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Restrictive Clauses in Employment Agreements – Legal Situation in India

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1. Introduction

When one joins a company as an employee, one is asked to sign a contract by the employer. As one reads through it, one notices a set of clauses labeled as "Non-disclosure" and another set called "Non-compete". These are what can be called as restrictive clauses. Some restrictive clauses are against law and some are legally valid and binding. It is important for employees (even the ones without any knowledge of law) to understand the legal position regarding such clauses. This paper attempts to clarify the law in this regard in as simple terms as possible for the benefit of all those who are often made to sign such contracts under the fear of losing a job.

2. Examples of Restrictive Clauses

Restrictive Clauses can be classified into the following categories:

a) **Non-Disclosure Clauses** covering confidentiality during employment as well as after employment ceases – Such clauses typically prevent an employee from sharing confidential information with outsiders

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b) **Non-Compete Clauses during employment** – These clauses prevent the employee from engaging in activities that clash with his employment responsibilities

c) **Non-Compete Post-Employment Clauses** – Some employers do not want their employees to join competitors even after the employee has quit the job. Restriction in this category may also prevent an ex-employee from staring a competing business or even advising a relative who is in a similar line of business.

d) **Non-use Post-Employment Clauses** – Such clauses are tighter than the previous ones. They not only prevent from using information gained during employment for competition use. They go a step further and even strop an ex-employee from making a non-competitive use of the information.

Here are some examples of typical clauses of each of the above categories of restrictive clauses.

2A) Non-Disclosure Clauses

The following are some typical examples of Non-Disclosure clauses which prevent employees from disclosing confidential information during employment.

- "In the course of the employment, you will or may have access to confidential information belonging to ABCD. You and ABCD consider that your relationship is one of confidence with respect to such information.

  The components of your remuneration package are strictly confidential and are not to be discussed with anyone other than the directors of the company. Breach of confidentiality can result in instant dismissal or disciplinary proceedings. These components are salary, superannuation, salary sacrifice arrangements, overtime (if applicable), bonus (if applicable) and professional or other memberships (if applicable).

  You shall at all times (including after your employment ends for any reason):

  Hold all confidential information in confidence and not discuss, communicate or transmit to others or make any unauthorized copy of or use the trade secrets in any capacity, position or business unrelated to ABCD and unauthorized by ABCD;

Use the confidential information in confidence only in furtherance of proper company-related reasons for which such information is disclosed or discovered;

Take all reasonable action, that ABCD deems necessary or appropriate, to prevent unauthorized use or disclosure of, or to protect ABCD interests in, the confidential information except as required by law to do so."

In the above example the employee is restricted from sharing or discussing or using the confidential information or the trade secrets of the company except for business purpose. Also the employee is asked to take reasonable steps to protect such confidential information or trade secrets from others.

In the following example the employee commits to keep all the confidential information in confidence except and to the extent when disclosure is mandatory under any law in force. The employee further agrees that he shall not discuss or disclose the confidential information of company to any person or business unrelated to company:

- The Employee hereby commits to hold all Confidential Information in confidence except and to the extent when disclosure is mandatory under any law in force. The Employee shall not discuss, disclose, communicate or transmit to others (including any other employee / consultant / associate of CCCL) or make any unauthorized copy of or use the Confidential Information in any capacity, position or business unrelated to CCCL and unauthorized by CCCL. Any discussion or disclosure or communication or transmitting or use of confidential information shall be strictly for furtherance of the proper interests of CCCL and for the reasons the confidential information was made available to the Employee in the first place

In the preceding examples, the focus was on preventing company information from going out. Let us look at a few examples where the employee promises to keep Third Party Information confidential.

- I understand, in addition, that the Company has received and in the future may receive from third parties confidential or proprietary information, including but not limited to non-public and extremely confidential data of (a) the Company's clients (b) the vendors, customers, personnel, business partners and other stakeholders of the Company's clients; and (c) third party providers of data ("Third Party Information") subject to a duty on the Company's part to maintain the confidentiality of such Third Party Information and to use it only for certain limited purposes. During the term of my employment and thereafter, I shall hold Third Party Information in the strictest confidence in trust for the Company and the third party owner of such Information and shall not disclose to anyone (other than Company personnel who need to know such information in connection with their work for the Company) or use, except in connection with my work for the Company, any Third Party Information unless

expressly authorized by an officer of the Company in writing. I recognize that all Third Party Information shall be the sole property of the respective third party and its assigns.

