

**ROLE OF JUDICIARY IN REVAMPING THE
CONCEPT OF FREEDOM OF TRADE, COMMERCE
AND INTERCOURSE**

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ABSTRACT

Freedom of trade in any federation is equitable to another medal of valour on its personage for its courage to combat the war against poverty, illiteracy, inadequacy and imbalanced economic organisation. This study attempts to make an honest and in-depth endeavour about the judicial trend of the term “freedom of trade, commerce and intercourse” and the coextensively regulatory powers of Parliament and States on freedom of trade as prevalent under the Constitution of India as well as the different statutory provisions which are the outcomes of this constitutional provision. Even if the focus of this research is only on Part XIII of the Indian Constitution, it would be beneficial to look at other laws that have anything to do with commercial freedom. This raises the issue of analysing the link between Part XIII’s trade-related laws and other portions of the Constitution including, *inter alia*, the Fundamental Rights, the Directive Principles, the powers of the Parliament and States, and their taxation authority, among others. However, as is seen from the arguments held on the Chapter previous to its introduction, this Part has often been condemned as being the Constitution’s most loosely constructed Part. In interpreting the language of this part, the Courts have created certain uncertainties. An attempt is made in this study to provide a simple analysis of Part XIII and resolve these uncertainties. The judicial

developments are the heart and spirit of this study which helps in the interpretation of the constitutional provisions with much precision. Throughout the course of the investigation, specific issues and matters are humbly sought to be highlighted by way of suggestions and recommendations in order to uphold the constitutional spirit by properly protecting the provision of the Constitution from the unwarranted, whimsical, arbitrary, unbridled, and excessive dilution through way of interpretation, amendment, or other legislative measures.

Key Words: *Trade, Commerce, Intercourse, Constitution of India, Chapter XIII, Article 301, Article 19(1)(g), Freedom of Trade, Judiciary.*

INTRODUCTION

One of the pillars of a strengthened economy is its trade, commerce and intercourse within and outside its territorial boundaries. Trade and commerce include all sectors of an economy which deals with mutual gain spanning from agricultural to industrial. These sectors might be engaged in more diverse activities, from production and supply of raw materials to processing and manufacturing of goods. The locations of these activities are also subject to the factors like availability of cheap labour, good transportation and abundance of energy. Human desires, however, are many and limitless, and no one constitutional unit has the means to satiate them all. As a result, dependency between different constitutional components in the form of commerce between States became necessary.

Due to these factors, it is possible that the component units, each of which has its own legislative authority, may decide to impose trade restrictions by limiting the flow of goods into or out of the units in order to further their own very limited interests. Such regional trade obstacles might be detrimental to the interests of the country. It might slow down the nation’s overall economic development, which would ultimately be detrimental to all units. Therefore, in all federal countries, efforts have been made to reduce the likelihood of local economic barriers to

remove obstacles in the way of interstate as well as intrastate trade and commerce so that the economic resources of all the different regions may be utilised to the mutual benefit of all. This has been done by introducing provisions regulating the freedom of trade, commerce, and intercourse, including the restrictions imposed thereto. The authors of our constitution anticipated that India would not be able to sustain the economic differences between States. As a result, they added Chapter XIII, which includes Articles 301 to 307, to the Indian Constitution to secure economic unification and stability. The concept of freedom of trade, commerce, and intercourse has since been shaped by a vast array of judicial precedents, not only by recognising the arbitrary use of power to impose unreasonable restraints, but also by proposing new principles and formulating a new course of interpretation of the aforementioned provisions, which is further explained in the study.

MEANING OF TRADE, COMMERCE AND INTERCOURSE

The word “*trade*” means ‘buying’ or ‘selling’ of goods. The term “trade” not only refers to just the act of purchasing and selling but it also covers other actions that might be seen as essential components of the buying and selling process, such as the movement of the goods, the exchange of commodities, the setting of the price, hour, place, date, and method, and the execution of forward contracts. The term “trade” refers to borrowing, lending, the flow of commodities, the movement of products, the encouragement of buying and selling, borrowing, discounting bills and mercantile papers, banking, and other methods of supplying cash. Depending on the context, the term “trade” may signify a number of different things. In its narrower definition, it refers to the purchase and sale of products, but in its somewhat broader connotation, it also encompasses the purchase and sale of property.¹

