

Employment/Labour – India

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Non Compete Covenants in Employment Contracts

Traditionally, Indian courts have refused to enforce non compete covenants in employment contracts for the post termination period. The rationale for refusing to do so was that such covenants would have the effect of depriving individuals of their right to livelihood and trade and as such could not be enforced.

Indian courts have nevertheless been inclined to enforce non-compete covenants during the period of employment as not being in restraint of the employees right to trade and livelihood.

In the recent past, however, courts in India have shown an inclination to enforce non-compete covenants which apply to the post termination period, provided the injunction or restraint is sought for the purpose of protecting the employer's interests. The interests of employers that are considered to be entitled for protection are proprietary information such as trade secrets, business connections and secret manufacturing processes. However, the employer is required to prove that the employee acquired such proprietary information in the course of his employment and that such proprietary information would be compromised if the employee was permitted to work in a competing business by the very nature of such other business.

The courts' inclination to enforce non compete covenants post termination is enhanced in cases where the employee seeks to terminate his existing employment for the sole purpose of being employed with a competing business. Practically, the inclination to protect proprietary information through non-compete covenants is greater in the information technology/know how/pharma and biotech industries, which have in the recent past contributed enormously to the Indian economy.