

Whether Trade, Commerce and Intercourse Free?

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Abstract: *Is this article/paper addresses the intricacies worried in the query that whether or not the freedom of trade, commerce and intercourse (Article 301, Constitution of India) is an absolute freedom or does it have any restrictions on it? For an absolute freedom of trade, commerce and intercourse may also lead to economic confusion and misuse of the same. Therefore, the large amplitude of the freedom granted by way of Article 301 is restricted with the aid of restrictions imposed on it underneath Articles 302-305. The charter makers favoured to promote free glide of trade and commerce in India as they totally realized that monetary team spirit and integration of the India furnished the primary sustaining pressure for the balance and progress of the political and cultural team spirit of the federal polity, and that the India should characteristic as one single financial unit without obstacles on inner trade. In order to make sure that the country legislatures subjected to neighbourhood and regional pulls do now not create trade limitations in future, Article 301 was once integrated in the constitution. According to this provision, "trade, commerce and intercourse during the territory of India shall be free". The charter makers were absolutely aware of the want for preserving financial solidarity and development of federal polity while drafting the applicable Articles of phase XIII. Article 301 is not a assertion of a mere platitude or the expression of a pious hope of a declaratory character. It embodies and enshrines a precept of paramount significance that financial solidarity will supply the important sustaining force for stability and the progress of the political and cultural solidarity of the country*

1. Introduction

Article 301 and Section 297 of the Govt. of India Act, 1935

The content material of freedom provided for by using Article 301 is large than the freedom pondered by way of section 297 of the Government of India Act, 1935. the supreme court docket pointed out that the observations of the scope of Section 297 and Article 301 did not fall for consideration in a previously and the observations therein could now not be dealt with to preclude the scope of Article 301.

Content of Article 301

The scope and content material of Article 301 depends on the interpretations of three expressions used therein, viz., 'trade, commerce and intercourse', 'free' and 'throughout the territory of India'.

Trade, commerce and intercourse

The framers of the Indian constitution, rather of leaving the thought of 'intercourse' to be implied by the technique of judicial pronouncements, expressly incorporated the identical in Article 301. The words exchange and commerce have been widely interpreted. In most of the cases, the accent has been on the movement aspect. For example, in the *Atiabari Tea Co. v. State of Assam* case, the courtroom emphasized : "whatever else it (Art.301) may additionally or can also no longer include, it really includes movement of change which is of the very essence of all exchange and is its crucial part," and, further, that "primarily it is the movement section of the trade" which Article 301 has in its mind, that "the motion or the transport of the alternate need to be free," and that "it is the free motion or the transport of items from one part of the India to the other that is meant to be saved."

Again, in *State of Madras v. Nataraja Mudaliar*, the courtroom noted that "all restrictions which immediately and immediately affect the movement of trade are declared by means of Article 301 to be ineffective." Nevertheless, cases are no longer trying the place movement has no longer been involved but other factors of alternate and commerce have been involved. The view now seems to be fairly settled that the sweep of the notion 'trade, commerce and intercourse' is

very broad and that the phrase change alone, even in its slender sense, would consist of all things to do in relation to buying and selling, or the interchange or exchange of commodities and that movement from vicinity to location is the very soul of such trading activities.

In *Koteswar v. K.R.B. & Co*, a restrict on ahead contracts used to be held to be violative of Article 301. The supreme court docket held that a electricity conferred on the kingdom government to make an order presenting for regulating or prohibiting any type of business or monetary transactions referring to any vital Article, virtually lets in restrictions on freedom of exchange and commerce and, therefore, its validity has to be assessed with reference to Article 304(b).

In *District Collector, Hyderabad v. Ibrahim*, the Supreme Court has invalidated underneath Article 301 a try via a state to create with the aid of an administrative order a monopoly to deal in sugar in favour of cooperative societies. The order was issued whilst the proclamation of emergency used to be operative and so Article 19 (1)(g) could no longer be invoked. The court docket consequently took recourse to Article 301.

