



Freedom of Trade in India: A Constitutional Perspective

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Abstract

Trade is the most important aspect of a country's economic growth. To ensure growth and prosperity in the country the Constitution of India has enshrined right to freedom to carry on trade by an individual. Article 19(1)(g) and Articles 301-305 provides for such freedom to carry on business, trade, profession and occupation; and freedom of commerce and trade in any state and in India. These rights are not unrestricted and unguarded. These provisions also prescribes some restriction to prevent any misuse and mis-happening in the society. These are the ways it secure economic justice enshrined in the preamble to the constitution. In this article the researcher aims to analyse these provisions and find out if there is an inter-relationship and harmony between these provisions.

Key Words: Economic Growth, Freedom of Trade, Constitution, Articles.

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HISTORICAL BACKGROUND

Laws related to trade and commerce has always been a part of Indian history. From barter system to well defined laws, the freedom of trade has come a long way. The earliest laws on trade and commerce can be found in the writings of *Arthashastra*. The object of making these laws was to provide opportunities to the people to earn their livelihood and for the nation to prosper and grow. We have found evidence of trade and commerce in Indus valley civilization trade flourished with countries like Persia, China & Mesopotamia for gold, silver, and gems. With the entry of British East India Company the policies for the right to carry our trade and occupation changed completely. With the aim of establishing monopoly over the Indian market the company imposed restrictions on the Indian producers and traders which would directly benefit market of Britain.

An important event in India was performed in 1858, that was the transfer of power from East India Company to British Crown, we can say it was to begin to grow light after the black night for freedom of trade and business in India. After a long time, for trade and business, the selected rights were conferred as The Government of India Act, 1935 but it was also in shadow of British interest in India. Again a discussion was made by the Constituent Assembly under Article 13 (1) (g) and 6 of the Draft Constitution for the fundamental freedom of trade and commerce. After a big and bulk dialogue with related argument with existence of current and future need in respect of development and consequently growth of trade and business and in its continuation the Article 19 (1) (g) and the clause 2 of Article 19 (1) (g) was drafted.¹

The fundamental rights in Indian Constitution are a magna carta of the rights given to the people of the country. Article 19 protects certain basic freedoms of the citizens. Out of the six fundamental freedoms, Article 19(1)(g) of the Constitution of India guarantees that all citizen have the right to practice any profession or carry out any occupation or trade or business. This freedom is available to all the citizens residing within the jurisdiction of the country, thus it is not available to the non-citizens. Article 19(1)(g) confers a right to do any kind of business and practice nay profession. But it does not confer a right to do anything illegal, immoral, and dangerous in practice.

OBJECTIVE OF ARTICLE 19(1)(g)

This freedom is in line with the principle of economic justice enshrined in the preamble of the constitution. The state shall endeavor to ensure that equal opportunities are given to everyone in economic matters. Its major object is to strengthening of the socio-economic conditions of the country. The reason to keep this freedom under the head of fundamental rights is to ensure that this right is available to the people without any discrimination. This right was provided as obligation of by the state.

ANALYSIS OF ARTICLE 19(1)(g)

The main provision of Article 19(1)(g) is facilitating as equipment for confirming the rights of all citizen easily. In context of right of trade and business, the Article 19(1)(g) making a confirm assurance to all citizen to raising and leading the related work. The main purpose of this article is make a umbrella as easily economical growth as well as ease of business format. In this article, the

constitution maker use many time the terms like Trade , Business ,Occupation and Profession in overlapping manner, the objective was a effort and making discipline that anyone do not make a loop hole to leave, suppress or omit any kind of economic activity for purpose.²

The expressions trade, business, occupation, and profession were explained by **Kuldeep Sing, J.** in the case of **Sodan Singh v. New Delhi Municipal Committee**³ and we can express it in general language for communicating and interface easily; what say the term-

Profession: The word "Profession" will describe as in the context of a any person with regard his skill and qualification in dedicated branch.