Sometimes Non-Disclosure clauses in employment contracts can be so big and all encompassing that even the best legal minds may get confused. They also include Non-compete clauses. Let us look at an example of such an elaborate clause.

- The employee promises and agrees to receive and hold the Confidential Information in confidence. Without limiting the generality of the foregoing, the employee further promises and agrees:

  A. to protect and safeguard the Confidential Information against unauthorized use, publication or disclosure;

  B. not to use any of the Confidential Information except for Business Purposes.

  C. not to, directly or indirectly, in any way, reveal, report, publish, disclose, transfer or otherwise use any of the Confidential Information except as specifically authorized by the employer in accordance with this Non-Disclosure Agreement.

  D. not to use any Confidential Information to unfairly compete or obtain unfair advantage in relation to employer in any commercial activity which may be comparable to the commercial activity contemplated by the parties in connection with the Business Purposes.

  E. to restrict access to the Confidential Information to those of its officers, directors, and employees who clearly need such access to carry out the Business Purposes.

  F. to advise each of the persons to whom it provides access to any of the Confidential Information, that such persons are strictly prohibited from making any use, publishing or otherwise disclosing to others, or permitting others to use for their benefit or to the detriment of the Employer, any of the Confidential Information, and, upon Request of the Employer, to provide the Employer with a copy of a written agreement to that effect signed by such persons.

  G. to comply with any other reasonable security measures requested in writing by the employer

  H. To refrain from directly contacting or communicating by whatsoever means to the Source(s) of Information without written consent of the employer.

  I. To undertake not to disclose any names and their particulars to third parties without the written consent by the employer.

2B) Non-Compete Clauses during Employment

Few examples of typical Non- compete clauses during employment are listed below:

- I agree that during the course of my employment I will not, without the prior written consent of the Company, (i) serve as a partner, employee, consultant, officer, director, manager, agent, associate, investor, or otherwise for, (ii) directly or indirectly, own, purchase, organize or take preparatory steps for the organization of, or (iii) build, design, finance, acquire, lease, operate, manage, invest in, work or consult for or otherwise affiliate myself with, any business in competition with or otherwise similar to the Company's business.

In the above example the employee agrees that during the course of his employment, he will not involve himself in any capacity to any kind of business which is similar to the company business without the prior written consent of the company.

In contrast with the above where all sorts of competing is prohibited, in some cases restriction is only limited. For example, in the following clause the restriction is only for 75 km radius.

- The Employee shall not, during his employment, without the prior written consent of the Company, carry on, or be engaged in, or be concerned with, or interested in, or employed by, any person engaged in or concerned with or interested in a business which is the same as, or substantially similar to, or in competition with, the Company's business within a radius of seventy-five (75) kilometers from any Company or Affiliated Corporation office where the Employee is employed.

Geographic restrictions are not very common. However, most employers are keen to prevent their staff from soliciting business from the company's clients. The following clause achieves that.

- I promise that, during my employment with the Company, I shall not, directly or indirectly, whether alone or in association with others, in any capacity whatsoever, and whether for my benefit or the benefit of a third party or to the detriment of the Company, do any or all of the following: (a) solicit the business of any Client (other than on behalf of the Company); (b) engage in, participate in, invest in, provide, or attempt to provide any Conflicting Services; (c) without prejudice to the foregoing, join the employment of any Client or Competitor, whether as employee, consultant, advisor or in any other capacity whatsoever.

In the example the employee promises that during the course of employment, he shall not directly or indirectly and either for personal benefit or for a third party's benefit, won't solicit the business of any client of the company

A typical non-compete clause is the restriction on private practice of doctors employed in Government hospitals. Such restrictions are often imposed by service rules, which govern employees whether in government or private sector.

2C) Non-Compete Post Employment Clauses

While the above examples explained Non-disclosure and Non-compete restrictions imposed during the employment, the following examples contain Non–compete limitations which are imposed post employment.

- For a two (02) year period following the termination of Employee's employment, Employee shall not in any capacity, directly or indirectly advise, manage, render or perform services to or for any person or entity which is engaged in a business competitive to that of the Company within any geographical location wherein the Company produces, sells or markets its goods and services at the time of such termination.

In the above example the employee is restricted from involving himself in competitive business in any capacity for a period of two years from the date of termination.

