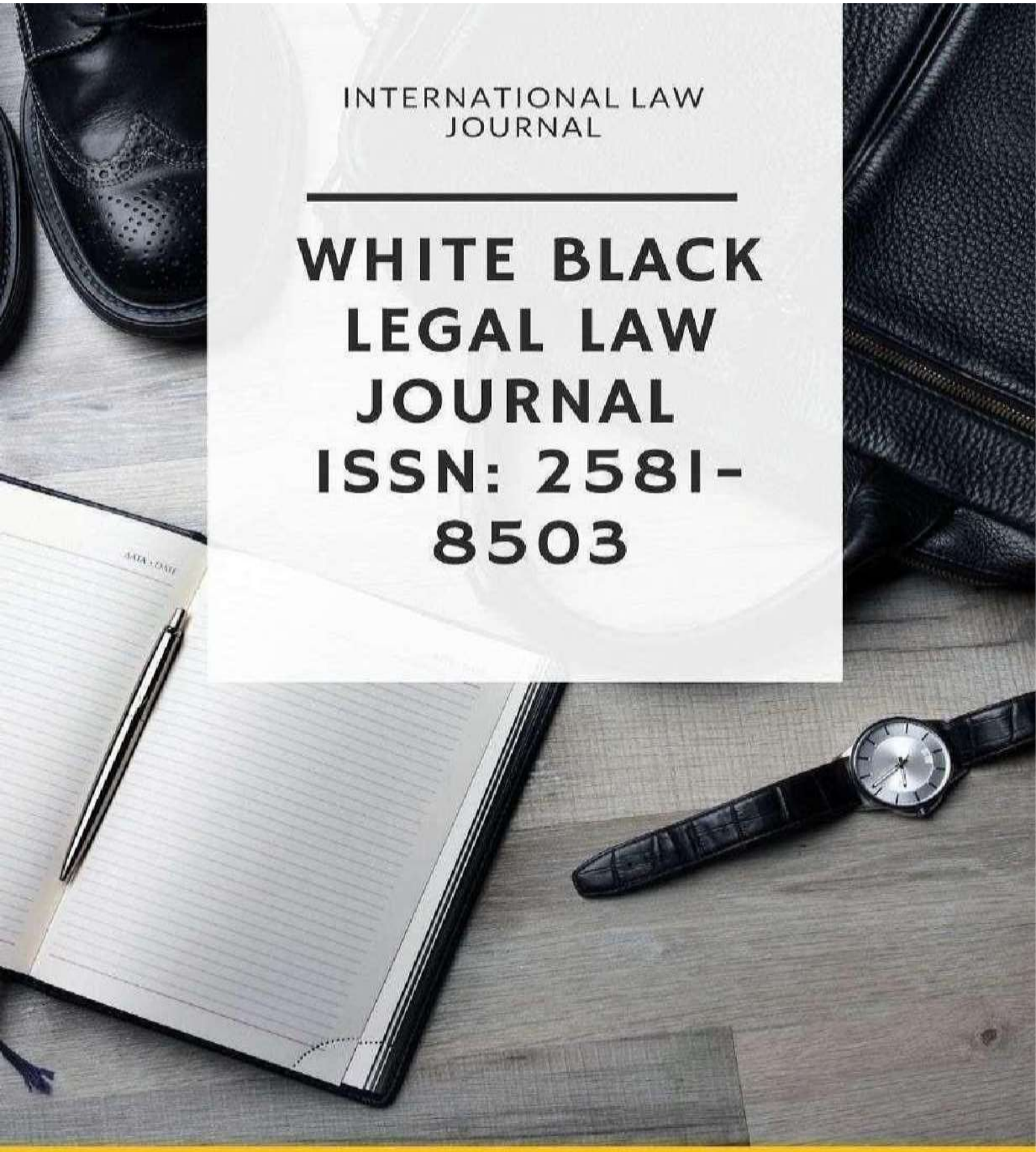

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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

NON COMPETE CLAUSE IN INDIAN CONTRACTS

AUTHORED BY - PRANAV S. JAGTAP

Abstract:

Non-compete clauses have become increasingly prevalent in employment contracts across various industries, aiming to protect a company's trade secrets, client relationships, and competitive advantage. However, the enforcement of such clauses presents a myriad of legal challenges, often entangling employers and employees in complex litigation. This abstract provides a concise overview of the significant legal hurdles encountered in enforcing non-compete agreements.

Firstly, courts scrutinize the reasonableness of non-compete clauses, assessing their geographical scope, duration, and the extent of restriction on the employee's ability to seek alternative employment. Determining reasonableness involves a delicate balance between protecting legitimate business interests and safeguarding employees' rights to pursue gainful employment.

Secondly, courts consider the adequacy of consideration provided in exchange for agreeing toa non-compete clause. In many jurisdictions, mere continued employment is deemed insufficient consideration, necessitating additional benefits or compensation to render the clause enforceable.

Thirdly, the enforceability of non-compete clauses may be contingent upon the classification of employees. Courts often distinguish between executives, key employees, and ordinary workers, applying different standards of scrutiny based on the individual's level of responsibility and access to sensitive company information.

Fourthly, courts examine whether enforcement of a non-compete clause would unduly restrain trade or harm the public interest. In certain cases, clauses that excessively limit competition or impede innovation may be deemed unenforceable as contrary to public policy

Moreover, the extraterritorial application of non-compete clauses raises jurisdictional challenges, especially in cases involving employees working across state or international borders. Conflicting laws and judicial interpretations further complicate enforcement efforts, necessitating careful consideration of choice-of-law provisions in employment contracts.