It is usually used to imply actions of a commercial nature through which the trader gives to clients for reward

¹ 8 DR. DURGA DAS BASU, COMMENTARY ON THE CONSTITUTION OF INDIA 9732 (LexisNexis Butterworths Wadhwa Nagpur, 2012)

of some form of products or service.² Trade includes both lending and financing of money. Gambling and contests for prizes cannot be seen as trade or business.³ “Trade” refers to any activity that involves the manufacture, supply, distribution, or control of products and also covers the rendering of any services.⁴

For the purposes of Article 301 of the Indian Constitution, the terms “trade” and “business” are interchangeable. Trade or business would imply a very significant, structured, or systematic line of action or behaviour with a specific goal.⁵ A broad and inclusive construction should be undertaken while constructing the nation’s commerce. Therefore, a movement of products for an advantageous purpose and actions associated with it are necessary for commerce.⁶

All modes of transportation, including land, air, and ocean travel, are included in the word “trade.” In general, it covers every type of movement of people and things, whether it’s done for a profit or not; every type of communication; every type of intelligence transmission, whether it’s done for a profit or not; and every type of commercial negotiation that, as demonstrated “*by the established course of business*”, will eventually involve moving people or things, providing services across state lines, or both.⁷ E-commerce is included in the word “commerce” due to contemporary trends and technical advancements. Online newspapers, other information services, online gaming, offshore and domestic banking, stock trading, and other forms of conventional trade are all included in e-commerce.⁸

The word “intercourse” refers to the transfer of items from one location to another.⁹ It refers to the transportation of products from one location to another. Both commercial and noncommercial movements and interactions are included. It would include going

² *Id.*

³ State of Bombay v. RMD Chamerbaughwala, AIR 1957 SC 699.

⁴ The Monopoly Restrictive Trade Practice Act, 1969, § 2(s), Act No. 54 of 1969.

⁵ State of Bihar v. Harihar Prasad Debuka, AIR 1989 SC 1119.

⁶ BAHARUL *supra* note 6 at pg. 28-30.

⁷ M.P. *supra* note 3 at pg. 90.

⁸ BAHARUL *supra* note 6 at pg. 31.

⁹ Dr., *supra* note 1 at 764.

somewhere and interacting with people in any way. It is countered that Article 301's protection of freedom extends to intercourse in its fullest sense. This is due to two factors. First of all, because "intercourse" is employed in opposition to "trade and commerce," it is assumed that it refers to "commercial-intercourse" rather than aimless movement. The word "intercourse" is not listed as a subject of legislation under the Seventh Schedule, unlike the words "trade" and "commerce," so it cannot be inferred that it has the broadest meaning when used here, even though Article 301 limits the power of the Legislature and Parliament (granted to them under Articles 245 and 246).¹⁰ The phrase "trade, commerce, and intercourse" therefore refers to any acts that are likely to fall under the category of commerce, including the sale or purchase of products, the transit of goods, agreements to sell or buy, and other equitable disposition transactions.¹¹

ALL ACTIVITIES ARE NOT TRADE, COMMERCE AND INTERCOURSE

The freedom of trade, commerce, and intercourse is guaranteed by Article 301 of the Indian Constitution, although there are certain acts that can fall within the purview of these activities but are not covered by the freedom. The Indian Constitution's Article 301 grants freedom to all activities that come under the headings of trade, commerce, and intercourse. Any actions that are not considered to be trade, commerce, or intercourse are not covered by the freedom guaranteed by Article 301.¹² For the sake of the current research, it is necessary to analyse the activities that often come under the categories of trade, commerce, and intercourse but are not protected by Article 301 of the Indian Constitution.

In the case of *State of Bombay v. R.M.D. Chamarbaugwala*¹³, Chief Justice Das noted that Article 301 examines the matter from the perspective of the nation's trade and commerce as a whole, as opposed to the individual interests of the citizens, and it relates to trade,

commerce, or intercourse with either the States or among the States. However, it is apparent that the person engaged in such activities whose freedom is guaranteed would seek the Court against its violation when it comes to giving effect to such purpose.