- I agree that for a period of eighteen (18) months immediately following the termination of my relationship with the Company for any reason, whether with or without good cause or for any or no cause, at the option either of the Company or myself, with or without notice, I will not, without the prior written consent of the Company, (i) serve as a partner, employee, consultant, officer, director, manager, agent, associate, investor, or otherwise for, (ii) build, design, finance, acquire, lease, operate, manage, invest in, work or consult for or otherwise affiliate myself with, any business in competition with or otherwise similar to the Company's business.

In this example, employee gives his consent that from the date of termination of his employment for a period of 18 months he will not in any ability affiliate himself with any competitive business.

Where as in the above example time was an important factor, in the next example permission or consent of the employer is key aspect. The employee cannot use the confidential information of the company without the prior approval of the employer for any purpose post employment.

- I shall not, without the KLN's written consent, use its confidential information to develop my own business or to compete with KLN, nor shall I reverse engineer, disassemble, or decompile any prototypes, software, or other tangible objects that embody KLN's confidential information. I shall not directly or indirectly with, circumvent or try to circumvent, avoid, bypass, or obviate KLN's interest, or the interest or relationship between KLN and its technology providers, manufacturers or feedstock providers, to change, increase or avoid directly or indirectly:

(i) payment of established or to be established fees or commissions;

(ii) to obtain rights or access to technologies or feed stock directly. In the event that one or several of the technology providers, manufactures or feedstock providers does not renew any existing rights or similar contracts or ceases its relationship with KLN, I cannot directly contact the technology provider, manufacturer or feedstock provider for a period of five (5) years from the relationship being terminated without the expressed written permission of KLN.

2D) Non-Use Post Employment Clauses

After Non-Disclosure and Non- Compete clauses, the next set of clauses is Non-use post employment clauses.

In the following example employee promises to keep in the confidential information in trust and also promises to not to use it for any purpose for a time period of sixty months from the date of termination.

- After the termination of my employment, for a period of sixty (60) months from the date hereof, I shall hold in trust and confidence, and not disclose to others or use for my own benefit or for the benefit of others, any Proprietary Information which is disclosed to me by ABC at any time between the date hereof and twelve (12) months before that.

- I recognize that KKKK has received and will receive confidential or proprietary information from its customers as well as third parties subject to a duty on KKKK part to maintain the confidentiality of such information and to use it only for certain limited purpose. After the term of my employment is over, I will not disclose such confidential or proprietary information to anyone. I will not use such information for the benefit of anyone other than KKKK or such third party, or in any manner inconsistent with any agreement between KKKK and such third party of which I am made aware.

In this example employee assures that even after the end of his employment, he would not use or discuss the confidential or proprietary or third party information of company for the benefit of any other than company.

- In addition, following the termination for any reason of Employee's employment with the Company, Employee shall not use, directly or indirectly, any Confidential Information. This prohibition does not apply to Confidential Information after it has become generally known in the industry in which the Company conducts its business. This prohibition also does not prohibit Employee's use of general skills and know-how acquired during, prior and post to employment by the Company, as long as such use does not involve the use or disclosure of Confidential Information or Trade Secrets.

Apart from the above examples the following example explains that an employee can use such information of the company which has become common in the market of business and also it does not restricts the employee form making use of any skill acquired before or during the employment.

2E) Non solicitation clauses

The last category of most common clauses in a employment contract are Non Solicitation clauses.

A non-solicitation clause is a clause inserted into a contract to prevent a employee, or former employee from taking employees or customers away from a company. For example in the following paragraphs the employee agrees that during or after the employment he would not solicit the employees or clients of the company in any manner.

- In order to protect the Company's legitimate business interests, including (without limitation) its interests in the Proprietary Information, its substantial and near permanent relationships with Clients, and its Client goodwill, I agree that during my employment with the Company, and continuing for two (02) years after the date my employment with the Company ends for any reason (including but not limited to voluntary termination by me or involuntary termination by the Company), I shall not, as an officer, director, employee, consultant, owner, partner, or in any other capacity, either directly or through others, and either for my benefit or for the benefit of a third party: (a) solicit, induce, encourage, or participate in soliciting, inducing, or encouraging any employee, independent contractor or consultant of the Company to terminate his or her relationship with the Company or to work in any capacity for any person or entity other than the Company; (b) solicit the business of any Client (other than on behalf of the Company). I agree that should I violate this covenant of non-solicitation, the Company may reasonably presume that I have abused the Proprietary Information and the Third Party Information disclosed to me or which I have accessed; or (c) solicit, while I am in the employment of the Company, employment with any Client and/or Competitor.