In *Fatehchand Himmatlal v. State of Maharashtra*, the Supreme Court considered the question that whether the Maharashtra debt comfort act, 1976, was constitutionally legitimate vis-à-vis Article 301. This depended on the further question that whether money-lending to poor villagers which was once sought to be prohibited by using the Act ought to be viewed as trade, commerce and intercourse. The court docket answered in the terrible although it acknowledged that the money-lending amongst the business community is critical to trade and consequently is trade.

Certain things to do may not be regarded as trade, commerce and intercourse although the traditional types and devices are employed therein, as for example, gambling, and consequently an Act proscribing making a bet and playing is now not awful beneath Article 301. In this case, the supreme court docket had expressed some sentiments of suggesting that illegal things to do adverse to public morality and security would no longer be viewed as trade and commerce. But the court then resiled from this extensive proposition

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announcing that the extensive proposition that a dealing towards morals would now not be business, includes the role that the which means of the expression 'trade or business' would depend upon, and vary with, the standard requirements of morality customary at a unique factor of time in the country.

After an tricky learn about of the scope of the meaning of these words, it can be said that the word "trade" can't be restrained to the motion of items however extends to transactions linked with merchandise or waft of goods, the merchandising of shopping for and selling, advances, borrowings, discounting bills and mercantile documents, banking and other boards of grant of funds. Money lending and exchange financing additionally constitutes trade.

Free

The phrase 'free' in Article 301 cannot mean an absolute freedom or that each and every restriction on alternate and commerce is invalid. The Supreme Court has held in *Atiabari* that freedom of trade and commerce guaranteed by Article 301 is freedom from such restrictions as directly and straight away restrict or impede the free waft or motion of trade. Therefore Article 301 would no longer be attracted if a regulation creates an indirect or inconsequential obstacle on trade, commerce and intercourse which may additionally be viewed as remote. The phrase 'free' in Article 301 does not imply freedom from regulation. As has been located via the supreme court: "there is a clear difference between laws interfering with freedom to carry out the activities constituting exchange and laws imposing on those engaged therein regulations of proper habits or different restraints directed to the due and orderly manner of carrying out the activities." Regulation of hours, equipment, weight, dimension of load, lights, site visitors' laws are some examples of regulatory legal guidelines which are not hit by using Article 301.

Regulations like guidelines of traffic facilitate freedom of alternate and commerce whereas restrictions hinder that freedom. In *State of Mysore v. Sanjeeviah*, A rule banning motion of woodland produce within the state between 10 p.m; and sunrise used to be held to be void below Art. 301 as it was once no longer 'regulatory' but 'restrictive'. Tax legal guidelines are now not excluded from the scope of Art. 301. A tax which at once and immediately restricts alternate would fall within the purview of Art. 301. From the vogue of the case-law it appears that there is a higher readiness on the section of the courts to symbolize an obstacle on motion of commerce as 'direct' and so maintain it terrible under Art. 301, than the one no longer on motion which is usually held to be indirect or far off and so valid, e.g., octroi, sales tax, buy tax, etc. But sales tax discriminating between items of one kingdom from those of another may have an effect on free go with the flow of alternate and so offend Art. 301. A tax levied by means of Parliament on interstate sale would have offended Art. 301 as such a tax, in its essence, encumbers movement of alternate or commerce because with the aid of its very definition an interstate sale is one which activities movement of goods from one nation to another. Nevertheless, it used to be held valid due to the fact of Art. 302.

Throughout the territory of India

The view is definitely held now that Article 301 applies no longer solely to interstate however additionally to intrastate change and commerce, i.e. trade within the state. Therefore, it capacity freedom of trade commerce and intercourse is there within the country and/or outdoor the country and/or any section inside the territory of India.