The *Chamarbaugwala Case* approach was used in the case of *Fatehchand v. State of Maharashtra*¹⁴. In this instance, Krishna Iyer considered money lending as extra commercium and declared that "every systematic, profit-oriented activity, however, sinister, suppressive or socially diabolic, cannot ipso facto, exalt itself into a trade".¹⁵

However, later on, the decision in *H. Anraj v. Govt. of Tamil Nadu*¹⁶ is significant, where the Court departs from the reasoning in the *Chamarbaugwala case* and rules that those who sell lottery tickets are regarded to be merchants and are thus protected by Articles 301 and 304. (a). Additionally, it is quite unpractical to claim that Article 301 cannot be deemed violated unless and until the whole amount of trade and commerce is impacted. Given that Section 301 is practically verbatim taken from Section 92 of the Australian Constitution, it is important to note the Judicial Committee of Privy Council's comment about that section. The Committee noted that while Section 92 does not grant any new legal rights, it does grant State or Commonwealth citizens, depending on the situation, the right to disregard and, if necessary, to seek the assistance of the judicial power to help them resist, legislative or executive action that violates Section 92.¹⁷

Illegal activities, such as gambling and the lottery, are an example. In the case of *State of Bombay v. R.M.D. Chamarbaugwala*¹⁸, the Supreme Court affirmed the prohibition on these criminal practises. In this instance, it was determined that no illegal activity or unpleasant activity would get any protection under Article 301. Examples of such acts include taking pornographic photos

¹⁴ Fatehchand vs. State of Maharashtra, AIR 1977 SC 1825.

¹⁵ LEGAL SERVICES INDIA, <http://www.legalservicesindia.com/article/148/Freedom-of-Trade-&-Commerce.html>

¹⁶ H. Anraj vs. Govt. of Tamil Nadu, AIR 1986 SC 63.

¹⁷ LEGAL SERVICES INDIA, <http://www.legalservicesindia.com/article/148/Freedom-of-Trade-&-Commerce.html>

¹⁸ State of Bombay v. R.M.D. Chamarbaugwala, 1957 AIR 699.

¹⁰BLOG I-PLEADERS, <https://blog.iplayers.in/freedom-trade-commerce-intercourse-articles-301-307-indian-constitution/#Commerce>

¹¹ Dr., *supra* note 1 at 764.

¹² BAHARUL *supra* note 6 at pg. 35.

¹³ State of Bombay vs. R.M.D. Chamarbaugwala, AIR 1957 SC 699.

for cash, trafficking in women and children, employing terrorists or goons, etc. These activities are extra-commercium (not subject to private ownership or acquisition) and are not covered by Article 301, even if the forms, techniques, and processes of trade may be utilised.¹⁹

The same position is held in Australia, where the Court²⁰ determined that the lottery business does not fall under the definition of trade, commerce, or intercourse. As a result, Section 92 of the Australian Constitution's provisions cannot be used to prevent the suppression or restriction of gambling. It should be noted that Indian jurist Dr. Durga Das Basu²¹ disagreed with such a delineation of activities. He argued that because the State Legislatures have the authority to prohibit such operations, it is not essential to remove them from the legal definition of trade and commerce. It is argued that this point of view is incorrect. Including all actions that fall within the definition of "extra-commercium" in the definition of "commerce" in Article 301 would imply that both legal and illegal acts would be protected by this provision.²²

While, the State Legislature would have to wait for the President's consent under Article 304 if it wanted to regulate such activities (b). Thus, it would appear accurate to state that Article 301 only provides protection for aspects of trade and commerce that are recognised by law as being legal. Similar thinking is used to the booze industry.²³ Contrarily, under the American Constitution, the courts have referred to such acts as "commerce",²⁴ but their focus was on the issue of power distribution rather than commercial freedom.²⁵

Thus, "trade" refers to the purchasing or selling of products, but "commerce" refers to all modes of conveyance, including those by land, air, and sea. The word "intercourse" refers to the transfer of goods from one location to another. The phrase "trade, commerce, and intercourse" may include a wide range of activities that fall under the category of commerce.²⁶

DEVELOPMENT OF CONCEPT POST INDEPENDENCE

Trade and commerce were first put under the basic right, which was taken from Section 92 of the Australian Constitution, in the Constituent Assembly Debate. The freedom of trade and commerce eventually appeared in Part XIII of the Constitution, covering Articles 301 to 307. This was done after a lengthy debate based on the suggestions of the Committee led by Alladi Krishnaswami Ayyar.²⁷

