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RESTRICTIVE COVENANTS IN EMPLOYMENT CONTRACTS: A COMPARISON BETWEEN THE LEGAL POSITIONS IN INDIA AND AUSTRALIA

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ABSTRACT:

Restrictive covenants are those clauses in a contract that are added in the contract especially to make a balance between the freedoms of employees to follow their professions and the preservation of legitimate corporate interests. They are an important part of modern employment law.[1] Typically, these covenants prohibit workers from doing specific things after they quit their jobs, such as working for competitors, pursuing clients, or divulging private information. The enforcement and breadth of these covenants vary greatly throughout nations due to differing legal traditions, economic conditions, and policy concerns.

Despite variations in the particulars, both Australia and India acknowledge restrictive covenants as legally valid under specific circumstances. The purpose of these regulations is to prohibit employees from exploiting their insider connections and expertise for personal gain or to damage the company they previously worked for. Employers want to protect their clientele, intellectual property, and competitive edge by limiting their capacity to compete or reveal private information.[2] However, courts regularly examine restrictive covenants to ensure that their scope, length, and geographic reach are appropriate. This is because they are not always enforceable. When evaluating a covenant, courts typically consider whether it protects the employer's legitimate economic interest without materially reducing the employee's ability to sustain themselves. This delicate balancing effort is essential to ascertaining the legitimacy and enforceability of such clauses.[3]

[1] "A guide to restrictive covenants and their significance within employment contracts, https://www.dentons.com/en/insights/articles/2024/may/9/a-guide-to-restrictive-covenants-and-their-significance-within-employment-contracts (last visited August 26, 2024).

[2] Venable LLP, https://www.venable.com/insights/publications/1999/04/protecting-your-companys-intellectual-property (last visited Feb. 10, 2025)

[3] TAY Yong Seng, ANG Ann Liang, Alyssa P'NG, ESTRICTIVE COVENANTS IN EMPLOYMENT LAW When are they enforceable? [2018] SAL Prac 17 (Feb. 10, 2025, 8:00 P.M.)

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Restrictive covenants cannot be enforced in India, and in the very rare case they are enforced by a court, it is if it is fair and required to protect the employer's interests, according to the Indian Contract Act, 1872. Indian courts have traditionally viewed restrictive covenants with caution, enforcing them only in situations where their length, scope, and type of restriction make sense. In contrast, common law rules and legislative provisions are used in Australia to evaluate restrictive covenants.[4] Similar reasonableness standards are used by courts, although they may also take industry norms and the particulars of each case into account. The requirement that these provisions be restricted to what is necessary to protect the employer's legal interests is heavily stressed by Australian courts.[5]

There are parallels and differences in the legal systems and judicial perspectives between India and Australia when comparing restrictive covenants in employment contracts. While protecting business interests is the overarching goal, the application and enforcement of these articles vary depending on the legal system and interpretation. By contrasting the legal stances in Australia and India, this paper seeks to shed light on how employment law is evolving and the challenges that employers and employees face when attempting to manage restrictive covenants in a globalized market.

Protecting business interests requires restrictive covenants, but how well-drafted and closely they adhere to the law will determine whether or not they may be enforced. Employers, workers, and legal experts must all understand the nuances of these phrases in different countries in order to provide fair and effective protection of rights and interests in the context of employment contracts. A comparison between Australia and India will be carried out in later phases of the study, laying the foundation for a more in-depth investigation of restrictive covenants in employment contracts.

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1. Reason for Comparing India with Australia.

https://journalsonline.academypublishing.org.sg/Journals/SAL-Practitioner/Employment-Law/ctl/eFirstSALPDFJournalView/mid/615/ArticleId/1343/Citation/JournalsOnline

[4] K Law, https://www.klaw.in/validity-of-restrictive-covenants-in-contractsve-2/ (last visited Feb. 10, 2025).
[5] Baker McKenzie-Erica Kidston et al., "In review: employment law for executives in Australia" Lexology, 2022, (Feb. 10, 2025, 8:00 P.M.), https://www.lexology.com/library/detail.aspx?g=ea36909c-dea0-4f96-9778-e817d8b3a3b7.

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Regarding restrictive covenants in employment contracts, there are a number of significant reasons why legal scholarship and practice should compare Australia and India.