- For a two year period following the termination of Employee's employment for any reason or without reason, Employee shall not solicit or induce any person who was an employee of the Company or any of its subsidiaries on the date of Employee's termination or within three months prior to leaving her employment with the Company or any of its subsidiaries to leave their employment with the Company.

3. Applicable laws

3A) Indian Contract Act 1872

Section 27 of the Indian Contract Act makes void all contracts that impose 'restraint of trade'. The provision is as follows: '

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

The only exception that is permitted to the above is when goodwill of a business is sold. The exception is not relevant to the discussion in this article. Hence, we shall ignore it.

3B) Constitution of India

Article 19 1 (g) of the Indian constitution guarantees that all the citizens shall have the right:

> "to practice any profession, or to carry on any occupation, trade or business."

However, the right to carry on a profession, trade or business is not unqualified. It can be restricted and regulated by the authority of law. The restrictions have to be reasonable and in public interest.

Moreover, it is important to understand that fundamental rights are available only against the state or in other words government or government undertakings. Fundamental rights have almost no scope when the relationship is between a private employer and an individual employee.

3C) Competition Act 2002

According to Section 3(1) of the competition Act 2002,

> "no enterprise or association of enterprises shall enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India".

According to Section 3(2) of the competition Act 2002,

> Any agreement entered into in contravention of the provisions contained in subsection (1) shall be void.

Agreements which cause or are likely to cause appreciable adverse effect on competition in markets in India are anti-competitive and are void.

According to Section 3(4) of the competition Act 2002,

> “Any agreement amongst enterprises or persons at different stages or levels of the production chain in different markets, in respect of production, supply, distribution, storage, sale or price of, or trade in goods or provision of services, including refusal to deal”;
>
> "refusal to deal" includes any agreement which restricts, or is likely to restrict, by any method the persons or classes of persons to whom goods are sold or from whom goods are bought;

According to Section 4 of the competition Act 2002,

> (1) No enterprise or group shall abuse its dominant position.
>
> (2) There shall be an abuse of dominant position under sub-section (1), if an enterprise or a group.—-
>
> (a) directly or indirectly, imposes unfair or discriminatory—
>
> (i) condition in purchase or sale of goods or service; or
>
> (ii) price in purchase or sale (including predatory price) of goods or service.

Dominance refers to a position of strength which enables an enterprise to operate independent of competitive forces or to affect its competitors or consumer or the market in its favor. In the case of relationship between employer and employee, the dominant position cannot be enjoyed by a single enterprise as they alone cannot affect the condition of market. This position can only be acquired if all or majority of enterprise come together and make such conditions which could affect the market.

4. Relevant Case Laws

Superintendence Company of India Pvt Limited Vs. Krishnan Murgai [2]

In this case the appointment letter of an employee contained some conditions under which the employee agreed that during the course of employment, he would not be permitted to engage himself in any part time job. Also he was not permitted to join any firm of competitors or run a business of his own in similar lines, for a period of two years at the place of his last posting after he leaves the company. And lastly, he was prevented from revealing secrets of the company to other parties.

The employee accepted these terms. But after the termination of employment he started carrying on business of similar nature. He also solicited the business and customers of the company and even used the trade secrets of the company.

The company brought a suit for a permanent injunction to restrain him from his activities as per the agreement signed with them during the course of employment. The plaintiff also sought a temporary injunction restraining him from continuing with the new business or employment.

The Court held in this case that the ex-employee can only be restrained from disclosing trade secrets of the Company and he cannot be prevented from carrying out any business or employment in competition with the Company.

Desiccant Rotors International Pvt. Ltd. Vs. Respondent: Bappaditya Sarkar and Anr.[3]

In the present case (which came up before Delhi High Court) the employee signed an obligation agreement under which he agreed that for two years after termination of employment – (a) he would not compete directly or indirectly against the company and its group companies; (b) he would not interfere with the relationship of the company with its customers, suppliers and employees; (c) he would not disclose the confidential information to which he was privy as employee of company to any third party; (d) he would deliver back all properties of the company which were in his

[2] AIR 1980 SC 1717, 1980 (41) FLR 137, (1981) ILLJ 121 S

[3] MANU/DE/1215/2009

possession; and (e) he would not retain copies of any of the properties of the company.

In addition to the Obligation Agreement, employee signed two declarations declaring that if he failed to comply with the declarations it would amount to breach of trust and that he would take full liability and responsibility of the same.