Regulatory and Compensatory Tax

To smoothen the movement of interstate exchange and commerce, the state has to supply many facilities through way of roads etc. The concept of regulatory and compensatory taxation has been evolved with a view to reconcile the freedom of exchange and commerce guaranteed by using Art. 301 with the want to tax such trade at least to the extent of making it pay for the amenities provided to it by way of the state, e.g., a street net-work. If a cost is imposed not for the cause of obtaining a suitable contribution to the renovation and maintenance of the road, however for the cause of adversely affecting trade or commerce, then it would quantity to, a limit on the freedom of trade, commerce and intercourse.¹

The thinking of regulatory and compensatory taxation has been applied by the Indian courts to the nation taxation underneath entries 56 and 57 of List II.

Atiabari Tea Co. v. State of Assam,

Facts: A tax levied by means of the State of Assam on the carriage of tea by means of avenue or inland waterways was held terrible for "the transport or movement of items is taxed solely on the basis that the items are accordingly carried or transported, and for this reason "directly influences the freedom of change as contemplated by using Art. 301."

The Supreme Court took the view that the freedom assured via Art. 301 would become illusory if the movement, transport, or the carrying of items were allowed to be impeded, obstructed or hampered through the taxation without gratifying the necessities of Art. 302 to 304. The court docket did now not take into consideration the quantum. of tax burden which by means of no skill was once excessive. Simply because the tax was once levied on 'movement' of goods, from one vicinity to another, it was once held to offend Art. 301.

The view propounded in *Atiabari* was sure to have awesome negative impact upon the monetary autonomy of the states. It would have rendered their taxing electricity beneath entries 56 and 57, List II.

Accordingly, the count came to be re-considered by the Supreme Court in *Automobile Transport v. Rajasthan*.

Facts: The State of Rajasthan had levied a tax on motor automobiles (Rs. 60 on a motor car and Rs. 2000 on a goods car per year) used within the country in any public place or kept for use in the state. The validity of the tax was challenged.

¹<https://www.legalbites.in/freedom-trade-commerce-intercourse/>

Taking the view that freedom of exchange and commerce underneath Art. 301 must now not unduly cripple state autonomy, and that it should be consistent with an orderly society, the Supreme Court now ruled that regulatory measures and compensatory taxes for the use of buying and selling services were now not hit by Art. 301 as these did no longer hamper, but alternatively facilitated, trade, commerce and intercourse.

Issue: A working take a look at to figure out whether a tax is compensatory or now not would be to enquire whether the trades human beings are having the use of positive services for the higher conduct of their commercial enterprise and paying now not patently tons greater than what is required for imparting the facilities? A tax does no longer quit to be compensatory because the specific or unique amount accumulated is not truly used in supplying facilities.

The idea of compensatory tax evolved in this case used to be something new as in *Atiabari*, the court docket had pushed aside the argument that the money realized thru the tax would be used to enhance roads and waterways as a substitute curtly by pronouncing that there have been other ways, apart from the tax in question, to realize the money, and that if the stated object was supposed to be finished through levying a tax on the carriage of goods, the equal ought to be carried out solely with the aid of enjoyable Art. 304(b).

Decision: The court dominated that the tax used to be now not hit by means of Art. 301, as it used to be a compensatory tax having been levied for use of the roads furnished for and maintained via the state.

Thus, to this extent, the majority view in *Atiabari* was now overruled through *Automobile*.

Since then the concept of regulatory and compensatory taxes has come to be established in India with reference to entries fifty-six and 57, List II, and the thought has been applied in various cases, and step by step the courts have liberalised the concept so as to allow country taxation at a higher level.

Bolani Iron Ores v. State of Orissa

A compensatory tax is levied to elevate income to meet the expenditure for making roads, retaining them and for facilitating the movement and law of traffic. The Supreme Court held that taxation under entry 57, List II, cannot exceed the compensatory nature which need to have some nexus with the cars the usage of the roads. The regulatory and compensatory nature of the tax is that taxing power should be used to impose taxes on motor vehicles which use the roads in the state or are saved for use thereon.