Business: In the objective of profit a work lies the labor, attention and cover including investments, profession, trade, sailing of items and operational activity regard all the major term "Business".

Trade: The term 'Trade' is used for benefits by manual or mercantile i.e. purchase, sale and providing services which can described in broad theme combine any negotiation or sale, any occupation or business.

Occupation: The word 'occupation' express a broad sense and meaning like any permanent job, profession, work, mainly activity, employment, business as well any one is ready to provide his/her services on call or directly.⁴

JUDGMENTS ON ARTICLE 19(1)(g)

Various judgments have been made on the freedom of trade where courts have laid down different principles involving this freedom and brought out new aspects in this.

In **Hathising Mfg. Co. v. Union of India**⁵ the Supreme Court held that closing of business should be restricted in the case that even closing of business is not completely right and trader wishes to close by his will. Because of fact that State cannot force to continue his business and owner do not want to carry on by his will.

In **Excel Wear v. Union of India**⁶ the Supreme Court declared certain provisions of the Industrial Disputes Act, 1947 to be unconstitutional for being in violation of Article 19 (1)(g).

In **Sukumar Mukharjee v. State of W.B.**⁷ The court held that in the interest of common public, the restriction of private practice of Doctors, Teachers of W.B. is genuine. The restriction imply by the West Bengal Govt. under Article 19(1)(g) i.e. right to carry on any occupation, trade or business service rules of the state was challenged on which found that it imposes unreasonable restriction.

Khoday Distilleries Ltd. V. State of Karnataka⁸ In this case the matter was decided that a citizen of India have Fundamental right to business or trade of liquor or not by the Hon. Supreme Court of India. In the light of Article 19, the State is empowered to make mandatory and logical restriction in public favor because of the fact that a citizen has no fundamental right to carry on trade or business in activities which are not a moral and not a legal and not a healthy for wealth and health of public. The state has right to prohibit, the manufacture, sale, possession, distribution of liquor. Also Article 47 of the Constitution prohibits the same expressly.



In **Uni Krishnan v. State of A.P.**⁹ it was under Article 19(1)(g) as described that in a healthy society the educational institution establishment is not a part of the freedom because education is not a commercial activity and thus cannot be equated or measure with trade or business.

RESTRICTION ON THE FREEDOM

The assured rights under Article 19 are not unlimited and unfettered. To prevent and control any kind of misuse of the rights the constitution makers have also added restriction on the practice of these rights. The article mentions some of the grounds of restrictions. The state is fully free and authorized to imply the valuable prohibition to carry the business, profession or trade under Article 19(6). The following reasons for restrictions are applicable-

- i. Reasonable, and
- ii. In the interest of general public.

Because the restriction imposed by law in the interest of the general public under Article 19(6) as subject to exercise of this right to carry out trade.

The public order, public security, morals, humanity, public health and economic welfare of the community is the subject to a slogan 'in the interest of general public', in Article 19(6) is followed by wide import understanding. The legislature face the test of genuineness has to be observed in the reference of the matters and judge the validation by which the anapproach the problems from the point of view of furthering the social interest by the court and purpose of the legislation itself.

Now, the expression 'interest of general public' is of subjective interpretation. What is in interest of general public in a particular trade of business will be different in every trade and business. While imposing the restriction under Article 19(6), the legislature must consider the nature of the trade and business in determining the scope of the restrictions.

This fundamental right to carry on trade and business is not extended to carry on trade in obnoxious and dangerous goods like trade of drugs and liquors, trafficking of women, trade in adulterated food. Certain occupations are such that which may cause harms and discomfort to the general public. They cannot be banned but requires to be regulated because they are against the interest of people.

The state can make any law which prescribes technical or professional qualifications necessary to practice any job or carry on any occupation, trade or business. For example, it can be prescribed that one who wants to become a lawyer and practice in a court of law should have clear the LL.B. examination from any recognized University. The Advocates Act, The Legal Practitioners Act etc. are some of the examples of such laws.

