Trade Secret Protection in India: An Analysis of Agreements in Restraint of Trade and the Judicial Evolution of Section 27 of the Indian Contract Act, 1872

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Abstract

Trade secret protection has become a central issue in modern intellectual property law because competitive advantage in contemporary commerce often depends less on tangible assets and more on information, know-how, and confidential business strategy. In India, however, the protection of trade secrets has historically developed through contract law, equity, and judicial intervention rather than through a dedicated statute. Section 27 of the Indian Contract Act, 1872 occupies the doctrinal center of this field by rendering agreements in restraint of trade void, subject to limited exceptions. This article examines the relationship between trade secret protection and agreements in restraint of trade, focusing on the judicial evolution of Section 27 and the extent to which Indian courts have balanced employee mobility against proprietary business interests. Drawing from the uploaded document's discussion of leading Indian and comparative cases, the article argues that Indian law has consistently protected confidentiality and during-employment obligations but remains deeply suspicious of post-employment restraints such as non-compete clauses. The article concludes that while the present doctrine preserves freedom of occupation, it is insufficient for the modern knowledge economy and should be supplemented by a dedicated trade secrets framework.

Keywords: *Trade secrets; Section 27; restraint of trade; non-compete clause; non-disclosure agreement; non-solicitation; confidentiality; Indian Contract Act, 1872; employee mobility; trade secret law.*

I. Introduction

The modern economy runs on information. Business success increasingly depends on confidential processes, proprietary data, client relationships, technical know-how, and internal strategy rather than only on physical capital. This shift has intensified the importance of trade secret protection, especially in sectors driven by research, technology, design, and specialized services. Yet Indian law still lacks a comprehensive statutory regime dedicated specifically to trade secrets, and as a result, the subject remains governed primarily by contract principles, equitable doctrines, and judicial precedent.

The principal statutory obstacle is Section 27 of the Indian Contract Act, 1872, which declares agreements in restraint of trade void[1]. The policy underlying Section 27 is that no person should be prevented from exercising a lawful profession, trade, or business except within narrow recognized exceptions. At the same time, courts have also acknowledged that business entities have legitimate interests in protecting confidential information and trade secrets, particularly where the information is not publicly known and has been disclosed only in circumstances importing confidence [2].

This tension explains the structure of Indian case law. Courts have generally refused to enforce post-employment restraints that prevent a former employee from taking up new work, but they have been willing to enforce confidentiality obligations and restraints operative during the term of employment. The doctrinal challenge, therefore, is not whether trade secrets deserve protection, but how far that protection may legitimately extend without violating Section 27 or undermining the freedom to pursue a livelihood. That is the central question this article addresses.

II. Restraint of Trade

Agreements in restraint of trade are agreements by which one or both parties voluntarily restrict their ability to work, carry on a profession, or engage in business in a particular manner. These agreements are controversial because they sit at the intersection of two competing principles: freedom of contract and public interest. On one side is the idea that parties should be held to voluntary bargains. On the other hand is the concern that society should not be deprived of an individual's skill, labour, and expertise through private contractual restrictions[3].

The common law began by presuming restraints to be invalid, but over time it allowed certain exceptions where the restraint was reasonable and served legitimate interests. The leading starting point is ***Mitchel v. Reynolds***, which is described as one of the earliest reported non-competition disputes. The court in that case upheld a limited restraint tied to the sale of a business interest and recognized that some restrictions are justified when they protect the purchaser's investment and goodwill[4] . The case has remained foundational because it distinguishes between illegitimate restraints on livelihood and permissible restraints ancillary to a commercial transaction.

The principle was further refined in ***Nordenfelt v. Maxim Nordenfelt Guns & Ammunition Co. Ltd.***, where the House of Lords upheld one covenant but struck down a broader one[5] . The first covenant protected the purchaser's legitimate interest after a business sale, while the second was held too broad because it effectively barred the seller from entering any competing business for twenty-five years. The significance of *Nordenfelt* lies in its articulation of reasonableness as the key criterion. A restraint is potentially valid only if it is narrowly tailored to a legitimate interest and not harmful to the public interest.

In the case of ***Keeler v. Taylor***, where the Pennsylvania Supreme Court invalidated a sweeping covenant that prevented a mechanic from using the skills and knowledge he had acquired[6] . The court found the restriction overly broad in duration and scope, and emphasized that the employer could not claim exclusive control over knowledge that had merely been imparted in training. This case is useful because it anticipates a recurring problem

[1] India Code, n.d.
[2] Mulla, 2015, p. 143.
[3] Mulla, 2015, p. 143.
[4] *Mitchel v. Reynolds*, 1711.
[5] *Nordenfelt v. Maxim Nordenfelt Guns & Ammunition Co.*, 1894.
[6] *Keeler v. Taylor*, 1866.

in trade secret and employment law: employers often attempt to convert training and experience into perpetual control, even though the law generally treats generalized skill as part of the employee's own capital.