The Draft Constitution of 1948 did not include Draft Article 274A (Article 301, Constitution of India 1950). Discussion of this Draft Article was postponed on June 15, 1949, and finally took place on September 8, 1949. Draft Article 274A is the first in a series of Articles that explored trade, commerce, and intercourse within the territory of India, and the Drafting Committee Chairman recommended to add a new Part XA to the Constitution. It said that all forms of trade, commerce, and sexual activity would be permissible across India, subject to specified restrictions in Part XA.²⁸

The Drafting Committee Chairman included this additional section to consolidate different trade and commerce clauses that were dispersed throughout the Draft Constitution. The Assembly rejected the member's proposal to Draft Article 274A, which would have said that all of India's right to participate in trade, commerce, and sexual activity would be governed by the Constitution's provisions rather than simply Part XA. Some Members were worried that Draft Article 274A would weaken the freedom to freely

¹⁹BLOG I-PLEADERS, <https://blog.iplayers.in/freedom-trade-commerce-intercourse-articles-301-307-indian-constitution/#:~:text=Activities%20which%20are%20not%20trade,-Article%20301%20gives&text=The%20right%20under%20Article%2019,their%20right%20has%20been%20infringed.>

²⁰ Justice Evatt in the King v. Connare ; Ex parte Wawn. (1939) 61 CLR 596, 621; and Justice Dixon in the King v. Martin, (1940) 62 CLR 457, 461.

²¹ Dr. *supra* note 17, at pg. 9737.

²² BAHARUL *supra* note 6 at pg. 38.

²³ Kochan Velayudhan v. State of Kerala, AIR 1961 Ker. 8, (P.B.) State of Bombay, v. Balsara, AIR 1951 SC 318. From-Nusserwangi v. State of Bombay, AIR 1951 Bom. 210 (Full Bench).

²⁴ United States v. Simpson, (1920) 252 US (SC), 465. Chapman v. Ames. (1903) 188 US(SC), 321.

²⁵ J.N. PANDEY, THE CONSTITUTIONAL LAW OF INDIA 650 (Central Law Agency, Allahabad, 2009).

²⁶ *Id.*

²⁷ *Id.*

²⁸ CONSTITUTION OF INDIA, https://www.constitutionofindia.net/constitution_of_india/trade_commerce_and_intercourse_within_the_territory_of_india/articles/Article%20301

conduct trade and commerce across India, which was originally guaranteed under Draft Article 16 as a justiciable basic right. A few additional Members supported the addition of Part XA to the text so that all trade and commerce-related laws would be codified in one location. Draft Article 274A was accepted on September 8, 1949, after a protracted discussion.²⁹

The laws on trade and commerce have undergone several changes since the Constitution of India came into effect. With the first of these revisions, the State monopoly of any trade was exempt from Article 19(1) and became what is currently subclause (ii) of Article 19(6). (g).³⁰ Following this change, the Supreme Court of India in *Saghir Ahmed v. State of Uttar Pradesh*³¹ heard some concerns that a State monopoly in any trade would be subject to an Article 301 challenge. In order to prevent the legislation envisioned by Article 19(6)(ii) from being affected by Article 301, Article 305 was modified.³²

To scale the concept of freedom of trade under the Indian Constitution while navigating the various doctrines and principles pertaining to it articulated by the Court in its abundance of authorities since independence, it is crucial to study the judicial developments collateral to these amendments and the landmark decisions which circumscribe it. This is true in addition to these changes to the concept and scope of freedom of trade under the Indian Constitution.