ARTICLE 19(6)(ii)

As we know that the First Constitutional Amendment, 1951 incorporate the Article 19(6)(ii) and it consist to providing the authority for the State by which making any law related to partial or complete exclusion of citizen of India or differently from any financial action which the State required. This consist a restriction in said provision. The State is as parent of citizen and it is applicable ban by commanding with Article 19(6)(ii) of State and it is the said idea and plan of

State as so why the State will always agree with promising any action pro bono.¹⁰ In a very important case of **Akdasi Padhan v. State of Orissa**,¹¹ the Supreme Court of India describe the nature of state monopoly; and checking the validity; and remarkable points to considering it as follow-

- i. The creation of monopoly have direct relation to State monopoly in Law formulation.
- ii. The creation of monopoly should have any incidental, subsidiary, or helpful to the operation of monopoly because after this there is no other systems in law formulation.¹²

The part XIII of the Constitution of India provide us facility to understand the freedom of trade and commerce in India; So, we need to understand the components and implication of freedom in reference to trade, commerce and intercourse.

FREEDOM OF TRADE, COMMERCE AND INTERCOURSE

The Articles 301 to 307 under part xiii of constitution of India provide us the freedom of trade, commerce, and intercourse in which Article 302 to 305 express the restrictions while Article 301 cover the general principles of trade and commerce which trade is referenced.

This provision for this right was made to ensure the fare free logistics and exchange of goods all over the country to create financial integration of the Nation. The aim was to break barriers between all the state boundaries which would promote free flow of trade and commerce. It will help people to maximize their opportunities to earn their livelihood by providing them with new markets and they can trade in any part of the country.

The provision is made for trade, commerce and intercourse throughout the territory of India that it shall be free; and such provisions are facilitate by Article 301 of the Constitution of India and was sourced from Section 92 of the Australian Constitution which says that, "trade, commerce and intercourse among the states whether by means of internal carriage or ocean navigation, shall be absolutely free."

The meaning of freedom described as right to freedom of -

- Movement of persons,
- Movement of property,
- Movement of things

and it may be clearly seen for existence or difficult to measure, no obstacle by any hurdle within the intra or inter-state demography. The Article 301 mention the freedom from all bans excluding other applicability of Part XIII (Articles 302-305). Hence the restrains should not be indirect and occasional; it should be imply directly same time strictly.

TERMS USED IN ARTICLE 301

Trade: In the Article 301, the main motive for word "trade" is used frequently as "business" and visa-versa. So, the word "trade" mean an activity belongs to get a goal along with real and organized frame by which achieved the certain objective and aim.

Commerce: Commerce means Logistics by airways, waterway and roadways.



Intercourse: The movement of items, luggage or goods from one place to another is called intercourse and It combine commercial and non-commercial both for intercourse. So, in short; we can define that intercourse is “movements and dealings” of goods. In term of intercourse it includes the travelling and all formats to perform the relations and management as dealing with others. Hence the Commerce and nature of commerce include and organized with words “Trade”, “Commerce” and “Intercourse”.

JUDGMENTS ON ARTICLE 301

Atiabari Tea Co. v. State of Assam¹²

There was a business by which petitioner transported the tea to metro city Calcutta of West Bengal by the way of Assam. In Assam state a tax was implied for transportation of goods by roadways as well as waterways, called Assam Taxation Act. A tax under the above said Act was applicable on the time of supply and shipment of tea by the petitioner via Assam to Calcutta and so why the applicability of the act lies again discussing with remarkable questions on following basis:

- a. The provision and rights of Article 13 is being violated or not?
- b. As described matter can be secured and protected by Article 304 (b) or not?

In such case, If an obstruction is made without following the references and criteria of Article 302 to Article 304 of the constitution of India, because the following observations and conditions were not fulfilled so the Court finally held that freedom assured under Article 301 would be imaginary.

1. It was described by the Supreme Court without fulfilling of all the conditions of the Article 304 (b), cannot imply the taxes and sanctioning of President will compulsory required before any law of state enacts.
2. As the Act was challenged, the restriction of free movement of goods directly as well as indirectly, the Supreme Court of India held that so why it comes under Article 301.

