

# Freedom of Trade, Commerce and Intercourse: Articles 301 to 307 of the Indian Constitution

January 17, 2020 40231 0

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## Table of Contents



### Introduction

The object of such provisions in a Federal Constitution

Freedom of trade, commerce, and intercourse

Trade

Commerce

Intercourse

Activities which are not trade

Restrictions to trade and commerce

Parliament's power to regulate trade and commerce in the public interest

States power to regulate trade and commerce

Restrictions on trade, commerce, and intercourse among States

Saving of Existing Laws

Appointment of authority for carrying out the purposes of Articles 301 to 304

Landmark Judgments

Atiabari Tea Co. vs the State of Assam (1961)

Facts

Issues

Judgment

Automobile Transport Ltd. vs State of Rajasthan (1963)

Facts

Issue

Judgment

The state of Mysore vs Sanjeeviah (1967)

Facts

Issue

Judgment

G.K.Krishna vs State of Tamil Nadu (1975)

Facts

Issues

Judgment

Conclusion

References

## Introduction

Trade has always been important because no country or state can produce all the products it needs. For this reason, we need regulations and laws governing, managing and facilitating trade. The freedom of trade, commerce, and intercourse is provided under Part XIII of the Indian Constitution in Articles 301 to 307. [Article 301](#) lays down the general principles of trade and commerce whereas Article 302 to 305 enunciates the restrictions which trade is subjected to. The source for adopting these provisions was the Australian Constitution.

## The object of such provisions in a Federal Constitution

The makers of the Constitution wished to encourage the free flow of trade and commerce in India because, according to them, a country should work as a single economic unit without any barriers or obstacles in internal trade. They perceived that economic unity and integration of the nation would be the main sustaining power for stability and cultural unity of the federal polity.

In a federation, it is essential to reduce the barriers (tariffs, non-tariffs, quotas, etc.) between the states as much as possible so that the people feel that they are members of the same country though living in different geographical areas of the nation.

## Freedom of trade, commerce, and intercourse

Article 301 talks about the freedom of trade, commerce, and intercourse throughout the country. It states that subject to other provisions under Part XIII, the freedom to carry on these activities shall be free. Freedom here means the right to freedom of movement of persons, property, things that may be tangible or intangible, unobstructed by barriers within the state (intra-scale) or across the states (inter-scale).

The three main words used in this article are:

### Trade

Trade means buying and selling of goods for profit-making purposes. Under Article 301, the word trade means an actual, organized & structured activity with a definite motive or purpose. For the motive of Article 301, the word trade is interchangeably used with business.

### Commerce

Commerce means transmission or movement by air, water, telephone, telegraph or any other medium; what is essential for commerce under Article 301 is transportation or transmission and not gain or profit.

### Intercourse

It means the movement of goods from one place to another. It includes both commercial and non-commercial movements and dealings. It would include travel and all forms of dealing with others. However, it is argued that the freedom guaranteed in Article 301 does not reach out to intercourse in its broadest meaning. There are two reasons for this. First of all, the word "intercourse" is used in juxtaposition with the words 'trade and commerce' and hence this word here will mean "commercial-intercourse" and not purposeless motion. The second reason being that though Article 301 imposes a limitation on the power of

Legislature and Parliament (provided to them under [Article 245](#) and [246](#)) but the word intercourse is not included as a subject of legislation under the Seventh Schedule (as the words trade and commerce have been) and so the word intercourse can not be implied to have the widest of the meaning when used here.

The use of the word 'free' in Article 301 does not mean freedom from laws and rules governing the country. There is a clear distinction between the laws obstructing freedom and laws containing rules and regulations for the proper conduction of trade activities in a smooth and easy manner.

## Activities which are not trade

Article 301 gives the freedom of trade, commerce, and intercourse but there are certain activities which may be covered under the ambit of the trade, commerce or intercourse activities but are not protected by the freedom guaranteed under Article 301 of the Indian Constitution.

Illegal activities, like lottery and gambling, can be an example. The bar on these illegal activities was upheld by the Supreme Court in the case of [State of Bombay v. R.M.D. Chamarbaugwala \(1957\)](#). In this case, it was held that all activities of criminal nature or those activities which are undesirable would not be given any protection under Article 301. Some examples of such activities can be clicking obscene pictures for money, trafficking of women and children, hiring goondas or terrorists, etc. Though the forms, methods, and procedures of trade may be applied these activities are extra-commercium (*not subject to private ownership or acquisition*), and thus are not covered under Article 301. Inter-relation between Article 301 and Article 19(1)(g)