First, Australia and India are both sizable nations with unique legal systems and cultural backgrounds. By contrasting these two nations, it is possible to conduct a thorough analysis of the ways in which disparate legal customs and socioeconomic circumstances impact the creation and implementation of restrictive covenant laws. This comparative analysis aids in clarifying the guiding ideas and reasoning for accepting or rejecting these kinds of employment contract stipulations.[6] Second, the swift economic expansion and globalization of Australia and India have boosted skilled labor mobility and heightened company competition. Because of this, both employers and employees now seriously consider whether restrictive covenants are enforceable. This article attempts to identify common issues and best practices in the drafting, negotiation, and enforcement of restrictive covenants in a globalized market by contrasting the legal positions in Australia and India.[7]

Thirdly, legislators, solicitors, and companies that operate or want to develop throughout both regions can all benefit from knowing how the legal systems in Australia and India differ from one another. It makes it possible for interested parties to foresee possible legal issues, use risk-reduction tactics, and promote legislative changes that fairly balance the interests of businesses and employees.[8] To put it briefly, contrasting restrictive covenants in employment contracts between Australia and India allows for a thorough examination of the conception, interpretation, and application of these clauses in various legal circumstances. This comparative analysis adds to the conversation on employment law by highlighting areas where legal standards should be improved or harmonized across jurisdictions.[9]

2. Indian Legal Position towards Restrictive Covenants.

[6] Shaun Star" Australia and India: A Comparative Overview of the Law and Legal Practice," (Feb. 10, 2025, 8:00 P.M.) https://www.researchgate.net/publication/344083354_Australia_and_India_A_Comparative_Overview_of_the_Law_and_Legal_Practice.

[7] Orfonline, https://www.orfonline.org/research/a-growth-agenda-for-india-australia-economic-ties (last visited Feb. 10, 2025).

[8] ARCH-India," https://arch-india.org/research/case-studies/india-australias-puzzling-legal-relationship (last visited Feb. 10, 2025).

[9] Research gate, https://www.researchgate.net/publication/287379664_Comparative_analysis_of_employment_contracts (last visited Feb. 10, 2025).

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The Indian Contract Act of 1872, together with particular legislative provisions and court interpretations, principally governs restrictive covenants in employment contracts in India. The legal foundation for restrictive covenants, available remedies for violations, notable court rulings, and legislative reform ideas are all covered in this section.

2.1 Applicable Act.

The Indian Contract Act of 1872 lays down the general principles governing contracts in India. Whereas Section 27 of the Act

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

States Section 27 of the Act. Emphasizes contracts related to trade restrictions and states that contracts that forbid someone from participating in a lawful business, profession, or trade are void, with very few exceptions. Restriction clauses must be reasonable in the following areas to be enforceable in Time: The duration for which the restriction applies should be reasonable and necessary to protect the employer's interests. Geography: The restriction should apply to a reasonable geographic area that is consistent with the employer's place of operation.[10] Also, the scope of restricted activities should be clearly defined and be necessary to protect the employer's legitimate business interests.[11] As Indian courts have frequently noted, restrictive covenants must balance protecting the employer's interests with avoiding unreasonable limits on the employee's capacity to earn a living.

2.2 Available Remedy

Employers may file lawsuits in civil courts to obtain remedies for breaches of restrictive covenants. The most popular cures consist of:

2.2.1 **Injunctions:** Courts may grant injunctions to restrain the employee from engaging in activities prohibited by the restrictive covenant. Injunctions are a critical remedy for enforcing negative covenants, particularly when the employer seeks to prevent the employee from engaging in activities that violate the covenant. An injunction is a judicial order that restrains a party from performing specific acts, thereby providing immediate relief from potential harm.[12]

[10] Anchal Gupta, "Agreement in restraint of trade" SCC Times, 2021, (Feb. 10, 2025, 8:00 P.M.) https://www.scconline.com/blog/post/2021/03/20/agreement/.
[11] Omkar Wangikar "Restraint of Trade and its Exceptions" TaxGuru, 2017 (Feb. 10, 2025, 8:00 P.M.) https://taxguru.in/corporate-law/restraint-trade-exceptions-2.html.
[12] Girish Deepak, Restrictive Covenants: The Lack of an Effective Remedy in India, Christ University Law Journal 2017, Vol. 6, No. 2, 33-43

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2.2.2 **Specific Performance:** If damages are thought to be insufficient to compensate the employer, the courts may, in some situations, mandate a particular execution of the restrictive covenant. Delhi High Court held that if it did not enforce a negative covenant merely due to the unilateral termination of a contract, it would render Section 42 of the Act, which allows the courts to enforce a negative covenant without compelling specific performance of the contract, nugatory.[13]