III. Types of Restrictive Clauses

The restrictive clauses under Section 27 fall into several broad categories: ***non-disclosure clauses, non-compete clauses during employment, non-compete clauses after employment, non-use post-employment clauses, and non-solicitation agreements***. Each category serves a different commercial function and raises a different legal problem. The significance of the classification is that not all restraints operate in the same way, and their validity depends on whether they merely protect confidentiality or instead block trade altogether.

Non-disclosure clauses impose duties of confidentiality during and after employment. They are central to trade secret protection because they do not necessarily prevent a person from working; they restrict the disclosure or misuse of protected information. Indian courts are more likely to uphold such clauses because they directly relate to legitimate confidentiality interests.

Non-compete clauses during employment restrict an employee from engaging in activities inconsistent with the employer's business while the contract is still alive. Courts generally tolerate such clauses because the employee remains under a duty of loyalty and cannot simultaneously work for a competitor. The position is different after termination, when the person regains the freedom to pursue a profession.

Non-compete post-employment clauses are the most controversial. They seek to stop a former employee from joining a competitor, starting a competing enterprise, or assisting a rival. Indian courts have consistently treated such clauses with suspicion because they interfere directly with livelihood and are usually void under Section 27[7].

Non-use clauses and non-solicitation clauses fall somewhere in between. A non-use clause can prevent a former employee from using information acquired during employment in any competitive context, while a non-solicitation clause prevents poaching of customers, clients, or employees. Their enforceability depends on how narrowly they are drafted and whether they are genuinely aimed at protecting confidentiality or instead function as disguised non-competes.

IV. Trade Secret Protection

Trade secret law in India has developed through piecemeal doctrine rather than comprehensive legislation. In ***John Richard Brady v. Chemical Process Equipments (P) Ltd.***, the Delhi High Court held that courts must enforce equitable rules against breach of trust and confidential obligations[8]. The case confirms that where a confidential relationship exists and misuse is shown or threatened, equity can intervene to restrain abuse of confidence.

The historical account shows that trade secret law expanded considerably from about 1890 to 1920. During that period, the conceptual basis shifted from breach of trust to protection of commercially valuable information as a form of property-like interest[9]. The scope of protected information broadened beyond precise formulas to include know-how, skill, improvements, and employee-developed innovations. This shift matters in contemporary practice because trade secrets often include compilations, methods, digital workflows, and customer intelligence rather than a single isolated secret.

The discussion of ***Faccenda Chicken Ltd. v. Fowler*** is especially relevant because it identifies factors for determining whether information is confidential enough to merit protection[10]. Those factors include the nature of employment, the character of the information, whether confidentiality was clearly communicated, and whether the information is separable from ordinary skill and knowledge. The practical lesson is that courts will not protect everything an employee learns; they protect only information that has the quality of secrecy and commercial value.

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[7] *Superintendence Co. of India (P) Ltd. v. Krishan Murgai*, 1980.
[8] *John Richard Brady v. Chemical Process Equipments (P) Ltd.*, 1987.
[9] Fisk, 2001, p. 494.
[10] *Faccenda Chicken Ltd. v. Fowler*, 1987.

The distinction between trade secret and general skill is crucial. An employer may legitimately protect a formula, a process, a client database, or a technical manual, but cannot claim perpetual ownership over an employee's experience, competence, or market understanding. The line is not always easy to draw, but the cases suggest that Indian courts are attentive to whether the employer is trying to protect a true secret or merely suppress future competition.

V. Section 27 Framework

Section 27 of the Indian Contract Act, 1872 states the general rule that every agreement in restraint of trade is void, except in limited recognized cases[11]It can be stated that this is the statutory foundation for the idea of restraint of trade in India. The section is much stricter than many common-law formulations because it does not generally ask whether the restraint is reasonable in the abstract. Instead, the default position is invalidity, subject to express exceptions.

The most important statutory exception is the sale of goodwill, where a seller may agree not to carry on a similar business within reasonable local limits so long as the buyer continues a like business there. This exception reflects the reasoning of *Mitchel v. Reynolds* and *Nordenfelt*: a restraint connected to transfer of value may be justified because the buyer has paid for the goodwill and is entitled to enjoy the benefit of the bargain.

The Law Commission's Thirteenth Report recommended amendment of Section 27 to allow reasonable restrictions that serve the interests of the parties and the public interest[12]. That recommendation remains important because it recognizes the gap between rigid statutory text and commercial reality. However, Indian law has not adopted a general reasonableness test for post-employment restraints, and courts continue to apply Section 27 in a strongly employee-protective manner.