- Article 301 under Part XIII empowers the free flow of the stream of trade throughout the country whereas [Article 19\(1\)\(g\)](#) under Part III provides the freedom to practice any occupation, trade or business in the interest of the general public. The right under Article 301 is constitutional and can be claimed by anyone. **The right under Article 19(1)(g) is fundamental and can be claimed only by citizens. Thus, this aspect of limitation of Article 19 is dealt with under Article 301 which gives the right to both citizens and non-citizens to move the court if their right has been infringed.**
- Article 19(1)(g) contains restrictions to the freedom of carrying an occupation or trade while Article 301 is accompanied by Article 302-307 which lay down the restrictions to the free flow of trade in the country. However, the restrictions specified in Article 302-307 should have indirect results and should not directly reduce the freedom laid down in Article 19(1)(g). Article 301 is thus considered an explanatory provision to Article 19(1)(g) and also has a more limited scope than Article 19(1)(g) because it is only concerned about the flow of goods and services.
- It is also often argued that Article 301 is the right available for trade as a whole whereas Article 19(1)(g) is the right for individuals. However, this is not true. Article 301 is derived from [Section 92 of the Australian Constitution](#) and hence this right is available to individuals as well.
- Thus both of them can be said to be interrelated in some aspects. They also can be seen as interrelated concepts at the time of emergency. At the time of emergency, rights under Article 19(1)(g) are suspended. At that time the court looks forward to the rights provided under Article 301 to check whether any violation has occurred or not.

## Restrictions to trade and commerce

### Parliament's power to regulate trade and commerce in the public interest

[Article 302](#) gives power to the Parliament to impose restrictions on the freedom of trade, commerce or intercourse carried on within a state or across states anywhere in the territory of India. These restrictions can solely be imposed taking into due consideration the interests of the public. The power to decide whether something is in the interest of the public or not is solely given to the Parliament. It can be seen as in the case of [Surajmal Roopchand and Co v/s the State of Rajasthan \(1967\)](#) were under [the Defence of India Rules](#), in the interest of the general public, restrictions were imposed on the movement of grain.

### States power to regulate trade and commerce

The power of the Parliament in Article 302 is kept in check by [Article 303](#). Article 303(1) states that the Parliament does not have the power to make any law which will keep one State at a more preferable position than the other State, by virtue of any entry in trade and commerce in any one of the lists in 7th Schedule. However, Clause (2) states that the

Parliament can do so if it is proclaimed by law that it is essential to make such provisions or regulations, as there is indeed a scarcity of goods in some parts of the country. The power to decide whether there is a scarcity of goods in some parts of the territory or not is vested in the hands of the Parliament.

[Article 304\(a\)](#) further says that the State should impose taxes on any goods transported/imported from other States if alike goods are taxed in the State too. It is done so that there is no discrimination between goods produced within the State and goods imported from some other states. In the case of *State of Madhya Pradesh v/s Bhailal Bhai, (1964)* the State of Madhya Pradesh imposed taxes on imported tobacco which was not even subject to tax in the very own State i.e State of Madhya Pradesh. The Court disapproved of the tax statement that it was discriminatory in nature.

## Restrictions on trade, commerce, and intercourse among States

Clause (2) of [Article 304](#) guides the States to impose certain reasonable restrictions on the freedom of trade, commerce, and intercourse as may suit the public interest. But no Bill or Amendment for such shall be put forward in the State Legislature without the prior approval of the President. A law passed by the State to regulate interstate trade must thus fulfill the following conditions-

- An approval from the President must be taken beforehand,
- The restriction must be sensible and rational,
- It must be in the interests of the public.

These conditions make it clear that the Parliament's power to regulate trade and commerce is superior to the State's power.

## Saving of Existing Laws

[Article 305 of the Indian constitution](#) saves already formed laws and laws providing for State monopolies. Article 305 can only do so until the President is not ordering something opposite to it or otherwise to the law already formed. In *Saghir Ahmad v/s The State of UP, (1954)*, the Supreme Court raised the query that whether an Act that provides for State monopoly in a specific trade or commerce would be held violative of the Constitution of India under Article 301.

Article 19(1)(g) was amended by the First Constitutional Amendment taking out such activities from the purview of Article 19(1)(g). And now after the Constitution's 4th Amendment, already formed laws and laws made hereafter for State monopoly in trade, are immune from attack on the ground of violation of Articles 301 & 304.

## Appointment of authority for carrying out the purposes of Articles 301 to 304

[Article 307](#) under Part XIII permits the Parliament to designate such authority as it deems fit for carrying out the provisions laid down in Articles 301, 302, 303 and 304. The Parliament can also bestow such authorities with functions and powers as it feels are required.