FREEDOM OF TRADE, COMMERCE AND INTERCOURSE UNDER CONSTITUTION OF INDIA

Article 301 of the Indian Constitution guarantees and declares the freedom of "trade, commerce, and intercourse throughout the territory of India," subject to the other provisions of Part XIII.³³ The goal of this freedom is to eliminate obstacles within and between States and to unify India as a whole in order to foster an environment that is favourable to trade and commerce. The stability and

development of the nation depend on economic cohesion. When this occurs, the States will also suffer since they are a part of the total because the State Legislatures may be persuaded to take legislation that are only meant to further local interests. This might have severe effects on the national economy.³⁴ The Supreme Court, while explaining the rationale for the adoption of Article 301 of the Indian Constitution, opined that:

*“The provision contained in Article 301 guaranteeing the freedom of trade, commerce and intercourse is not a declaration of a mere platitude, or the expression of a pious hope of a declaratory character; it is not also a mere statement of a directive principle of a state policy, it embodies and enshrines a principle of paramount importance that the economic unity of the country will provide the main sustaining force for the stability and progress of the political and cultural unity of the country.”*³⁵

The Indian Constitution's Article 301 states that all trade, commerce, and sexual relations must be free across India's territory. Section 92 of the Australian Constitution, which, among other things, specifies that, served as a basis for Article 301 of the Indian Constitution³⁶;

“.....trade and commerce and intercourse among the States whether by means of internal carriage or ocean navigation, shall be absolutely free.”

This section's historical intent was to eliminate state customary restrictions. However, due to judicial

²⁹*Id.*

³⁰ The Constitution (First Amendment) Act, 1951, § 3.

³¹ *Saghir Ahmed v. State of Uttar Pradesh*, AIR 1954 SC 728, 742.

³² The Constitution (Fourth Amendment) Act, 1955, § 4.

³³ INDIA CONSTI. art. 301 cl. 1.

³⁴ BRIJ KISHORE SHARMA, INTRODUCTION TO THE CONSTITUTION OF INDIA 313 (PHI Learning Private Limited, New Delhi, 2011).

³⁵ *Atiabari Tea Company v. State of Assam*, AIR 1961, SC 232 at 247.

³⁶ Dr., *supra* note 1 at 763.

rulings, it now now applies to States and the Commonwealth. This was acknowledged in the judgement of *James v. Commonwealth Australia*³⁷, when the Privy Council deemed a Commonwealth Act requiring a licence for interstate shipping of dried fruits to be invalid. However, Section 92 in India grants more flexibility than it does in Australia. While Section 92 exclusively refers to interstate trade, Article 301 covers both intrastate trade and freedom of interstate trade, which refers to trade and commerce conducted inside a State's borders. It limits both the legislative authority of Parliament and the State Legislature. The Australian Constitution's use of the phrase "completely free" created a number of problems for the nation. The Centre was unable to control trade and commerce. The Court was to specify the limitation.³⁸

The Article 301 protects trade freedom against legislative and executive actions by the State. It is a restriction on the State's use of its legislative and executive authorities, and if it is broken, a court may enforce it. The size of the restriction and the instances in which it is broken are the most crucial factors to consider. This necessitates a close reading and understanding of Article 301's text.³⁹

The first sentence of Article 301, "Subject to the other provisions of this Part," implies that trade, commerce, and sexual relations are not entirely free across the territory of India but are instead bound by other laws of Part XIII, as set out in Articles 302 to 307.⁴⁰

The legislative authority granted to the State Legislature and to Parliament under Articles 245 and 246 may be used to obstruct trade, commerce, and intercourse. They are unable to because of the free commerce provision in Article 301. It places a broad restriction on the legislative authority outlined in the Constitution's Seventh Schedule. This restriction does not go without exception. The phrase "subject to the other provisions of this part" in the first sentence indicates that other Part XIII laws further qualify the restrictions placed on the legislative authority by Article

301. Additionally, this term appears in Articles 245 and 246(3) of the Indian Constitution. According to Article 245's introductory phrase, "subject to the provisions of this Constitution," the legislative authority of the Union and the State shall be interpreted in light of any restrictions set out elsewhere in the Constitution. In a similar vein, the first sentence of Article 301 implies that the restriction placed on the legislative authority of the Union and the State should be interpreted in light of the explanations offered in other Part XIII articles.⁴¹

Article 301 in India is subject to limitations outlined in the constitution itself. Articles 302 through 305 of the Constitution list the limits. No freedom is "absolute," and even in Australia, freedom is "controlled" and "relative," making this essential.⁴² In addition to interstate trade, Article 301 also covers intrastate trade, commerce, and intercourse. Therefore, limitations on any stage before to or after at the State's boundary constitute a violation of Article 301. With the exception of those that are outlined in the other provisions of Part XIII of the Indian Constitution, Article 301 of the Indian Constitution guarantees freedom from all constraints. All types of trade, business, and intercourse are included by the freedom provided by Article 301 in its broadest sense. Only the limitations listed in Articles 302 to 305 of the Indian Constitution apply to it. These clauses make it very obvious that an executive action cannot be used to revoke the assurance provided by Article 301.⁴³ The free flow of commerce should not be restricted in any way that is "incidental" or "indirect"; rather, constraints from which freedom is assured should be such limits.⁴⁴