Introduction:

Non-compete clauses, commonly integrated into employment contracts, serve as vital instruments for safeguarding a company's proprietary information, client base, and competitive edge. However, the enforcement of these clauses presents a multifaceted array of legal challenges, navigating which requires a nuanced understanding of contractual law, employment statutes, and judicial precedents.

In recent years, the proliferation of non-compete agreements across diverse industries has sparked debates regarding their fairness, reasonableness, and impact on labor mobility and innovation. As such, courts have increasingly scrutinized the enforceability of these clauses, balancing employers' legitimate interests against employees' rights to pursue gainful employment.

This introduction sets the stage for a comprehensive examination of the legal challenges inherent in enforcing non-compete clauses. By delving into the intricacies of contractual interpretation, considerations of public policy, and jurisdictional complexities, this analysis aims to shed light on the evolving landscape of non-compete litigation and provide insights for employers, employees, and legal practitioners alike.

Through a systematic exploration of key legal principles and emerging trends, this study seeks to elucidate the factors that influence the enforceability of non-compete clauses and offer practical guidance for navigating the complexities of this contentious area of employment law. As businesses increasingly rely on non-compete agreements to protect their proprietary interests, a nuanced understanding of the legal challenges involved is essential for fostering fair and equitable employment practices while preserving the integrity of the competitive marketplace.

Objectives

1. Assessing the Reasonableness Standard: To evaluate the reasonableness of non-compete clauses in terms of geographical scope, duration, and restrictions imposed on employees, thereby understanding the threshold for enforceability.

2. Analyzing Consideration Requirements: To examine the adequacy of consideration provided in exchange for agreeing to non-compete clauses, including assessing whether continued employment constitutes sufficient consideration under relevant jurisdictional laws.

3. Classifying Employees: To distinguish between different categories of employees based on their level of responsibility, access to confidential information, and key roles within the organization, and to understand how classification impacts the scrutiny and enforceability of non-compete clauses.

4. Evaluating Public Policy Implications: To assess whether the enforcement of non-compete clauses aligns with public policy objectives, including considerations of competition, innovation, and the broader societal interests served by labor mobility.

5. Addressing Jurisdictional Challenges: To navigate the complexities of jurisdictional issues arising from the extraterritorial application of non-compete clauses, including conflicts of lawand choice-of-law provisions, to determine the appropriate legal framework for enforcement.

6. Applying Equitable Doctrines: To consider equitable doctrines such as unclean hands, laches, and estoppel in evaluating the enforceability of non-compete clauses, ensuring fairness and equity in legal proceedings.

7. Identifying Emerging Trends: To stay abreast of evolving legal precedents, legislative developments, and judicial interpretations pertaining to non-compete clauses, enabling proactive management of legal risks and compliance obligations.

8. Providing Practical Guidance: To offer practical advice and strategic recommendations for employers, employees, and legal practitioners on drafting, negotiating, and litigating non-compete agreements in a manner that balances competing interests and fosters fair employment practices.

9. Promoting Legal Certainty: To contribute to the development of clear and consistent legal standards for enforcing non-compete clauses, promoting predictability and certainty in contractual relationships and judicial outcomes.

10. Enhancing Legal Awareness: To raise awareness among stakeholders about the legal complexities and implications associated with non-compete clauses, fostering informed decision-making and promoting dialogue on best practices and ethical considerations inemployment law.

Scope and Limitations Scope:

1. Legal Frameworks: Examination of legal principles and statutes governing non-compete clauses in various jurisdictions, including common law doctrines, statutory regulations, and judicial interpretations.

2. Contractual Analysis: Analysis of non-compete clauses within the broader context of employment contracts, including consideration of drafting nuances, contractual ambiguity, and the interplay with other contractual provisions.

3. Case Studies: Review of landmark court cases and legal precedents involving the

enforcement (or lack thereof) of non-compete clauses, illustrating key legal challenges and evolving trends in jurisprudence.

4. Comparative Analysis: Comparative study of non-compete laws and enforcement practices across different jurisdictions, highlighting variations in legal standards, judicial approaches, and legislative frameworks.

5. Stakeholder Perspectives: Examination of the perspectives and interests of employers, employees, legal practitioners, and policymakers concerning the enforceability of non- compete clauses, including ethical considerations and societal implications.

6. Emerging Trends: Identification of emerging legal trends, legislative developments, and judicial decisions shaping the landscape of non-compete enforcement, with a focus on implications for future legal challenges and strategic considerations.

Limitations:

1. Jurisdictional Variations: Limitations stemming from differences in legal systems, statutory frameworks, and judicial interpretations across jurisdictions, necessitating a focusedanalysis on select jurisdictions or general principles rather than exhaustive coverage of all legal regimes.

2. Evolving Legal Landscape: Limitations associated with the dynamic nature of non- compete law, as legal standards and enforcement practices may evolve over time due to legislative changes, judicial decisions, or shifts in societal attitudes, requiring regular updates and ongoing monitoring.

3. Access to Legal Resources: Constraints related to access to comprehensive legal databases, court records, and up-to-date legal commentary, which may impact the depth and breadth of the analysis conducted within this scope.

4. Practical Realities: Limitations inherent in the application of legal principles to real-world scenarios, including factors such as case-specific facts, strategic considerations, and thediscretion exercised by judges in individual cases, which may influence outcomes unpredictably.