## Landmark Judgments

### Atiabari Tea Co. vs the State of Assam (1961)

#### Facts

In this case of *Atiabari Tea Co.Ltd. v/s the State of Assam*, Assam Taxation Act levies a tax on goods transmitted through Inland Waterways and road. The petitioner in the present case carried on the business of transporting tea to Calcutta (now Kolkata) via Assam. Now while passing through Assam for the purpose of transportation to Calcutta, the tea was liable to tax under the said Act.

#### Issues

The rationality of [The Assam Taxation Act of 1954](#) was questioned on the grounds that:

- whether it is violative of Article 301 or not?
- whether it could be protected by making it fall under the ambit of Article 304 (b) or not?

#### Judgment

The Supreme Court said that the disputed law undeniably levied a tax that directly and immediately infringed the movement of goods and therefore it comes under the purview of Article 301. The Supreme Court further clarified that these taxes can only be levied after fulfilling the conditions of Article 304(b) which states that the sanction by the President is required before any State enacts such a law. In this case, the requirements of Article 304(b) were also not fulfilled. Freedom assured under Article 301 would become non-existent or imaginary if transmission of goods is obstructed without meeting the criteria set out by Article 302 to Article 304 of the Constitution.

### Automobile Transport Ltd. vs State of Rajasthan (1963)

#### Facts

In *The Automobile Transport Ltd. v/s State of Rajasthan*, case, State of Rajasthan imposed an annual tax on motor vehicles (Rs 60 on a motor vehicle and Rs 2000 on a goods vehicle).

#### Issue

The appellant challenged the validity of the tax levied under Article 301. Now whether the tax levied was constitutionally correct or not had to be checked.

## Judgment

It was held by the court that in the present case the tax imposed is valid as it is only a regulatory measure or a compensatory tax for the facilitation of the smooth running of trade, commerce, and intercourse. The Court commented that the taxes are the sole key for a state, in order to preserve the financial health of the state at large. The concept of "Compensatory or Regulatory Taxes" has evolved to ensure that the state will levy such taxes that are set as an objective in the form of compensation, that is, for the public interest as well as for regulatory purposes if necessary. They would be used within the state. If the same is challenged in the Court as being an infringement or as being violative of the freedom under Article 301 then that would not be considered as an infringement and such a measure or tax does not even need the validation of the provisions under Article 304(b).

## The state of Mysore vs Sanjeeviah (1967)

### Facts

In the case of the *State of Mysore v/s Sanjeeviah*, the government under the *Mysore Forest Act, 1900*, made a law banning the movement of forest produce between sunrise and sunset.

### Issue

Whether it was violative of the freedom guaranteed Article 301 of the Constitution?

### Judgment

The Supreme Court held the law void. It remarked that such a law was restrictive and not regulatory thus violative of the freedom provided under Article 301.

## G.K.Krishna vs State of Tamil Nadu (1975)

### Facts

In the case of *G.K Krishna v/s State of Tamil Nadu*, a govt notification under Madras Motor Vehicles Act was issued, increasing the motor vehicle tax on omnibuses from Rs 30 to Rs 100. The government's argument while imposing this tax was that this was done to stop the unhealthy competition between omnibuses and regular stage carriage buses and to reduce the misuse of omnibuses.

### Issues

The petitioner in his argument questioned:

- whether the tax was compensatory or regulatory?
- whether it was a barrier to the freedom of trade, commerce, and intercourse or not?

### Judgment

The Supreme Court held that the tax on carriage charges was of compensatory or regulatory nature and was not therefore violative of the freedom guaranteed under Article 301. The Courts while explaining its rationale behind the judgment said that these taxes are not barriers but a medium that facilitates trade. A tax to become a prohibited tax must be first a direct tax. A direct tax is a tax that infringes the transmission of goods or services in a trade or business. The Court, however, presented its view in this regard that no citizen has the right to engage in any service without reimbursing the State for the special service. Here, in this case, safe and efficient roads are required for the smooth running of vehicles. The maintenance of such roads will cost the money of the Government and the use of

public motor vehicles stands in direct relation to it. Therefore the imposing of tax should not seem unreasonable i.e. making of a special contribution over and above the contribution generally provided by the taxpayers to the state. The increase in tax was thus held correct and valid in the eyes of law.

## Conclusion

When the Constitution provides the freedom of trade, such freedom cannot be absolute. Thus Article 302 to 305 impose restrictions and ensures that trade is conducted in a lawful manner throughout the states and the country. All these provisions together ensure the provision of Constitutional status to the freedom of trade, commerce, and intercourse. Now at least there would be no unreasonable interference with trade and commerce based upon geographical variations or any other such barriers.