Within three months of leaving employment the employee joined one of the competitors of the company.

The High Court when deciding on the case opined as follows:

> 14. The stance of Indian courts on the question of restraint on trade is unmistakably clear. There are no two ways about the fact that the approach towards a negative covenant subsisting during the course of employment is completely different from the approach which would be taken towards the applicability of a negative covenant post-employment duration. The

Before expressing the above opinion the Court quoted from Superintendence Company of India Pvt Limited Vs. Krishnan Murgai[4]. The Court also quoted from Percept D' Mark (India (P) Ltd. v. Zaheer Khan and Anr.[5]

In the case the Court also quoted from two judgments as follows:

> Pepsi Foods Ltd. and Ors. v. Bharat Coca-Cola Holdings Pvt. Ltd. and Ors. 81 (1991) DLT 122 wherein it has been held that post termination restraint on an employee is in violation of Section 27 of the Indian Contract Act, 1872. A contract containing such a clause is unenforceable, void and against public policy and since it is prohibited by law it cannot be allowed by the Courts injunction. If such injunction was to be granted, it would directly curtail the freedom of employees for improving their future prospects by changing their employment and such a right cannot be restricted by an injunction. It would almost be a situation of "economic terrorism. creating a situation alike to that of bonded labour.
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> Wipro Ltd. v. Beckman Coulter International S.A MANU/DE/2671/2006 : 2006 (3) ARBLR 118 (Delhi) wherein it has been held that negative covenants between employer and employee contracts pertaining to the period post termination and restricting an employees right to seek employment and/or to do business in the same field as the employer would be a restraint of trade and therefore, a stipulation to this effect in the contract would be void. No employee can be confronted with a situation where he has to either work for the present employer or be forced to idleness. Also, in

[4] AIR 1980 SC 1717, 1980 (41) FLR 137, (1981) ILLJ 121 S

[5] MANU/SC/1412/2006 : (2006) 4 SCC 227

> such a contract the employer has advantage over the employee and it is quite often the case that employees have to sign standard form contracts or not be employed at all.

The final judgment of the Court in the above matter is summed up in the following words:

> I have no doubt that such was the intention of the plaintiff, but with equal conviction I believe that such is the intention of all employers who rely on like negative covenants in employment contracts with their employees. It is this attempt to protect themselves from competition which clashes with the right of the employees to seek employment where so ever they choose and in a clash like this, it is clear that the right of livelihood of the latter must prevail. Clearly, in part at least, the Obligation Agreement sought to restrain Defendant No. 1 from seeking employment with an employer dealing in competitive business with the plaintiff after he had ceased to be an employee of the plaintiff, and that too for a period of two years. Such an act cannot be allowed in view of the crystal clear law laid on this issue.

Percept D' Mark (India) Pvt. Ltd. Vs. Zaheer Khan and Anr.[6]

The case does not relate directly to an employment situation. The company had entered into an agreement with a cricketer of national repute on 1st October 2000 for a period of three years commencing on 30th October 2000 and expiring on 29th October 2003.

The agreement included a condition that the player could not accept any offer for endorsements, promotions, advertising or other affiliation with regard to any product or services and that prior to accepting any such offer, he was under an obligation to provide the company in writing all the terms and conditions of such third party and offer the company the right to match such third party offer.

The cricketer informed the company on 10th September 2003 that he was not interested in renewing and/or extending the terms of the said agreement and the same would, therefore, end as of 20th October 2003. In November 2003, the cricketer entered into an agreement with a third party. The company protested against this and pulled the cricketer to court.

[6] MANU/SC/1412/2006; AIR 2006 SC 3426

The Supreme Court in deciding the matter quoted approvingly Niranjan Shankar Golikari[7], Superintendence Company of India[8] and Gujarat Bottling[9] Opinion of the Court on the issue of post-contractual commitments is summed up as follows:

> 38. The legal position with regard to post-contractual covenants or restrictions has been consistent, unchanging and completely settled in our country. The legal position clearly crystallised in our country is that while construing the provisions of Section 27 of the Contract Act, neither the test of reasonableness nor the principle of restraint being partial is applicable, unless it falls within express exception engrafted in Section 27.

It is important to note that the Honourable Court affirmed that even if a restraint is reasonable it would be null and void under section 27 of the Contract Act. Moreover, partial restraints are also disallowed.