G.K. Krishnan v. State of Tamil Nadu

Facts: The State of Tamil Nadu accelerated the motor cars tax from Rs. 30 to a hundred per seat per quarter and this was once challenged as being violative of Art. 301.

Issue: whether a non-discriminatory tax levied by way of a nation be considered as a limit on trade and commerce because of the feeling that this would curtail country

autonomy to levy taxes falling in the country legislative sphere?

But the Supreme Court upheld the tax. The court docket stated, "A compensatory tax is not a limit upon the movement section of alternate and commerce." The tax need to now not go past "a suited recompense to the State for the authentic use made of the physical amenities furnished in the shape of a road." In the instant case, the tax collections amounted to over Rs. 16 crores whilst the expenditure for the year amounted to Rs. 19.51 crores and this amount did now not include the delivers to neighbourhood governments for the restore and preservation of roads inside their jurisdiction. The tax was once accordingly held to be compensatory and consequently valid.

The Supreme Court further liberalised the country taxing strength through upholding a kingdom tax on passengers and goods carried on country wide highways.

International visitor enterprise v. State of Haryana

Facts: The state of Haryana levied a tax on transporters plying motor vehicles between Delhi and Jammu & Kashmir. They use national highway, bypass via Haryana without picking up or setting down any passenger in the state. The responsibility for establishing and maintaining of country wide highways rests on the Centre. It used to be consequently argued through the transporters that the tax could hardly be viewed as compensatory, but the court docket rejected the contention.

The Supreme Court said that what is critical to uphold such a tax is the existence of a specific, 'identifiable' object in the back of the levy and a 'sufficient nexus' between the 'subject and the object of the levy.' The courtroom similarly said that a country incurs big expenditure for preservation of roads and imparting amenities for transport of items and passengers. Even in connection with country wide highways, a kingdom incurs full-size expenditure now not directly via establishing or keeping them but through facilitating the transport of items and passengers along with them in various methods such as lighting, site visitors' control, facilities for passengers, halting places for buses and trucks. That part of a country wide highway which lies inside municipal limits is to be developed and maintained via the state. There is as a consequence enough nexus between the tax and the passengers and items carried on the national highways to justify the imposition of the said tax.

Decision: the tax was once held to be valid.

Malwa Bus Service v. State of Punjab

Facts: In this case, in the year 1981, the State of Punjab significantly improved the fee of tax on each stage carriage plying for rent and transport of passengers. The costs adopted had been Rs. 500 per seat per year subject to a maximum of Rs. 35,000 per bus irrespective of the distance over which it operated daily. According to the budget figures for 1981-82, the income receipts of the authorities from motor motors tax used to be Rs. 50 crores as in opposition to the expenditure of Rs. 34 crores. The tax used to be challenged on the ground that it used to be now not compensatory as the authorities was using it for augmenting

its regular revenues, but the court upheld the tax as compensatory.

In the instant case, the budget expenditure on the roads and bridges did not encompass the expenditure incurred by using the country on different heads linked with avenue transport, such as, the directorate of transport, transport authorities, provision for bus stands, lighting, visitors' police, supplies to local authorities. Taking all this expenditure into account, it grew to become clear that a vast phase of the levy on motor vehicles was once being spent yearly on presenting facilities to motor motors operators. The court docket also pointed out that in later years, the government expenditure on roads and bridges had drastically increased. It also said that the figures of earnings and expenditure for only one 12 months may current a distorted picture. In this case, cumulative figures of receipts and expenditure for 9 years (1973-1982) presented a one-of-a-kind picture. Describing the principle underlying such a tax, the court docket said: "what is integral is that the burden should now not disproportionately exceed the fee of the services supplied via the state."

Decision: Therefore, the tax imposed with the aid of the kingdom of Punjab was once held to be valid.