5. Ethical Considerations: Limitations arising from ethical considerations surrounding the enforcement of non-compete clauses, including concerns related to employee rights, economic fairness, and social welfare, which may require nuanced analysis beyond purely legal considerations.

6. Interdisciplinary Factors: Limitations stemming from the interdisciplinary nature of non-compete enforcement, including overlaps with areas such as employment law, intellectual property law, antitrust regulation, and labor economics, which may necessitate collaboration with experts from diverse fields for comprehensive analysis.

RESTRAINT OF TRADE [S. 27]

S. 27. Agreement in restraint of trade void. — Every agreement by which any one isrestrained from exercising a lawful profession, trade or business of any kind, is to that extent void.

Exception 1. — Saving of agreement not to carry on business of which goodwill is sold.

One who sells the goodwill of a business may agree with the buyer to refrain from carrying on a similar business, within specified local limits, so long as the buyer, or any person deriving title to the goodwill from him, carries on a like business therein:

Provided that such limits appear to the Court reasonable, regard being had to the nature of the business.

Protection of freedom of trade and commerce

Freedom of trade and commerce is a right protected by the Constitution of India. Just as the Legislature cannot take away individual freedom of trade, so also the individual cannot barterit away by agreement. "The principle of law is this: Public policy requires that every manshall be at liberty to work for himself, and shall not be at liberty to deprive himself or theState of his labour, skill or talent, by any contract that he enters into."[1] "Every man should have unfettered liberty to exercise his powers and capacities for his own and the community's benefit."[2] Section 27, therefore, declares in plain terms 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]

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[1]Per JAMES VC in Leather Cloth Co v Lorsont, (1869) LR 9 Eq 345, 354: 39 LJCh 86

[2].Vancouver Malt & Sake Brewing Co Lov Vancouver Breweries Ltd, (1934) 39 LW 618:AIR1934 PC 101

[3]Electrostel Castings Led y Saw Pipes Ltd, (2005) 1 CHN 612, the words "lawful AIR 1934 PC 101.

All restraints covered whether partial or general

Madhub Chander v Raj Coomar is the first case in which the scope of the section came up for consideration before the Calcutta High Court.

The plaintiff and the defendant were rival shopkeepers in a locality in Calcutta. The defendant agreed to pay a sum of money to the plaintiff if he would close his business in that locality. The plaintiff accordingly did so, but the defendant refused to pay.

The plaintiff sued him for the money contending that the restraint in question was only partialas he was restrained from exercising his profession only in one locality and that suchrestraints had been upheld in English law. CoucH J, however, held the agreement to be void and laid down: The words"restrained from exercising a lawful profession, trade or business", do notmean an absolute restriction, and are intended to apply to a partial restiction, a restriction limited to some place.

The learned judge drew support from the use of the word "absolutely» in Section 28, which deals with restraint of legal proceedings. As this word is absent from Section 27, therefore, he concluded, that it was intended to Prevent not merely a total restraint but also a partial restraint. This interpretation of the section has been generally accepted. "The section has abolished the distinction between partial and total restraints of trade. Whether the restraint is general or partial, unqualified or qualified, if the agreement is in the nature of a restraint of trade, it is void." Thus, an agreement to close a mill for 3 months in a year,[4] andan agreement that one party would sell beef for 14 days in a month and the other for the restof the month,[5]have been held void.

Developments in English Law

In England the law relating to restraint of trade was elaborately considered by the House of Lords in Nordenfelt v Maxim Nordenfelt Guns & Ammunition Co[6]

The case involved a sale of goodwill by an inventor and a manufacturer of guns and ammunition who agreed with the buyer company: (1) not to practise the same trade for 25

[4]Khemchand Manekchand v Dayaldas Bassarmal, AIR 1942 Sind 114.

[5]Mohammad v Ona Mohd Ebrahim, AIR 1922 Upper Burma 9.

[6]1894 AC 535.

years, and (2) not to engage in any business competating liable to compete in any way with business for the time being carried on by the the company.

It was held that first part of the agreement was valid being reasonably necessary for the protection of the purchaser's interest. But the rest of the covenant by which he was prohibited from competing with the company in any business that the company might carry on was held as unreasonable and, therefore, void. Lord MACNAGHTEN laid down: "The public have an interest in every person's carrying on his trade freely: so has the individual. All interference with individual liberty of action in trading, and all restraints of trade of themselves, if there is nothing more, are contrary to public porlicy and, therefore, void. That is the general rule. But there are exceptions. Restraint of trade... may be justified by the special circumstances of a particular case. The only justification is that the restriction should be reasonable reasonable inreference to the interest of the parties and reasonable in reference to the public interest. The restriction should be so framed and guarded as to afford adequate protection to the party in whose favour it is imposed while at the same time it is in no way injurious to the public."