Additionally, it should be emphasised that Article 19(1)(g) gives residents the freedom to engage in any occupation or kind of company. However, although Article 19(1)(g) grants people of India a fundamental right to engage in commerce, business, etc., Article 301 simply grants a statutory right. While the right under Article 301 may be

³⁷ *James v. Commonwealth of Australia*, (1936) AC 578.

³⁸ *Id* at 763.

³⁹ BAHARUL *supra* note 6 at 78 - 79.

⁴⁰ *Id* at 79.

⁴¹ *Id* at 79.

⁴² *Id* at 764.

⁴³ *District Collector, Hyderabad v. Ibrahim & Co.*, AIR 1970 SC 1255.

⁴⁴ *Automobile Transport Ltd. V. State of Rajasthan*, AIR 1962 SC 1406.

asserted by anybody, whether a natural or artificial person, the right under Article 19(1)(g) can only be enforced by citizens of India.⁴⁵

JUDICIAL DEVELOPMENT OF THE CONCEPT POST INDEPENDENCE

Since independence, the stated provisions under Part XIII of the Constitution have undergone a number of revisions as a result of the Supreme Court's proclamation of multiple important decisions that helped define the boundaries of the idea of freedom of commerce.

The Apex Court has come to understand over the last several decades that the term "free" in Article 301 does not indicate freedom from rules or laws. There is a fundamental difference between laws that restrict people's ability to engage in the activities that make up commerce and laws that impose moral standards or other types of restrictions. The meaning of the term "regulation" is ambiguous. Depending on the nature of the object to which it is applied, its meaning varies.⁴⁶

The freedom of trade and commerce cannot be violated by a legislation that is merely regulatory or compensatory.⁴⁷ Such rules are just meant to control trade and business. These regulations tend to encourage trade freedom rather than hinder it. Thus, laws pertaining to traffic, vehicle licencing, road maintenance fees, marketing and health, pricing control, economic and social planning, and minimum wage requirements are all completely regulatory in nature.⁴⁸

Similar to this, a legislation that imposes a tax or toll for the use of a road or bridge is not a hindrance or burden on commerce, but rather aids in it by making it possible to provide a more convenient and affordable transportation route. As long as "they are within normal limitations," such compensating taxes do not impede commerce; otherwise, "if the amount of such taxes is too

large," trade would undoubtedly be hampered.⁴⁹ In this regard, the Court has emphasised that it is important to remember the distinction between "freedom" as defined by Article 301 and "restriction" as defined by Articles 302 and 304. In reality, a factor that facilitates trade cannot be a restriction, whereas one that actually hinders it will be referred to as a restriction.⁵⁰

The Assam Taxation (on Goods Carried by Roads or Inland Waterways) Act, 1954 was challenged in *Atiabari Tea Co. v. State of Assam*⁵¹ on the grounds that it violated Article 301 of the Constitution and was not protected by Article 304. (b). Tea was grown by the petitioner, who then exported it to Calcutta through Assam. According to the aforementioned Act, tea that was transiting through Assam was subject to tax. According to the Supreme Court, the challenged statute unquestionably imposed a tax directly and immediately on the transfer of commodities and as a result fell inside the ambit of Article 301. As a result, the Act was declared invalid. The Court ruled that taxes may and do constitute restraints if they immediately and directly impede commerce. Without a doubt, the tax in the present situation restricted commerce. A violation of Article 301 would not always result from the imposition of a duty or tax on everyone. Only those taxes or regulations that directly or indirectly limit or impede the flow of commerce; every tax imposed does not have this effect. Every case has to be evaluated based on its unique collection of facts, context, and circumstances.⁵²

Only if the conditions of Article 304(b) are met, which implies that the State must request the President's prior approval before enacting such a Statute, might such taxes be collected. This acts as a safeguard to prevent the State Legislature from undermining the economic unity of the nation. The conditions of Article 304(b) had not been met in this instance. The Court declared that the freedom promised by Article 301 would become illusory if taxes was permitted to restrict, obstruct, or hinder the movement,

⁴⁵ Dr., *supra* note 1 at 764.