2.2.3 Recovery of damages

Under Indian law, the primary basis for claiming damages is found in Section 73 of the Indian Contract Act of 1872. This section provides that a party suffering from a breach of contract is entitled to compensation for any loss or damage caused by the breach. The compensation should be such as naturally arose in the usual course of things from the breach or which the parties knew, when they made the contract, to be likely to result from the breach.[14]

2.3 Judicial Pronouncements.

Indian courts have clarified and refined the principles governing restrictive covenants through various judicial pronouncements. These are three landmark judgments:

2.3.1 **Niranjan Shankar Golikari v. Century Spinning & Manufacturing Co. Ltd. (1967):** The Supreme Court held that a restrictive covenant must be reasonable with reference to the parties concerned and with reference to the public interest.[15]

2.3.2 **Percept D'Mark (India) Pvt. Ltd. v. Zaheer Khan & Anr. 2006):** The Bombay High Court emphasized that restrictive covenants must be narrowly tailored to protect legitimate business interests and should not unnecessarily restrain trade.[16]

2.3.3 **Superintendence Company of India Pvt. Ltd. v. Krishan Murgai (1980):** The Delhi High Court highlighted that while enforcing a restrictive covenant, the court should

[13] Padmaja Kaul, Yugank Goel and Vansh Bhutani, "Delhi High Court firmly establishes: specific performance of contracts is the general rule, not an exception" Lexology, 2023 (Feb. 10, 2025, 8:00 P.M.) https://www.lexology.com/library/detail.aspx?g=69b01402-7b92-4eaf-bda8-9ce0336ec135 .

[14] PITTA ISAAC NEWTON, DAMAGES FOR BREACH [Section. 73] UNDER INDIAN CONTRACT ACT, 1872, 1 IJCRT | Volume 9, Issue 6 June 2021 | ISSN: 2320-2882

[15] Kevin Moses Paul, "Niranjan Shankar Golikari vs Century Spinning & Manufacturing Case Summary (1967 SC) - Law Planet - Legal News, Law Updates & Law Exams Preparation," 2021 (Feb. 10, 2025, 8:00 P.M.) https://lawplanet.in/niranjan-shankar-golikari-vs-century-spinning-manufacturing-case-summary-1967-sc/.

[16] Divya Anne Jeswant and Parul Kumar, "Percept D'Mark (India) Pvt. Ltd. v. Zaheer Khan & Anr. (2006) 4 SCC 227.", National Law School of India Review, Vol 19 Issue 2 2007.

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consider whether the covenant is necessary to protect the employer's interests and whether it imposes an undue hardship on the employee.[17]

These cases illustrate the judiciary's approach to balancing the interests of employers and employees concerning restrictive covenants.

2.4 Required changes in law.

Even while the existing legal system offers guidance on whether restrictive covenants are enforceable, there are some areas where legislative reform could improve efficacy and clarity. I) Statutory Guidance: Introducing specific statutory guidelines or criteria for determining the reasonableness of restrictive covenants could provide clearer standards for employers and employees. II) Standardization: Establishing standardized practices for drafting restrictive covenants could reduce ambiguity and ensure fairness in their enforcement. III) Employee Protections: Strengthening provisions to protect employees from overly burdensome or unfair restrictive covenants could promote a more balanced approach to employment contracts. IV) Judicial Training: Providing training to judges on the nuances of employment law and restrictive covenants could improve consistency in judicial decisions and ensure equitable outcomes.

3 Australian Legal Position towards Restrictive Covenants.

Restrictive covenants, which place restrictions on an employee's actions both during and after their employment, are frequently seen in employment contracts.[18]. These covenants are there to protect the business of the employer, which include mostly trade secrets, confidential data, and the names and phone numbers of vendor and client relationships. Restrictive covenants are governed by a number of legislative acts, judicial rulings, and available remedies for violations in Australia. This section explores relevant legislation, available remedies, significant court rulings, and proposed legislative amendments.

3.1 Applicable Act.

[17] The Legal Lock," 2022 https://thelegallock.com/superintendence-company-v-krishan-murgai/ (last visited Feb. 10, 2025).
[18] Dentons, https://www.dentons.com/en/insights/articles/2024/may/9/a-guide-to-restrictive-covenants-and-their-significance-within-employment-contracts (last visited Feb. 10, 2025).