General principle in India and England same

Thus both in England and in India the general principle is the same, namely, that all restraintsof trade whether partial or total, are void.[7] The only difference is that in England a restriction will be valid if it is reasonable.In India it will be valid if it falls within any of the statutory, or judicially created exceptions. To the extent to which these exceptions are an embodiment of the situations in which restraints have been found reasonable in England, the two laws are identical and not "widely dissimilar" The English law may be a little more flexible as the word "reasonable" enables the courts to adapt it to changing conditions. As Lord WILBERFORce remarked in Esso Petroleum Co Ltd v Harper's Garage (Stourport) Ltd23 "the classification (of agreements in restraint of trade) must remain fluid and the categories can never be closed". The following passage in a judgment of the Supreme Court-24 shows the effect of absence of the test of "reasonableness": "The question of reasonableness of restraint is outside the purview of Section 27 of the Contract Act and need not be gone into. Therefore, the present case has to be proceeded on the basis that an enquiry into

[7]Chitty on CONTRACT (GENERAL PRINCIPLES) (21st Edn) 481-82, where the learned writer

says that "allcontracts in restraint of trade are prima facie void, unless they are reasonable." For Indian authority see PIGOTand McPHELSON JJ in Nur AliDubash v Abdul ali, ILR (1992) 19 Cal 765,773,S.27 does away with the distinction between partial and total restraints of trade.

reasonableness of the restraint is not envisaged by Section 27. On that view, instead of being required to consider two questions as in England, the courts in India have

"Profession, trade or business"

But the Indian courts have not been rendered entirely sterile in the matter.[8] Thus, forexample, where it was necessary to do so, the High Court of Kutch regarded an agreement to monopolise the privlice of performing religious services in a village as being opposed to public policy and void undet Section 27 though it may be doubted whether the words"profession, trade or business" as used in the section were intended to cover the religious services of a priest. On the other hand, the Allahabad High Court in Pothi Ram v Islam Fatima upheld as valid a restrictive covenant on the ground that the activity restrained was not in the nature of "profession, trade or business".

Two landlords in the same neighbourhood, in order to avoid competi-tion, agreed that a market for sale of cattle shall not be held on the same day on the lands of both of them.

The High Court said: "It seems to us that a landlord who in return for tolls or fees, allows a cattle market to be conducted on his land is not thereby exercising trade or business of sellingcattle. He is only a landholder and an agreement on his part not to use the land on a certain day for a certain purpose does not amount to restraint of 'profession, trade or business."

The strange contrast in these two cases is that while letting out land for commercial purposes is not a "profession, trade or business", the performance of religious services is.

The Madras High Court took the lead provided by the Allahabad High Court and came to the conclusion that submission of tenders for the purpose of obtaining a contract is not "a trade or calling"[9]

A postal authority invited tenders for licence for carrying mails.

[8]Sandhya Organic Chemicals P Ltd v United Phosphorus Ltd, AIR 1997 Guj 177, where the court

observed thatthe principles of English common law can be used where the statutory provisions cannot be understood withoutthe aid of English law, but not beyond that.

[9] Mohd Isack v Daddapaneni, AIR 1946 Mad 289.

The plaintiff, a bus owner, abstained from tendering on the promisis. the defendant, another bus owner, to pay him some money. The latter obtained the contract but refused to pay the money.

The court said that tendering to obtain a contract is not in the nature of a trade or calling. The court compared the case with an agreement between intending bidders and said that such an agreement was considered as being not opposed to public policy in a few previous cases Special stress was laid upon a decision of the Privy Council where it was held that a court sale by public auction does not become void if a person had deterred others from bidding But, it is submitted with respect, that the decision is not an authority for the proposition that the collusion agreement between the bidders is itself valid and enforceable. In the United States such agreements have been held illegal.

When the Madras High Court faced a problem of this kind again in a subsequent case, it reluctantly held that "the precedents are far too numerous to be got over, even if one shouldbe disposed to disagree with the underlying reasoning therein". The facts were that on an auction sale of fishery, the villagers colluded that only one of them shall bid for all of them and thereby the public authority was misguided as to the real value of the fishery. The agreement between the villagers was held to be valid.

All these matters had subsequently to be taken in the light of the provision in Section 33(1)(ib) of the Monopolies and Restrictive Trade Practices Act, 1969 [now repealed] to the effect that an agreement as to making of bids, or excluding a person from bidding, at an auction for sale of goods, shall be a restrictive trade practice and, therefore, void unless it wasnecessary in public interest as spelled out in Section 38 of that Act. Now by the virtue of this clause, such collusive agreements can be held to be void unless they are necessary in public interest within the meaning of Section 38. The clause is wide enough to cover cases of secret agreements as to participation an auction according to preplanned terms.

Restrictions for long period

The principle of the Nordenfelt case was applied by the House of Lords in McEllistrim v Ballymacelligott Coop Agricultural & Diary Society[10] where an agreement contained in the rules of a society by which a former member agreed that for an unlimited time he would sell all the milk he produced to a creamery run by the society was held to be invalid. The doctrine

[10] 1919 AC 548 (HL).

of restraint of trade has been reconsidered by the House of Lords in Esso Petroleum Co Ltd v Harper's Garage (Stourport) Ltd.[11] In this case, their Lordships struck down an exclusive dealing agreement because it extended to a period of 21 years, which was unreasonable. A five-year period would have been held to be reasonable. In holding that the doctrine appliedto exclusive dealing agreements they opened up the possibility that it might be extended to every sort of contract because all contracts must need involve a restraint of some sort. They said that the doctrine applied only if a man contracted to give up some existing freedomwhich he had.

Restriction upon use of trade mark

A restraint upon the use of a trade mark does not attract Section 27, it being not a restriction upon carrying on any trade or business. The trade mark was the subject-matter of the dispute.

Restrictions in lease

Restrictions contained in a lease agreement as to the uses to which the premises can be put and what business would be done and in what name and style have been held to be not violative of Section 27.

EXCEPTIONS

There are two kinds of exceptions to the rule, those arising from judicial interpretation of Section 27.

Statutory exceptions

1. Sale of goodwill

The only exception mentioned in the proviso to Section 27 of the Contract Act is that relatingto

sale of goodwill. It is thus stated:

[11] 1968 AC 269: (1967) 2 WLR 871 (HL).