Automobile Transport Ltd. v. State of Rajasthan¹³

To get the freedom in trade in the reference of transportation the petitioner raises validity of Rajasthan Motor Vehicles Act, 1951 in the context of Article 301 of the Indian Constitution and challenged it. In fact, this act imposed the annual tax on motor vehicles in two categories as; an amount of Rs 60 for a motor vehicle and an amount of Rs 2000 for a goods vehicle.

As above context, it was necessary to check the validity of act in the reference of constitutional and in this case the Supreme Court of India held that:

1. Because of fact that for the smooth running of trade, commerce as well as intercourse the tax imposed is valid that's why this tax is just like only a compensatory or regulatory measure.
2. It is cleared that financial health of the state was securing by this type of compensatory and regulatory tax and ensuring the main objectives of state for regulatory purpose or/and public interest “Sarva Jan Hitaya”. So, is not a violation of Article 301 and such

opinion and arguments do not require to check the effects and act of process under Article 304(b).¹⁴

RESTRICTIONS ON TRADE AND COMMERCE

Article 301 is subject to the following restrictions imposed under Articles 302- 305.

1. In the public interest, how to regulate in the all territory of India or inter-state trade and commerce with Parliament's power. (Article. 302).
2. There is not any provision and clause for giving any benefit as regulating the inter-state level trade and commerce by the Parliament of India.(Article. 302).
3. A different circumstances occurs by the parliament of India, in the case of scarcity of goods in all area of India by which it will define and action performed as discriminate among all states if feels necessary with situations. (Article 303).
4. There is no any discrimination occurs, In a case, if any tax imposed by the state for similar goods and similar tax which are imported from one state to another states.(Article 304).
5. Saving of the existing law and laws providing for state monopolies. (Article 305)

WHY BOTH ARTICLES 19(1)(g) AND ARTICLE 301 ARE ASSOCIATED WITH EACH OTHER?

1. By Article 19(1)(g),We got a guarantee of freedom to perform any type of business, trade and profession while Article 301 provides us to do any practice trade in all over India.
2. As we know that we have a Fundamental Right and it can claim by only citizen under Article 19(1)(g) and Article 301 is constitutional and provide us facility to be claimed by both citizen and non-citizen also. Hence, its make a provision to move the court, if the rights are being violated in the reference of restriction or limitations of Article 19 is encroached with under Article 301.
3. To limit the freedom for movement of trade or occupation controlled by Article 19(1)(g) whereas it is being limited to the free flow of trade in all over the country by Article 301 which is accompanied by Article 302-307.
4. Basically the Article 301 has a limited scope in reference goods and services for trade and business, so it is assumed as an descriptive arrangement and provision to Article 19(1)(g) and having very limited criteria in respect of Article 19(1)(g).
5. We can say that, In trade or business, the Article 19(10)(g) provide a right for individuals while Article 301 provide for whole. So, both Article's provisions can be assumed as rights of "One" and "All" respectively.
6. So, both above said Articles are associated with each other in the reference of few conditions of trade or business as well as goods and services. In accordance, the rights of Article 19(1)(g) will be withheld in critical position and unavoidable circumstances. It is the time for court to consider all the facts and check the infringements (Yes/No) as facility provided under Article 301.¹⁵

CONCLUSION

The Constitution of India while understanding the importance of trade for the country and its people gives space to provisions related to trade and guarantees the freedom in Article 19(1)(g)



and Article 301. The Constitution firstly declares that there is freedom of trade in Article 19(1)(g) and Article 301 but later also provides for some restrictions to prevent the misuse of the freedom in Article 19(6) and Article 302-305 respectively. So we see a holistic mention of the provisions. There are rights as well as corresponding liabilities. Through these provisions all the people will have right to carry on trade and earn their livelihood and the free flow of trade and commerce is ensured but if there is any act done with malafide intentions to cause harm which is against the interest of people and society then restrictions will be imposed.

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