This strict approach has both strengths and weaknesses. It protects workers from oppressive contracts and prevents powerful employers from locking employees into restrictive arrangements after termination. But it also leaves firms vulnerable where their main asset is confidential information that can be carried away easily by departing staff. The absence of a specific trade secrets statute means that Section 27 often has to do work for which it was never fully designed.

VI. Judicial Evolution

The case of ***Niranjan Shankar Golikari v. Century Spinning & Manufacturing Co. Ltd***. was the starting point of the Indian Supreme Court's modern treatment of restraint of trade[13]. In that case, the Court upheld a negative covenant operating during the term of employment and held that such a covenant is not necessarily a restraint of trade if it is not unconscionable or one-sided. The decision introduced the key distinction between restraints during employment and restraints after termination.

The Court in *Golikari* also emphasized several important propositions. First, freedom to carry on one's trade or calling is a general rule of common law and should not be interfered with lightly. Second, courts are stricter with employment restraints than with covenants in business-sale or partnership contexts. Third, an employer is generally not entitled to prevent competition after termination, while a purchaser of business goodwill may be so protected. These principles continue to frame Indian doctrine.

The next major case, ***Superintendence Co. of India (P) Ltd. v. Krishan Murgai***, consolidated the anti-post-employment position[14]. The Court held that a restrictive covenant extending beyond the employment period is a restraint of trade and void under Section 27. It also acknowledged the unequal bargaining power between employers and employees, noting that standard-form employment agreements often leave little room for real

[11] India Code, n.d.
[12] Law Commission of India, 1958, para. 55.
[13] *Niranjan Shankar Golikari v. Century Spg. & Mfg. Co. Ltd.*, 1967.
[14] *Superintendence Co. of India (P) Ltd. v. Krishan Murgai*, 1980.

negotiation. This concern is particularly important in modern labour markets where workers may accept restrictive terms simply to secure employment.

In the case of ***Madhub Chunder v. Rajcoomar Doss***, which treated agreements in restraint of trade as void whether they were general or partial[15]. Later cases such as ***Taprogge Gesellschaft MBH v. IAEC India Ltd***. reinforced this approach by refusing to enforce post-termination restraints even where foreign law would have been more permissive[16]. The Bombay High Court made clear that Indian public policy would not permit enforcement of a covenant that restricts a person once the contractual relationship has ended.

In ***Sociedade de Fomento Industrial Ltd. v. Ravindranath Subraya Kamath***, the Bombay High Court held that an employee cannot be permanently barred from using knowledge and skills acquired during previous employment[17]. This is one of the clearest statements of the doctrine that personal skill cannot be appropriated by contract. It distinguishes between secret information, which can be protected, and human capital, which cannot be frozen by private agreement.

VII. Contemporary Cases

American Express Bank Ltd. v. Priya Puri refined the concept of confidentiality by holding that customer names and telephone numbers that are generally known or readily ascertainable are not trade secrets[18]. The Court also warned against using the confidentiality doctrine to suppress legitimate competition. This case is significant because it prevents employers from characterizing ordinary business relationships as secret property.

The Supreme Court's decision in ***Percept D'Mark (India) Pvt. Ltd. v. Zaheer Khan*** is perhaps the strongest modern statement on Section 27[19]. The Court held that the distinction between total and partial restraints, and the test of reasonableness, have no meaningful role unless the case falls within an express statutory exception. This means that even a restraint that looks commercially sensible may still be void if it is post-contractual and outside the exceptions recognized by Section 27.

VFS Global Services Pvt. Ltd. v. Suprit Roy is a useful application of this principle in the employment context[20]. The Court treated the post-employment covenant and garden-leave-like restriction as a prima facie hindrance of trade and therefore attracted the prohibition in Section 27. The judgment reflects judicial discomfort with clauses that, in effect, delay or prevent a worker from taking up new gainful employment.

In ***Bombay Dyeing & Manufacturing Co. Ltd. v. Mehar Karan Singh***, the Court protected genuinely confidential software-related information and restrained unauthorized dissemination[21]. The case shows that Indian courts are willing to enforce confidentiality obligations where the issue is misuse of secret material rather than ordinary competition. Likewise, ***Independent News Service Pvt. Ltd. v. Anurag Muskaan*** shows that courts may grant short interim protection where the employee appears to be acting inconsistently with ongoing obligations[22].

In ***Pepsi Foods Ltd. v. Bharat Coca-Cola Holdings Pvt. Ltd***., the Delhi High Court held that a restrictive covenant surviving termination is void and cannot be enforced by injunction[23]. The court's strong language underscores the concern that post-employment restraints may operate like economic coercion or even bonded labour. That language has become emblematic of the Indian judiciary's suspicion toward broad restrictive covenants.