Inter-relation between Articles 301 and 19(1)(g)

Article 19(1)(g), a quintessential right, confers on the residents the proper to exercise any profession or carry on any occupation, change or business. The query of inter-relationship between Articles 19(1)(g) and 301 is relatively uncertain.

One view is that while Article 19(1)(g) offers with the right of the individuals, Article 301 affords safeguards for the carrying on change as a whole unique from an men and women right to do the same. This view is rarely tenable. Article 301 is based on section ninety two of the Australian constitution which has been held to compromise rights of the person as well, and the equal ought to be the function in India. In real practice, the view has never been enforced and men and women have challenged law on the ground of its effect on their proper to raise on trade and commerce. The supreme court has denounced the theory that Article 301 guarantees freedom "in abstract and not of the individuals."

A distinction between Arts. 19(1)(g) and 301, it has been said, is that Art. 301 ought to be invoked only when an individual, is averted from sending his goods across the state, or from one point to any other in the identical state, whilst Art. 19(1)(g) can be invoked when the complaint is with regard to the proper of an person to carryon enterprise unrelated to, or irrespective of, the motion of goods, i.e., whilst Art. 301 contemplates the proper of alternate in motion, Art. 19(1)(g) secures the right at rest.

Art. 301 covers many interferences with trade and commerce which may now not mainly come within Art. 19(1)(g), Freedom of exchange and commerce is a wider thought than that of an individual's freedom to change assured by way of Art. 19(1)(g).

Art. 19(1)(g) can be taken advantage of by way of a citizen, while Art. 301 can be invoked with the aid of a citizen as well as a non-citizen. Also, while Art. 19(1)(g) is now not available to a company person, Art.301 can also be invoked by using a agency and even by means of a country on complaints of discrimination or desire which are outlawed by way of Art. 303, discussed below.

In emergency, Art. 19(1)(g) is suspended and so courts can also take recourse to Art. 301 to adjudge the validity of a restriction on commerce.

In positive situations, only one of the two may also be relevant, as for example when there is no direct burden on a alternate however it may additionally be a limit in phrases of Art. 19(1)(g) read with Art. 19(6). In some different situations, each provision might also become relevant and it may additionally be possible to invoke them both.

Art. 301 is a mandatory provision and a law contravening the equal is ultra vires, however it is now not a crucial proper and therefore is not enforceable beneath Article 32 . But if the proper underneath Article 19(1)(g) is additionally infringed, then Article 32 petition may additionally lie.

Is this freedom an absolute one?

A question arises here that whether or not the freedom of trade, commerce and intercourse is an absolute freedom or does it have any restrictions on it? For an absolute freedom of trade, commerce and intercourse may additionally lead to financial confusion and misuse of the same. Therefore, the huge amplitude of the freedom granted by means of Article 301 is confined by Articles 302-305. the exceptions to Article 301 are:

a. Parliament is given electricity to regulate trade and commerce in public pastime below Article 302 problem to Article 303.

Article 302 empowers parliament to impose restrictions on the freedom of trade, commerce and intercourse between one country and another, or inside any phase of the territory of India, in the public interest. The reference of Article 302 to restriction on the freedom of trade within any part of the territory of India as distinct from freedom of alternate between one nation and some other truly indicates that the freedom granted by means of Article 301 covers each inter nation and intra kingdom trade and commerce, as Article 302 is in the very nature of an exception to Article 301.

The Essential Commodities Act has been held to impose sensible restrictions on the right to raise on exchange and commerce as assured via Articles 19(1)(g) and 301.

In *Prag Ice & Oil Mills v. India*, the supreme courtroom said that Article 302 does now not communicate of 'reasonable restrictions' yet the court docket further held that 'it is evident that restrictions contemplated by means of it need to endure a real looking nexus with the want to serve the public interest.'

b. The country legislatures are given strength to regulate trade and commerce under Article 304 difficulty to Article 303.