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In Australia, rather than being governed by a particular legislative act, common law rules essentially control the enforceability of restrictive covenants.[19]. However, the interpretation and enforcement of these covenants are influenced by a number of statutory provisions and general contract law principles that can be found in laws like the Fair Work Act of 2009 and the Competition and Consumer Act of 2010 (CCA)[20].

3.1.1 **Competition and Consumer Act 2010:** Contracts, agreements, and understandings that significantly restrict commerce or competition are prohibited by the CCA. Any covenant or agreement that intends to significantly reduce competition may be declared unlawful under Section 45. x A specific exception in the CCA also provides that the prohibitions on cartel conduct and anticompetitive information sharing or agreements (including exclusive dealing) do not apply to matters relating to remuneration, conditions of employment, working hours, or working conditions of employees.[21] A specific exception in the CCA also provides that the prohibitions on cartel conduct and anticompetitive information sharing or agreements (including exclusive dealing) do not apply to matters relating to remuneration, conditions of employment, working hours, or working conditions of employees.

3.1.2 **Fair Work Act 2009:** A foundation for equitable labor practices and circumstances is provided by this statute. It affects the terms and circumstances of employment contracts, which may contain restrictive provisions, even if it does not specifically address restrictive covenants.

3.1.3 **General Contract Law:** Restrictive covenants' enforceability is mostly determined by common law rules that are drawn from court rulings. The covenant's reasonableness with regard to its length, geographic reach, and protected interests is the primary criterion.

3.2 Available Remedy

When a restrictive covenant is breached, the aggrieved party has several remedies available under Australian law:

[19] L&E Global, https://leglobal.law/countries/australia/employment-law/employment-law-overview-australia/08-restrictive-covenants/ (last visited Feb. 10, 2025).
[20] Australian Human Rights Commission," https://humanrights.gov.au/our-work/rights-and-freedoms/common-law-rights-human-rights-scrutiny-and-rule-law (last visited Feb. 10, 2025).
[21] Corrs Chambers Westgarth, "Non-compete clauses in employment contracts – is time up?," "What are Damages in Australian Contract Law?, NWF legal (Feb. 10. 2025. 8:00 P.M.) https://www.corrs.com.au/insights/non-compete-clauses-in-employment-contracts-is-time-up.

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3.2.1 **Injunctions:** An injunction is the primary remedy sought in cases of breach of restrictive covenants. It can be either an interim (temporary) injunction or a permanent injunction. An interim injunction is often sought to prevent the employee from engaging in prohibited activities until the court reaches a final decision. For example, in Integrated Group Ltd v Dillon (2009), the court granted an interim injunction to prevent the employee from working for a competitor.[22]

3.2.2 **Damages:** The employer is entitled to damages if the breaking of a restrictive covenant causes them to suffer financial loss. The goal of the awarded damages is to make up for the loss incurred as a result of the violation. It might be difficult to demonstrate the whole degree of the financial loss, though.[23]

3.2.3 **Account of Profits:** The employee may be required to account for any gains made as a result of breaking the restrictive covenant if the employer requests an account of profits in certain circumstances. Although less often, this remedy might be important if the employee gains a substantial sum of money as a result of the breach.[24]

3.3 Judicial Pronouncements.

Through a variety of legal rulings, Australian courts have significantly shaped the enforcement of restrictive covenants. A number of significant court decisions have established standards and offered guidance about the enforcement and fairness of these covenants:

3.3.1 **Nordenfelt v Maxim Nordenfelt Guns and Ammunition Co Ltd (1894)**: Although an English case, Nordenfelt is often cited in Australian courts for the principle that restrictive covenants must be reasonable in terms of the interests of the parties and the public.[25]

3.3.2 **Stenhouse Australia Ltd v Phillips (1974):** The High Court of Australia, in this case, held that a restrictive covenant must protect the legitimate interest of the employer and be reasonable in scope. The court emphasized that the covenant should not be more restrictive than necessary to protect the employer's interests.[26]

[22] DWF "What are Damages in Australian Contract Law?, NWF legal (Feb. 10. 2025. 8:00 P.M.) https://dwfgroup.com/ar-qa/news-and-insights/insights/2022/10/restrictive-covenants-key-considerations-for-employers-in-australia.

[23] Nevett Wilkinson Frawley,"What are Damages in Australian Contract Law?, NWF legal (Feb. 10. 2025. 8:00 P.M.) https://nwflegal.com.au/what-are-damages-in-australian-contract-law/.