One who sells the goodwill of a business may agree with the buyer to refrain from carrying on a similar business, within specified local limits, so long as the buyer, or any person deriving title to the goodwill from him, carries on a like business therein:

Provided that such limits appear to the court reasonable, regard being had to the nature of the business.

Apparently the object is to protect the interest of a purchaser of goodwill."It is difficult to imagine that when the goodwill and trade of a retail shop were sold, the vendor might thenext day set up a shop within a few doors and draw off all customers.[12]"Therefore, some restriction on the liberty of the seller becomes necessary. Indeed, the restriction is the only "means by which a saleable value is given to the goodwill of a business".[13]Far from being adverse to public interest, the restriction, by giving a real marketable value to the goodwill of a business, operates as an additional inducement to individuals to employ their skills and capital in trade and thus tend to the advantage of public interest.

MEANING OF GOODWILL. —There should be a real goodwill to be sold.

"Goodwill" being an abstract property, is not easy to define. In the words of Lord ELDON:

The goodwill which has been the subject of sale is nothing more than the probability that the old customer will resort to old place.

But in the opinion of Lord MACNAGHTEN, as expressed in a subsequent case, goodwill means much more than this: Often it happens that goodwill is the ety sap and life of the business. It is the whole advantage, whatever it may be, of the reputation and connection of firm, which may have been built up by years of honest work or gained by lavish expenditure of money.

These opinions were adopted by the judicial Committee in an appeal from a decision of the Calcutta High Court.

[12] Lcd MACNACHTEN in Ann Trego v George Stratford Hunt, 1896 AC 7, 23 citing PLUMBER VC inHarrison v W. Gardner, 369 F 2d 172

[13]D.W. Auchterlonie v Charles Bell, (1868) 4 Mad HCR 77, 79.

The plaintiff and the defendant were carrying on business as carriers of passengers by boats. The plaintiff sold his business to the defendant for a sum of money and agreed to abstainfrom carrying on a boat business there for a period of three years.

The suit was brought to recover the promised sum. Allowing the plaintiffs action Lord Haldane said: "Their Lordships entertain no doubt that what took place was the sale of goodwill within the meaning put on the expression in such cases as Irego v Hunt."

Where the aim of an agreement is prevention of competition, it will be void even if its nakedness is concealed behind the "imposing facade of a sale" of goodwill. An attempt of thiskind was in evidence in Vancouver Malt & Sake Brewing Co Ltd v Vancouver Breweries Ltd.[14]

A company was licensed to manufacture liquor and beer but it confined its business to produce only 'sake, a Japanese liquor made from rice. Its only customer was the Government.It entered into an agreement with another wine and beer manufacturing company by which it sold its business and goodwill of manufacturing wine and beer, but not the right to produce sake.

The agreement was held to be devoid of any content. "The only business in which it was engaged was the brewing of sake, and the goodwill of its licence so far as relating to sake wasexpressly excluded from sale. It had no goodwill to sell so far as regards the brewing of beer. Nothing has been sold. It is simply a case of the appellant undertaking to the respondent in consideration of a sum of money that it will not for 15 years carry on a particular branch of business. If there was any sale, it was a sale by the appellant of its liberty to brew beer and a purchase by the respondent of protection against the possible competition of the appellant in the brewing of beer." Lord MAcMILLAN then referred to the judgment of Lord Chancellor BIRKENHEAD in McEllistrim v Ballymacelligott Coop Agricultural & Dairy Society, that "the respondents were not entitled to be protected against mere competition", and continuedto say that "covenants restrictive of competition which have been sustained have all been ancillary to some main transaction, and have been found justified because they were reasonably necessary to render that transaction effective.

[14]248. 1934) 39 LW 618: AIR 1934 PC 101.

LIMITS OF RESTRAINT. — The agreement has to specify the local limits of the restraint. The seller can be restrained within certain territorial or geographical limits and the limits must be reasonable. Reasonableness of the goodwill is effectively enjoyed and the price paid for it.restrictions will depend upon many factors, for paim, the area in which The seller can only be restrained from usins sond is milar business and also only for such period for which the business sot is actually carried on else by the buyer or by any person deriving title to the goodwill from him.

2. Partnership Act

There are four provisions in the Partnership Act which validate agreements in restraint of trade. Section 11 enables partners during the continuance of the firm to restrict their mutual liberty by agreeing that none of them shall catry on any business other than that of the firm.Section 36 enables them to restrain an outgoing partner from carrying on a similar business shal in specifepetic on within specified local limits. Such agreement shall be valid if the restrictions imposed are reasonable. A similar agreement may be made by partners upon or in anticipation of dissolution by which they may restrain each other from carrying on a business similar to that of the firm.

It is necessary for the validity of a restraint under Section 36 or 54 that

(1) the agreement should specify the local limits or the period of restraint, and

(2) the restriction imposed must be reasonable.

An agreement by a retiring partner not to carry on similar business on the land belonging to him and adjoining the factory of the firm, has been held to be reasonable and binding on the persons buying the land from him.

Under judicial interpretation

1. **Trade combinations**

It is now almost a universal practice for traders or manufacturers in the same line of business to carry on their trade in an organised way. Thus, there are combinations of ice manufacturers, grain merchants, sugar pro-ducers, etc. The primary object of such associations is to regulate business and not to restrain it. Combinations of this kind are often desirable in the interest of trade itself and also for the promotion of public interest.