Finally, ***Krishan Murgai v. Superintendence Co. of India (P) Ltd***. is cited for the proposition that during employment, an employee is bound to devote services exclusively to the employer and maintain secrecy, even without an express negative covenant[24]. This is an important practical rule because it allows courts to protect

[15] *Madhub Chunder v. Rajcoomar Doss*, 1874.
[16] *Taprogge Gesellschaft MBH v. IAEC India Ltd.*, 1988.
[17] *Sociedade de Fomento Indl. Ltd. v. Ravindranath Subraya Kamath*, 1995.
[18] *Am. Express Bank Ltd. v. Priya Puri*, 2006.
[19] *Percept D'Mark (India) (P) Ltd. v. Zaheer Khan*, 2006.
[20] *VFS Global Servs. (P) Ltd. v. Suprit Roy*, 2008.
[21] *Bombay Dyeing & Mfg. Co. Ltd. v. Mehar Karan Singh*, 2010.
[22] *Indep. News Serv. (P) Ltd. v. Anurag Muskaan*, 2013
[23] *Pepsi Foods Ltd. v. Bharat Coca-Cola Holdings (P) Ltd.*, 1999.
[24] *Krishan Murgai v. Superintendence Co. of India (P) Ltd.*, 1979.

employers during the term of service without having to rely solely on Section 27. It also preserves the doctrinal distinction between ongoing contractual fidelity and post-termination freedom.

VIII. Non-solicitation and NDAs

Non-disclosure agreements are among the most effective and legally defensible tools available for trade secret protection in India. They are directed not at competition itself but at disclosure and misuse of confidential information. Because of that, they fit more comfortably within the logic of both contract and equity.

The employers often prefer NDAs because actual judicial remedies can be inadequate once a secret has been disclosed[25]. Even if a court grants relief, the damage may already be done because trade secret value often depends on secrecy itself. This is why businesses rely so heavily on advanced contractual protection.

Non-solicitation clauses are more controversial. It can be noted that in one Delhi High Court decision, treated as not amounting to restraint of trade[26], while another took the opposite view[27]. The distinction usually turns on whether the clause merely protects client relationships or whether it indirectly prevents a former employee from competing at all. Drafting and context matter greatly here. A practical lesson follows from the cases. Employers should use narrowly tailored confidentiality and non-solicitation clauses rather than sweeping non-competes. The narrower the clause, the better its chance of surviving scrutiny, though even then courts will ask whether the restriction is truly protective or simply suppressive.

IX. Need for Reform

India lacks a dedicated legislative framework for trade secrets, and this creates a serious gap in protection. The judiciary has played an important role, but courts can only respond case by case. They cannot provide the systematic clarity, procedural safeguards, and remedial certainty that a statutory regime could provide.

The need for reform is especially acute because the economic stakes are high. Trade secrets may embody years of investment, research, employee training, customer development, and technical refinement. Once disclosed, they may lose all commercial value, and damages may be difficult to quantify. That makes proactive legal protection essential.

A future Indian trade secrets statute should probably do three things. First, it should define trade secrets clearly and distinguish them from general skill and public information. Second, it should provide targeted civil remedies, including injunctions and damages, for misappropriation. Third, it should preserve employee mobility and constitutional freedom by limiting restraints to what is genuinely necessary for confidentiality protection. Such reform would bring doctrinal coherence without abandoning the policy basis of Section 27.

X. Conclusion

The judicial evolution of Section 27 shows a stable and deliberate pattern: Indian law rejects broad restraints on trade, especially after termination of employment, but protects confidentiality and legitimate business interests during the life of the contract. This pattern is evident from ***Golikari***, ***Krishan Murgai***, ***Percept D'Mark***, ***VFS Global***, and the confidentiality cases discussed above. The central idea is that one may not be prevented from working, but one may be prevented from misusing confidential information.

At the same time, the present regime is incomplete. The courts have built a workable but fragmented framework through contract and equity, yet trade secret disputes in a knowledge economy require more precision than case law alone can provide. India therefore needs a dedicated trade secrets law that respects public policy, protects employers from misappropriation, and preserves employee freedom. Until such reform occurs, Section 27 will continue to define the outer limits of private restraints, while courts must do the difficult work of distinguishing lawful confidentiality from unlawful restraint of trade.

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[25] Nard et al., 2008, p. 938.
[26] *Escorts Constr. Equip. Ltd. v. Action Constr. Equip. (P) Ltd.*, 1998.
[27] *Burlington Home Shopping (P) Ltd. v. Rajnish Chibber*, 1995.

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