[24] CHRISTOPHER ARUP, CHRIS DENT, JOHN HOWE AND WILLIAM VAN CAENEGEM, RESTRAINTS OF TRADE: THE LEGAL PRACTICE, Unswlawjournal (Feb. 10, 2025, 8:00 P.M.), https://www.unswlawjournal.unsw.edu.au/wp-content/uploads/2017/09/36-1-14.pdf (last visited Feb. 10, 2025).

[25] Lawteacher, https://www.lawteacher.net/cases/nordenfelt-v-maxim.php (last visited Feb. 10, 2025).

[26] Vlex, https://vlex.co.uk/vid/stenhouse-australia-ltd-v-805496645 (last visited Feb. 10, 2025).

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3.3.3 **Adamson v New South Wales Rugby League Ltd (1991):** This case highlighted the principle that restrictive covenants should not unduly restrict an individual's ability to earn a livelihood. The court struck down a covenant that was deemed excessively restrictive.[27]

3.3.4 **Koops Martin v Dean Reeves (2006):** The court upheld a restrictive covenant, finding it reasonable in protecting the employer's legitimate business interests. This case reinforced the idea that the duration and geographical scope of the covenant must be proportionate to the interests being protected.[28]

3.3.5 **Just Group Ltd v Peck (2016):** The court considered the enforceability of a non-compete clause and emphasized the need for clear and unambiguous terms. The decision highlighted the importance of precise drafting in restrictive covenants to avoid ambiguity and potential unenforceability.[29]

3.4 Required changes in law.

Even though Australia's existing legal system offers a strong method for handling restrictive covenants, there are a few areas that might have judicial or legislative improvement to improve justice and clarity: I) Codification of Reasonableness Test: Judicial rulings may be more lucid and consistent if explicit legislative measures were introduced to formalize the reasonableness test for restricted covenants. These clauses could list important things to think about, such as the length of time, the area covered, and the interests being safeguarded.[30] II) Statutory Guidelines on Legitimate Interests: Standardising the definition of a genuine economic interest in law may aid in the evaluation of restrictive covenants. This might entail safeguarding client relationships, commercial secrets, and private information. III) Enhanced Protection for Employees: Excessively restrictive covenants may be avoided by enacting legislative measures that strike a compromise between the rights of workers and the preservation of company interests. This might entail paying workers during a limited period or restricting the length and

[27] Classic, http://classic.austlii.edu.au/au/journals/SydLawRw/1993/5.pdf (last visited Feb. 10, 2025).
[28] Joe Catanzariti & Abraham Ash ,"Top Stories - Corporate LiveWire , Corporate LiveWire, (Feb. 10, 2025, 8:00 P.M.) https://www.corporatelivewire.com/top-story.html?id=post-employment-non-solicitation-restraints-when-does-solicitation-occur (last visited Feb. 10, 2025).
[29] Edith Moss, "Unreasonable Restraint of Trade: Just Group Limited v Peck," 2017 (Feb. 10, 2025, 8:00 P.M.) https://legalvision.com.au/unreasonable-restraint-of-trade-just-group-limited-v-peck/
[30] Herbert Smith Australia: Is this the end for non-compete and non-solicit provisions in employment agreements? Public consultation begins on proposed reform," Global law firm, (Feb. 10, 2025, 8:00 P.M.) https://www.herbertsmithfreehills.com/notes/employment/2024-04/is-this-the-end-for-non-compete-and-non-solicit-provisions-in-employment-agreements-public-consultation-begins-on-proposed-reform (last visited Feb. 10, 2025).

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geographic reach of non-compete agreements. IV) Mandatory Review Clauses: Laws may require review provisions in employment contracts to be reviewed on a regular basis to see if restrictive covenants are still necessary and acceptable. This would guarantee the covenants' continued applicability and fairness. V) Clearer Enforcement Mechanisms: Streamlining the legal process and lightening the load on courts might be achieved by establishing more precise standards for the enforcement mechanisms, such as the awarding of damages and the issuance of injunctions. VI) Public Policy Considerations: Incorporating public policy concerns explicitly when evaluating restrictive covenants might guarantee that the terms do not excessively limit competition or the ability of skilled labor to migrate.[31]

4 Comparing The Enforcement Regimes Of Australia and India.

Employers utilize restrictive covenants in employment contracts as a tool to safeguard their company interests by limiting their workers' post-job actions. Due to disparities in statutory frameworks, judicial interpretations, and legal principles, Australia and India have somewhat different enforcement regimes for certain covenants. This section highlights the main similarities and differences between the restricted covenant enforcement systems in the two nations.