They bring about standardised goods, fixed prices and eliminate ruinous competition. Thus, "regulations as to the opening and closing of business in the market, licensing of traders, supervision and control of dealers and the mode of dealing are not illegal,[15]"even if there is incidental deprivation of trade liberty. But the courts would not allow a restraint to be imposed disguised as trade regulations. Thus, an agreement between certain persons to carry on business with the members of their caste only,[16] and an agreement to restrict the business of a sugar mill within a zone allotted to it, have been held void. An agreement between two companies that one would not employ the former employees of the other has been held to be void by reason of its generality. This was the situation in Kores Mfg Co Ltd v Kolok Mfg Co Ltd.

Both companies were engaged in manufacturing similar products involving technical processes in which the employees were likely to acquire knowledge of trade secrets and confidential information. The companies agreed that neither would employ, without thewritten consent of the other, any person who had been the employee of the other for any time during the previous five years.

Though the agreement was between two employers who were dealing at arm's length and on equal terms, it was held to be void. It prohibited the appointment of any person by any one company or the other who had been in the service of one or the other for any period, however short, and in any capacity, however humble. The ban was applicable as much to an unskilled manual labourer who might have been employed even for a single day as to a highly skilled and long-term employee, as much to a dismissed servant as to one who might have resigned; as much to a lay employee as to one who might have acquired confidential knowledge.

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[15]Municipal Committe, Khurai v Firm Kaluram Hiralal, AIR 1944 Nag 73

[16] Vaithelinga v Saminada, ILR (1872) 2 Mad 44.

Agreements as to regulation of prices and output are generally upheld as valid. Thus in a Bombay case:

Four ginning factories entered into an agreement fixing uniform rate for ginning cotton, and pooling their earnings to be divided between them in certain proportions.

The action was for division of profits and there being nothing in the agreement against Section 27, it was allowed.

Referring to the other part of the agreement, which fixed uniform rates, FARREN C said that an agreement of this description whereby traders agree amongst themselves to sell their waresat a fixed price, or labourers so agree to labour only at the stipulated wage have in the Englishcourts usually been

held void. But CANDY J disagreed with him. He believed that the apparent object was to prevent competition,

The question again arose in S. B. Fraser & Co v Bombay lee M/s Co[17] An agreement berween certain ice manufacturers fixed the minimum price for sale of ier, the proportion of the manufacture which ench was to bear and of profits which each was to receive, some of them were restrained from selling at Poona and some others at steamers.

Russel J held that the agreement was not within the terms of Section 27, the whole object being to regulate business and not to restrain it,[18]

The Allahabad High Court faced the problem in Bhola Nath Shankar Das v Lachmi Narain,

The rules of an association of traders and weighmen provided that members shall not deal with outsiders, the penalty for breach being fine and expulsion. The legality of the associationwas attacked on the ground that its objects and methods were unlawful as it aimed at the creation of a monopoly by shutting out all competition and was a defiance of the spirit of Sections 23 and 27.

Rejecting this contention, SEN J quoted Baron ALDERSON in Hilton v Eckersley

[17] ILR (1904) 29 Bom 107,

[18] The learned Judge elted a number of decisions from the United States in which it has been held thatcompetition is not always a public benefaction. See at pp. 30-31 of 6 Bom LR 1904.

as saying: "prima facie it is the privilege of a trader in a freecountry in all matters not contrary to law, to regulate his own mode of carrying it on according to his own discretion and choice. "

2. Solus or exclusive dealing agreements

Another business practice in vogue is that a producer or manufacturer likes to market his goods through a sole agent or distributor and the latter agrees in turn not to deal with the goods of any other manufacturer. A producer may, or example, agree to sell all his output to one consumer who, in turn, agrees not to buy his requirements from any other source. Aslong as the negative stipulation is nothing but an ordinary incident of or ancillary to the positive covenant, there is hardly anything obnoxious to Section 27 indeed in one sense, every agreement for sale of goods whether in esse or in posse is a contract in restraint of self trade for, if AB agrees to sell goods o Co, hé precludes himself from selling them to anybody else". Thus, an Agreement by a manufacturer of dhotis to supply 1,36,000 pairs of certain description to the defendant and not to sell goods of that kind to any other person for a fixed period,[19] an agreement by a person to sell all the salt manufactured by him to a firm for five years;"[20] an agreement by a person to send all the mica produced by him to the plaintiffs, and not to send them to any other firm, nor to keep any in stock? and an agreement by a buyer of goods for Calcutta market, not to sell them in Madras, have all been hell to be ourside the scope of Section 27 and therefore valid. Such negative stipulations do not have the effect of restraining the manufacturer. "On the contrary, he is encouraged to exercise his business because he is assured of a certain market for the products of his labour."

But where a manufacturer or supplier, after meeting all the requirements of a buyer, has surplus to sell to others, he cannot be restrained from doing so.The buyer cannot restrain the seller from dealing with others unless he can acquire the whole stock during the period of the agreement. The court may not countenance the agreement particularly where the buyerintends to corner or monopolise the commodity so that he may resell at his own price or where he binds the seller for an unreasonable period of time. Thus, in Shuikh Kalu v Ram Saran Bhagat:

[19] Carlies Nephews & Co v Ricknauth Bucktermull, ILR (1882) 8 Cal 809

[20] Mackenzie v Striramiah, ILR (1890) 8 Mad 472.

A seller of combs entered into an agreement with all the manufacturers of combs in the city of Patna whereby the latter undertook during their lifetime to sell all their products to R.S., and to his heirs and not to sell the same to any one else.