Dr. S. Gobu vs. The State of Tamil Nadu[10]

Dr. Gobu was serving as an Associate Professor in General Surgery department of a Medical College. The issue before the High Court was whether (1) he was entitled to wriggle out of an agreement reached between him and the management on 2nd September 2006 and (2) whether the petitioner was entitled to leave his service as a matter of right without fulfilling his obligations. He had undergone Post Graduate Degree in M.Ch (Gastroenterology) as a service candidate and had executed an agreement to serve the institution for a period of six years, failing which he was bound himself to pay six months' salary together with three months' notice pay.

The decision of the High Court in the matter is summed up in the following paragraph:

> 28. In the light of the above and the factual matrix brought on record, this Court is of the opinion that though Clause No. 1 obliges a candidate to serve for six years, but the second clause makes that rigour disappear with the quantified damages to be paid. In the present case, the petitioner is the beneficiary of three years leave period together with salary paid and he was treated as service candidate and not as a direct candidate. Therefore, he cannot have best of both Worlds. The contract agreed to by him stipulates that he should serve for six years in the institution after the completion of the course. The petitioner is bound to serve the institution for six years as agreed

[7] MANU/SC/0364/1967; AIR 1967 SC 1098

[8] AIR 1980 SC 1717, 1980 (41) FLR 137, (1981) ILLJ 121 S

[9] MANU/SC/0472/1995; AIR 1995 SC 2372

[10] W.P. Nos. 264 and 5674 of 2010 and M.P. Nos. 1 and 2 of 2010, High Court of Madras

> to by him. But in case he wants to waive the said condition, then Clause No. 2 provides for a way out by paying the quantified damages. Since the petitioner had left the service abruptly by sending his resignation, he was bound by the terms of the agreement, dated 2.9.2006 and cannot escape from the liability to pay damages.

Noticeably, the High Court refused to let the employee have the benefit of section 27 of Contract Act and also ruled that "the agreement executed by him does not suffer from any arbitrariness or it was not done due to any unequal bargaining power".

5. Summary of Legal Position

The law seems to be extremely clear that any restrictions imposed on an employee during the employment are legally enforceable while the ones relating to post-employment period are null and void. Post-employment conditions or restrictions are rendered void by section 27 of Contract Act.

While there exists a strong body of case law based on Contract Act, there is no case where the matter has been examined by a Court or authority under the Competition Act. In the Desiccant Rotors case quoted above, the Court observed, "It is this attempt to protect themselves from competition which clashes with the right of the employees to seek employment …" (emphasis added). The anti-competition nature of post-employment restrictions is obvious.

Competition Act is wider in scope compared to Contract Act. While Contract Act relates to contracts only, the Competition Act relates to any "agreement". The term "agreement" is much more extensive than a contract. An agreement is defined under the Competition Act as follows:

> "agreement" includes any arrangement or understanding or action in concert,—
>
> (i) whether or not, such arrangement, understanding or action is formal or in writing; or
>
> (ii) whether or not such arrangement, understanding or action is intended to be enforceable by legal proceedings;

Moreover, while the only action open to a Court under Contract Act is to render the contract void, it is possible under the Competition Act to impose penalties on all those who make their employees sign such documents (by whatever name called) that impose post-employment restrictions on employees.

It may also be possible to initiate class-action suits or proceedings under the Competition Act on behalf of employees in sectors where such agreements are common.

While the position on post-employment restrictions regarding taking up employment or other competitive activities is clear, the issue of confidentiality of information and of intellectual property rights remains an open area. An employee has the right to engage in any gainful activity after his employment ceases but this cannot be a license to take away all confidential intellectual property of the employer. The law in respect of rights on undisclosed and confidential information is still evolving in the country. One hopes that in the coming years, the Courts and Parliament will bring more clarity on this subject.

Lastly, it is relevant to mention about the fundamental right enshrined under Article 19 (1) (g) of Constitution of India. The fundamental right is exercised only against the state and hence is relevant only when the employer is either the government or a government undertaking. As the economy evolves and the importance of private sector grows in Indian economy, there is a strong argument for extending the definition of the state to include large scale private sector units which enjoy a dominant position no different from that of the state.

Law aims for fair play. There is always a potential to misuse the law. An employee cannot evade all restrictions and responsibilities by hiding behind protective provisions of law. This was made clear in the case of Dr. S. Gobu quoted above.

6. Conclusion

In conclusion, it can be said that restrictive clauses in agreements between a company and its employees are binding as long as the employee is in service and not after the employment ceases.

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