4.1. Legal Framework-

Australia: In Australia, common law principles govern restrictive covenant enforceability, and these principles are further strengthened by laws like the Competition and Consumer Act 2010 (Cth) and the Fair Work Act 2009 (Cth). The courts evaluate a covenant's fairness based on a number of factors, including its duration, geographic scope, and the legitimate business interests it protects. Important judicial decisions have established that restrictive covenants must be fair and not more stringent than required to preserve the employer's interests.

India: In India, the primary legislation governing restrictive covenants is the Indian Contract Act of 1872. Section 27 of the Act states that any agreement intended to limit commerce is void, with a few exceptions made where the restriction is deemed to be reasonable.[32] Indian courts often read non-compete clauses strictly, particularly where they extend beyond the term of an employee's employment. Secrecy and non-solicitation agreements have a higher chance of being sustained if they are necessary and suitable to protect legitimate business interests.

[31] SWS Lawyers," 2024, https://swslawyers.com.au/post-employment-restraints-changes-internationally-and-possibly-in-australia/ (last visited Feb. 10, 2025).
[32] Test book, https://testbook.com/ugc-net-commerce/indian-contract-act-1872 (last visited Feb. 10. 2025).

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4.2 Judicial Interpretations

Australia: Restrictive covenant enforcement is being handled delicately by Australian courts. Important decisions like Koops Martin v. Dean Reeves (2006) and Stenhouse Australia Ltd. v. Phillips (1974)[33] highlight the necessity of covenants protecting lawful business interests and being reasonable in length and breadth. Non-compete agreements will be upheld by the courts if they are appropriate and required. For example, in the 2016 case of Just Group Ltd v. Peck, the court affirmed a non-compete agreement that was precise and fair in its limitations.

India: When it comes to restrictive covenants, especially non-compete agreements, Indian courts take a more cautious approach. In decisions like Niranjan Shankar Golikari v. Century Spinning & Manufacturing Co. Ltd.[34] (1967) and Superintendence Company of India (P) Ltd. v. Krishan Murgai (1981)[35], the Indian Supreme Court has ruled that non-compete agreements after employment are normally unenforceable unless they safeguard proprietary knowledge or trade secrets. If in a contract, a covenant like non-solicitation and confidentiality agreements are fair& reasonable and also do not substantially restrict an employee's ability to earn a proper earning as per his standard of skills, it seems that Indian courts are more likely to enforce them.

4.3 Available Remedies

Australia: The main options as remedies for violating restrictive covenants are injunctions, damages, and, in some cases, an account of profits. It is very normal practice in a suit to ask for temporary and permanent injunctions to stop workers from participating in illegal actions that are in violation of parent contacts. Whereas Damages are awarded to compensate for any monetary losses resulting from the breach. In order to make up for any monetary losses brought on by the contravention, damages are imposed. The employee could additionally have to offer any earnings from the breach if the courts decide to impose an account of earnings.

India: In India, the only acceptable remedies for infringing restrictive agreements are usually damages and injunctions. When there has been a misuse of personal information or solicitation of clients, injunctions are often used to prevent further breaches. Damages may be awarded to make up for the employer's actual losses. However, determining damages may be challenging, and Indian courts frequently decide less than Australian courts.[36]

[33] [1974] AC 391 (PC).
[34] AIR 1967 SC 1098.
[35] (1981) 2 SCC 246.
[36] All research, https://www.allresearchjournal.com/archives/2017/vol3issue6/PartQ/6-7-119-137.pdf (last visited Feb. 10. 2025).

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4.4 Public Policy Considerations

Australia: The Australian courts try to strike a balance between the need for protection to employers while taking public policy into consideration to ensure that restrictive covenants do not obstruct competition in the market or the flow of qualified employees' skills in the market. When the said reasonableness test comprises public policy concerns, the Australian court may take into account the broader implications on the skilled labor market and competitiveness. The courts also use extreme caution when they are enforcing covenants that might encourage conduct or make it more strict for someone to financially support himself.

India: Whereas in India, Public policy has a major role in court while adjudicating implementation of restrictive covenants in India. The Indian Contract Act of 1872 represents an old approach that opposes trade constraints and restrictions on free trade and also emphasizes the need to allow individuals to pursue their jobs very freely. Indian courts many times particularly reject post-employment non-compete agreements since though higher judiciary because of the history of India Court belief it interferes with the public interest and the constitutional rights of workers. Well, this approach is more confined than in Australia because of the attitude of public policy.[37]

4.5 Required Changes and Future Directions

Australia: In Australia, there is an ongoing debate for the change by the employer which is pertaining to the need for legislative clarity about the standard of reasonableness and what can form legitimate commercial interests. The predictability and consistency of court decisions may not be enhanced by the use of the said legislative principles. Furthermore, it is believed that a balance is needed to be struck between the union, which is defending employee rights, and employers who fight for legitimate business interests; maybe the solution can be legislation limiting the extent and length of restrictive covenants.