Holding the agreement void under Section 27, the court said: "It bound the manufacturers from generation to generation; it was unrestricted both as to time and place; it was oppressive; it was intended to create a monopoly." The House of Lords has held that 21-year period of exclusive dealing would be unreasonably long. The case before their Lordships was Esso Petroleum Co Ltd v Harper's Garage (Stourport) Ltd.

Esso Co had an agreement with two garages which was to bind one for about four and a half years and the other for 21 years. During this period

They had to buy the whole of their requirements from esso and to operate the garages in accordance with essocooperation plan.The garage which tha bound for 21 years was also more 2 years and gainst a loan which was repayable in instalments lasting for 21 years and not earlier.

The House of Lords unanimously held that the agreement fell within the sphere to which the doctrine of restraint applies and the period of 21 years being not reasonable, it was void, but the tie with the other garage for four years and five months was reasonable. Lord PEARCE laid down: "The doc-tears does not apply to ordinary commercial contracts for the regulation and promotion of trade during the existence of the contract provided that agencies are a normal and necessary incident of commerce, and those who desire the benefit of a sole agency must deprive themselves the opportunities of other agencies. So too, in the case of a film star who may tie himself to a company in order to obtain from them the benefits of stardom."

Where a contract is reasonable and fair at the beginning, but circumstances have arisen which show that it is being enforced by one party in a manner which is prejudicial to the interest of the other, the courts will hold the agreement to be unenforceable, though not void or invalid. This opinion has been expressed by the Court of Appeal in Shell U.K. Ltd v Lostock Garages Ltd.

A petrol pump was tied to Shell for a period which the court found to be reasonable.Subsequently, on account of a sharp rise in petrol prices sales suffered and in order to counteract this, some of the petroleum companies encouraged their pumps to cut prices. The

Shell Company did not do so, but instead adopted a support plan to compensate their pumps for losses suffered by them in selling at competitive prices. This support plan did not apply toLostock because his sales had not suffered to the extent contemplated by the support plan. Lostock attempted to get supplies from other companies and an injunction was sought againsthim. No injunction was, however, granted.

Lord DENNING MR first remarked that "it is now settled beyond doubt that a solus agreement is a contract in restraint of trade. As such it comes within that special class in which the courts can investigate the terms of the contract and see whether they are fair and reasonable. If they are unfair and unreasonable, the courts may refuse to enforce them". His Lordship found that there was nothing unreasonable in the contract, it being only for five years A hat time the parties did not anticipate, it being would arise in which Shell would subsidise neighbouring garages to such an extent.

"His Lordship then laid down that the court should not enforce a covenant in restraint of tradeif circumstances afterwards arise in which it would be unreasonable or unfair to enforce it.

An agency for sale of the goods of a German company in India which carried a termrestraining the Indian company from selling goods for five years after the termination of the contract was held to be not enforceable. An agreement of this kind was okayed by the Supreme Court where it was confined to the currency of the agreement. The case before the court was Gujarat Bottling Co Ltd v Coca Cola Co.[21]

An agreement for grant of franchise by Coca Cola Co to Gujarat Bottling Co to manufacture, bottle, sell and distribute beverages under trade marks held by the franchiser contained the negative stipulation restraining the franchisee to "manufacture, bottle, sell, deal or otherwise be concerned with the products, beverages of any other brands or trade marks/trade names during subsistence of this agreement including the period of one year's notice". It was held that the negative stipulation was intended to promote the trade.

Moreover, operation of the stipulation was confined only to subsistence of the agreement and not after termination thereof. Hence stipulation could not be regarded as in restraint of trade.

The court proceeded as follows:

[21] (1995)5 SCC 545: AIR 1995 SC 2372: (1995) 84 Comp Case 618.

"A stipulation in a contract which is intended for advancement of trade shall not be regarded as being in restraint of trade. Similarly, except in cases where the contract is wholly one- sided, normally the doctrine of restraint of trade is not attracted in cases where the restriction is to operate during the period the contract is subsisting and it applies in respect of arestriction which operates after the termination of the contract."

"There is a growing trend to regulate distribution of goods and services through franchise agreements providing for grant of franchise by the franchiser on certain terms and conditions to the franchisee. Such agreements often incorporate a condition that the franchisee shall not deal with competing goods. Such a condition restricting the right of the franchisee to deal with competing goods is for facilitating the distribution of the goods of the franchiser and it cannot be regarded as in restraint of trade.

The agreement in question in this case was an agreement for grant of franchise by Coca Cola to GBC to manufacture, bottle, sell and distribute the various beverages for which the trade marks were acquired by Coca Cola. It was thus, a commercial agreement where under both the parties have undertaken obligations for promoting the trade in beverages for their mutual benefit. The purpose of the negative stipulation contained the agreement was that GBC will work vigorously and diligently co in there and solicit the sale of the verdicts be erases produced under those made marks of Coca Cola. This would not co possible if CBC were co the nature, bottle, sell, deal or otherwise be concerned with the prod. mas beverages or any other brands trade names. Thus, the purpose of the said agreement is to the trade and the negative stipulation to achieve the said purpose by requiring CBC 10 heartedly apply to promote the sale of the products of Coca Cola. Moreover, since the negative stipulation is confined in its application to the period of subsistence of the agreement and the restriction imposed therein is operative only during the period the agreement is subsisting, the said stipulation cannot be held to be in restraint of trade so as to attract the bar of Section 27 of theContract Act."