Article 304, which consists of two clauses, empowers the states to make laws to modify and prevent the freedom of trade and commerce to some extent. According to 304 (a), a nation legislature may via regulation impose on items imported from different states any tax to which comparable goods manufactured or produced inside that state are subject, so, however, as not to discriminate between items so imported and items so manufactured or produced. Article 304(a) thus says that nation legislature may additionally impose taxes but one circumstance is there, it shall no longer be discriminatory.

In *Kalyani Stores v. State of Orrisa*, the state of Orrisa levied a responsibility on foreign liquor. No such liquor was produced within the country and the whole of it was imported from other states. The supreme court ruled that if the items of a particular description had been not produced inside a state, the strength to legislate under Article 304(a) would no longer available to it. In the immediate case as no liquor used to be produced within the state, the country ought to now not use its legislative energy under Article 304(a).

In *Saghir Ahmed v. State of U.P.*, it used to be held that subsequent sanction is of no effect. But in different instances it was held that proviso has to be study in a harmonious manner with Article 255, which says that if the Act receives the assent of the president, the non-compliance of the previous sanction to the introduction of the invoice is cured.

c. Article 305 protects existing laws from the operation of Articles 301 and 303. it also saves nationalization laws from the operation of Article 301.

Restrictions and regulations

The distinction between "freedom below Article 301 and "restrictions " underneath Article 302 and 304 in reality appears: "that which in truth facilitates change and commerce is not a restriction and that which in fact hampers or burdens change and commerce is a restriction." it is the truth or the substance that has to be regarded into and determined. If Article 301 is interpreted to cowl all regulation, it will imply that the nation legislature can't manipulate trade, commerce and intercourse even if it is to facilitate free movement. It ought to but proceed to make a regulation under Article 304(b) and no such bill can be delivered or moved in the legislature of a nation without the previous sanction of the president.²

Necessity of lifelike restrictions

Now a question arises as to the necessity of such real looking restrictions. To reply this, the constitutional framers have been mindful of free trade, commerce and intercourse throughout the territory of India is necessary. At the identical time, such freedom might also require to be curtailed or curbed in public hobby and the parliament and

the kingdom legislatures have been given powers beneath Articles 302, 303, 304.

The object of part XIII is not to make inter-state trade, commerce and intercourse absolutely free. Reasonable restrictions in public pastime are permissible. Regulatory or compensatory measures cannot be viewed as violative of the freedom except they are shown to be colorable measures to hinder the free glide of trade, commerce and intercourse. Therefore Article 304 permits imposition of such life like restrictions on the freedom of alternate as are in public interest.

2. Conclusion

To conclude this lookup paper, I would like to say that part XIII is the most badly drafted section of the charter of India. The charter framers had just borrowed this phase from the Australian constitution, (section 92) perhaps, except taking into consideration it's in addition implications and penalties in countries like India.

- 1) Firstly, the freedom enshrined beneath the phase XIII, is concern exception upon exception and thereby limiting the scope of the said freedom.
- 2) Secondly, the constitution framers should no longer have supplied the phrases like "subject to the different provisions to this part". If this part is interpreted actually or the literal rule of frequent regulation is utilized then it can be said that this section is to be examine solely with the different provisions of this section only and not the other provisions of the constitution. however virtually it is now not so, as supreme court, in many cases, as referred in this paper, has taken the help or read along with different provisions of the constitution as well.
- 3) Thirdly, these badly drafted provisions can solely be cured by way of the change to the constitution. Therefore, it needs amendment.
- 4) Fourthly, it is now not a self-contained code. May be the constitution has specifically provided that it will concern only to the part XIII, but it has to be examined in a harmonious way. Therefore, it is to be examine with the other provisions of the constitution.³

² [leaders.in/freedom-trade-commerce-intercourse-articles-301-307-indian-constitu](https://www.leaders.in/freedom-trade-commerce-intercourse-articles-301-307-indian-constitu)

³<https://indiankanoon.org/doc/121190/>