India: In India, more specific legal specifications in the law are needed for the enforcement of restrictive covenants by courts. The current legal system wants to prioritize the freedom of trade and occupation and wants to take specific measures that balance this path with the protection of valid economic needs, which might lead to more clarity and predictability in the law and the precedent. It would be beneficial for employers if Indian courts adopted a more

[37] Faster capital, https://fastercapital.com/content/Legal-Stability--How-Stare-Decisis-Ensures-Predictability.html (last visited Feb. 10. 2025).

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sympathetic methodology, similar to what is Australia's reasonableness test, and evaluated each case's legality of restrictive covenants separately.

5 Conclusion: Time to set new parameters for Reasonableness.

The employment contracts in India mostly are not controlled by a well-established legal framework concerning restrictive covenants, It seems like future modifications to the law and ongoing judicial review will be necessary to effectively protect the rights of employers and employees while adapting to evolving business practices. An in-depth understanding of said legal principles will be essential for stakeholders to be involved with negotiating intricate details of employment agreements in India.[38]

The rigorous covenant enforcement regimes in both countries, Australia and India, are said to be a direct result of their distinct legal systems and tactical goals for their own public policy. In contrast, it seems like Australia has a much more balanced approach than the Indian court's, which mainly emphasizes either reasonableness or the safeguarding of legitimate economic interests. On the other side, India adopts a more conservative stance, which prioritizes the right to life and freedom of trade. Indian Workers as well as employers working in several jurisdictions need to be aware of these variances, underscoring the need for meticulously designed restricted agreements that adhere to provincial legal regulations.[39]

The legal framework of restrictive covenants in employment contracts in Australia is also established on common law foundations and further strengthened by legislative actions. In Australia, the courts have built more on the body of legal precedent, which highlights the essential and rational nature of said covenants, which are protection of lawful business interests. Despite the said need for change to provide more openness, fairness, and balance between the interests of firms and workers, the current legal structure looks efficient in many aspects. Enhancing the possibility of enforcement and fairness of restrictive covenants in Australia can very easily be achieved by amending regulations to give definitive instructions for evaluating reasonableness, identifying valid interests, and providing the workers and employees more protection.[40]

[38] DWF groups, https://dwfgroup.com/en/news-and-insights/insights/2022/10/restrictive-covenants-key-considerations-for-employers-in-australia (last visited Feb. 10. 2025).
[39] SCRIBD, https://www.scribd.com/document/509075050/Concept-of-Restrictive-Covenant-TOPA (last visited Feb. 10. 2025).
[40] Cite HR, https://www.citehr.com/609078-enforcement-negative-covenants-employment-contracts.html (last visited Feb. 10. 2025).

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Because of their very differing legal traditions and factors related to public policy, Australia and India have considerably contrasting enforcement schemes for the enforcement of negative covenants in employment contracts. These discrepancies become apparent when comparing the enforcement strategies of the two very different nations. On one side, Australia applies a sophisticated reasonableness test as the foundation for its strategy; on the other side, India's approach is mostly based on an outdated ideology that opposes trade barriers. In order to successfully balance the competing needs of employers and workers, it is essential to evaluate and reinterpret the criteria for a legal job restriction in light of worldwide economic and employment movements.

5.1 Revisiting Reasonableness in Australia

5.1.1 Reasonability is said to be in the fundamental principle; it is the principle of natural justice that determines the enforceability of restrictive covenants or negative covenants in Australia. All Judicial authorities mostly evaluate the equity of a covenant in safeguarding valid company interests without imposing excessive burden and litigation on workers. Whereas the implementation of this said reasonableness criterion is intrinsically subjective, it is also required, leading to varying legal interpretations. Therefore, it is very crucial to put in more exact laws in order to enhance consistency and predictability.