3. Restraints upon employees

Restraints during employment. - Agreements of service often contain negative covenants preventing the employee from working elsewhere during the period covered by the agreement. "Trade secrets, the names of customers, all such things which in sound philosophical language are denominated as objective knowledge these may not be given awayby a servant; they are his master's property, and there is no rule of public interest which

prevents a transfer of them against the master's will being restrained." A servant may,therefore, be restrained from taking part in any business in direct competition with that of his employer. Thus, in Charlesworth y MacDonald:

A agreed to become assistant for three years to B who was a physician and surgeon practisingat Zanzibar. The appointment was subject to the clause against practising. A left the service within a year and began to practise there on his own account.

Agreements for protection of confidentiality and trade secrets are not one-sided or unfair or unreasonable. Any breach of such clauses on the part of the employee can also be treated as a misconduct. The petitioner was in this case, after resignation, working for a competitor. The possibility of using the client lists and confidential information just cannot be ruled out.Though, there is no direct evidence on record but in view of the admitted breach and facts and circumstances the petitioner is liable to pay lump sum damages/compensation. It is clear breach of the agreed clauses as confidential information/data must had traversed out of the private domain to the competitor's domain through the petitioner. The sufferer needs to be compensated in view of the admitted breach itself. The element of breach relating

The defendant took employment as a weaving master in a mill and agreed not to serve in that capacity for three years for anyone else in any part of India. An injunction was granted to restrain him in terms of the agreement.

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(1890) 4 Mad 18; Subba Naidu v Haji Badsha Sahib, ILR (1902) 26 Mad 168; Burn 6 Co v Mcdonald, ILR (1909) 36 Cal 354; 9 Cal LJ 190. In this case an engineer Macdonald was brought by the company from England to work for them for five years. In case of his leaving employment earlier he was to pay damages of € 100. He left employment and refused to pay

damages. The Court did not permit him to continue his work with the new employer. The Court opined that the employee, could not act in such an overbearing manner. The C7. t proceeded on the illustrations (e) and (d) of 5. 57 of the earlier Specific Relief Act, 1877, R did not advert to S. 27 at all. Niranian Shankar Golikariv Century Spg Mf& Co Lid, AlR b67 SC 1098: (1967) 2 SCR 378, a restraint during five years' term of service, held 250m-abe. Numeric Power System 13, vMond.Muzaffar, 2006 SC OnLine Mad 697.12006)

4 LN 385, a negative coveman can be enforced during the continuance of the employment and it continues for this purpose till the employee is released. The stipulation in nation of tact that the ne ati his purpose till the employe is rele for one year after termination of complyment was ative chored Nair aricate Maroy So Co (India) asiable

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to confidential information with other elements of loss of profit, etc., just cannot be overlooked. As there is legal injury, it should be compensated. as RESTRAINTS AFTER TERMINATION OF EMPLOYMENT. - But an agreement to restrain a servant from competing with his employer after the termination of employment may not be allowed by the courts. Thus, in Brahmaputra Tea Co Ltd v E. Scarth,2where an attempt was made to restrain a servant

of their agreement is over, with their former employers within reasonable limits, are well known in English law, and the omission to make any such contract an exception to the general prohibition contained in Section 27 indicates that it was not intended to give them legal effect in this country!" The principles thus established have been approved by the Supreme Court in Niranjan Shankar Golikari v Century Spg & Mfg Co Ltd.

Conclusion

In conclusion, the enforcement of non-compete clauses in employment contracts presents a complex array of legal challenges that require careful consideration of various factors, including reasonableness, consideration, public policy, jurisdictional issues, equitable doctrines, and ethical considerations. Throughout this study, we have explored these challenges in-depth and provided insights into strategies for effectively navigating them.

One of the key findings of this study is the significance of reasonableness in determining the enforceability of non-compete clauses. Courts assess factors such as geographical scope, duration, and restrictions imposed on employees to ensure that these clauses strike a fair balance between protecting legitimate business interests and allowing employees the freedomto pursue alternative employment opportunities.

Consideration requirements also play a crucial role in non-compete enforcement, with courts scrutinizing whether adequate consideration, beyond mere continued employment, has been provided to employees in exchange for agreeing to these clauses. Employers must carefully structure non-compete agreements to ensure compliance with legal standards and maximize enforceability.

Furthermore, public policy considerations, such as promoting competition, innovation, and economic welfare, influence judicial decisions regarding non-compete enforcement. Courts weigh these factors alongside the parties' interests to arrive at equitable outcomes that serve broader societal objectives.

Jurisdictional challenges and conflicts of law add another layer of complexity to non-compete enforcement, particularly in cases involving cross-border employment arrangements. Legal practitioners must navigate jurisdictional variations and emerging trends to effectively advocate for their clients' interests and ensure enforceability across different legal regimes.

Equitable doctrines, including unclean hands, laches, and estoppel, may also impact non- compete enforcement by providing equitable defenses or remedies to parties involved in litigation. Understanding these doctrines and their implications is essential for both employers and employees in navigating legal challenges.

Finally, ethical considerations surrounding non-compete enforcement underscore theimportance of promoting fairness, equity, and respect for employee rights in employment

relationships. Stakeholders must adhere to ethical guidelines and best practices to uphold the integrity of non-compete agreements while safeguarding the interests of all parties involved.

In light of these findings, it is evident that addressing legal challenges in enforcing non- compete clauses requires a multifaceted approach that considers legal principles, jurisdictional nuances, ethical considerations, and practical implications. By understanding these challenges and adopting strategic measures to navigate them, stakeholders can promote fair and equitable employment practices while protecting legitimate business interests in today's dynamic and competitive marketplace.