5.1.2 **Codification of Reasonableness Factors**: Legal statutes that establish the concept of reasonableness would provide a judge a structured framework to operate within or a guideline from the apex body or court, specifying criteria that may contain parameters like duration, geographical extent, particular interests safeguarded, etc. The government, in order to enhance more uniformity in the evaluation process, said codification may also include many sub-categories of acceptable economic interests, such as client relationships, proprietary knowledge, sensitive data, etc.[41]

5.1.3 **Balancing Interests**: The revised regulations or guidelines must be made with the aim that they will achieve a suitable equilibrium between safeguarding the employer's interests and enabling workers to advance in their professional trajectories and other relevant skill enchantment. Whereas, in the absence of exceptional circumstances and legal restrictions on the length and said geographical extent of negative covenant agreements would prohibit excessively restrictive covenants that make it impracticable for an individual to sustain for their life.

[41] Austlii, https://www5.austlii.edu.au/au/journals/AIAdminLawF/2016/22.pdf (last visited Feb. 10. 2025).

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5.1.4 **Periodic Review Clauses**: It is required to regularly evaluate employment contracts within the employer-employee relationship, and it might facilitate the said process of determining whether said restricted covenants are still relevant and essential to continue. These continued assessments would ensure that in light of the evolving business landscape and the employee's role within the establishment, the covenants remain fair and appropriate.[42]

5.2 Redefining Reasonableness in India

5.2.1 India's strict enforcement methods, which are founded on Section 27 of the Indian Contract Act of 1872, demonstrate the country's strong position against trade restrictions. While protecting employees' right to freedom of employment, this occasionally leaves employers with limited legal options to protect their reasonable business interests. The more India's economy interacts with the global economy, the more important it is to interpret reasonableness in a way that balances these competing interests.

5.2.2 **Legislative Clarity**: More clarity for employers and employees would result from the introduction of legislative modifications that define acceptable limits precisely. Examples of such amendments include non-compete agreements during employment and restricted post-employment restrictions. These changes should specify acceptable lengths of time and geographic boundaries for different sectors and positions, guaranteeing that covenants are customized to meet particular business requirements.[43]

5.2.3 **Context-Specific Reasonableness**: The use of a context-specific reasonableness framework, such as the Australian model, may facilitate a more equitable and adaptable evaluation of restrictive covenants. Courts should consider factors such as the nature of the firm, the employee's role, and potential career consequences when determining whether an employee is subject to a covenant.

5.3 **Enhanced Judicial Guidelines**: Standardising court rulings and lowering ambiguity would be achieved by establishing comprehensive judicial standards on the enforcement of restrictive covenants. These regulations should encourage a reasonable approach that takes into account both the protection of business interests and the rights of workers to work.[44]

5.3.1 **Global Considerations and Future Directions:** Restrictive covenants need to change to reflect the increasingly global and digital nature of labor. The ideas of restrictive covenants

[42] SSRN, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2903598 (last visited Feb. 10. 2025).
[43] Spotdraft, https://www.spotdraft.com/verifai-articles/how-to-review-employment-contracts-a-comprehensive-guide (last visited Feb. 10. 2025).
[44] NSLR, https://www.nslr.in/wp-content/uploads/2019/04/NSLR-Vol-5-No-6.pdf (last visited Feb. 10. 2025).

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are being challenged by the fast progress of technology, remote working arrangements, and cross-border employment. Therefore, in establishing new reasonableness standards, Australia and India must take into account global best practices and new developments.

5.3.2 **Embracing Flexibility and Adaptability**: Legal frameworks have to be adaptable enough to take into account the changing character of the modern workplace. This entails realizing the necessity of distinct standards for diverse professions and sectors as well as the effects of technology improvements on workforce mobility and corporate operations.

5.3.3 **Promoting Fair Competition and Innovation**: Encouraging an environment that fosters innovation and fair competition is equally important as protecting legitimate business interests. Reasonable restrictive covenants should stop unfair competition without limiting innovation and the spirit of entrepreneurship.[45]

6 CONCLUSION:

It is imperative that both countries Australia and India revisit and day by day redefine the boundaries of reasonableness through respective courts' judgment and with regard to restrictive covenants in employment contracts mostly in the organized sector. Whereas, in the ever-changing scenario of global employment in a globalizing world, the restrictive covenants which are in continue to need to be fair, relevant, and successful provided that there are other clear legal standards like context-specific evaluations and a balanced approach to safeguarding employee rights and also the establishment’s interests. There is a way ahead by developing new reasonableness criteria, both countries may more effectively control the navigate Covenant and the complexities of modern work relationships and also promote a more vibrant and equitable labor market for a globalizing world.

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[45] Brainly, https://brainly.com/question/24478876 (last visited Feb. 10. 2025).

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