⁴⁶ *Id* at 764.

⁴⁷ G.K. Krishnan v. State of T.N., AIR 1975 SC 583.

⁴⁸ Dr., *supra* note 1 at 764.

⁴⁹ *Id.*

⁵⁰ Automobile Transport Ltd. V. State of Rajasthan, AIR 1962 SC 1406.

⁵¹ Atiabari Tea Co. v. State of Assam, AIR 1961 SC 232.

⁵² State of Kerala v. Very Rev. Mother Provincial, AIR 1970 SC 2079; Dr., *supra* note 1 at 765.

transport, or carrying of commodities without complying with the conditions of Articles 302 to 304.⁵³

The government issued a regulation under the Mysore Forests Act, 1900, prohibiting the transfer of forest products between dusk and dawn in *State of Mysore v. Sanjeeviah*⁵⁴. The regulation was declared invalid by the Supreme Court because it violated the right protected by Article 301 of the Indian Constitution and was not a "regulatory," but rather a "restrictive" action.⁵⁵

The Rajasthan Motor Vehicles Taxation Act, 1951 was challenged in *Automobile Transport Ltd. v. State of Rajasthan*⁵⁶, among other things. The impugned Act was challenged on the ground that it is in violation of Article 301. All motor vehicles used and retained inside the State of Rajasthan were subject to a levy levied by the State Government. As these were just "regulatory" measures imposing compensating taxes - for enabling trade, commerce, and intercourse - the Court upheld the tax's legality. With a clarification that regulatory measures imposing compensatory tax do not fall under the purview of the restrictions contemplated in Article 301 and as a result need not comply with the requirements of the provisions under Article 304(b), the Court upheld the direct and immediate effect test established in *Atiabari's case*. A compensation tax is not a limitation on the mobility component of trade and commerce, according to the Court's majority finding in this case.⁵⁷

Several principles defining the contours of Article 301 were established as a result of the majority decision in the *Atiabari Tea Case* and the *Automobile Case* including, *inter alia*, that:⁵⁸

- i. Both intra-state and interstate trade, commerce, and intercourse are guaranteed under Article 301.
- ii. The terms trade, commerce, and intercourse have the broadest meanings and include the movement of both people and products.

⁵³ Dr., *supra* note 1 at 765.

⁵⁴ *State of Mysore v. Sanjeeviah*, AIR 1967 SC 1189.

⁵⁵ Dr., *supra* note 1 at 765.

⁵⁶ *Automobile Transport Ltd. v. State of Rajasthan*, AIR 1962 SC 1406.

⁵⁷ Dr., *supra* note 1 at 765.

⁵⁸ Dr., *supra* note 1 at 765 – 766.

- iii. Freedom includes freedom from all laws, including tax laws, as well as laws created in the execution of the authority granted by the legislative acts related to trade and commerce, production, supply, and distribution of products.
- iv. Only legislation having a direct and immediate tendency to impede or limit free trade or commerce shall be subject to the negative effects of Article 301.
- v. Article 301 does not apply to laws that are solely regulatory or that impose only compensating tariffs with the intent of promoting free trade.

In the case of *G.K. Krishna v. State of Tamil Nadu*⁵⁹, the petitioner contested the legality of a government notification issued in accordance with the Madras Motor Vehicle Taxation Act, 1931 which increased the motor vehicle tax on omnibuses from Rs. 30 per seat to Rs. 100 per seat per quarter on the grounds. It was challenged on the grounds that, among other things, the tax restricts the freedom guaranteed by Article 301. The Petitioner contended that since the tax imposed was not compensating nor regulatory in nature and consequently restricted trade and commerce, it was not a statute established with the prior approval of the President and therefore not covered by Article 304 (b). On behalf of the government, it was said that this action was made to stop the improper usage of omnibuses as well as unfavorable competition between them and normal stage-carriage buses. The tax on contract carriages imposed by the government notification, according to the Supreme Court, was compensatory in character and did not, therefore, violate the freedom protected by Article 301. The Court ruled that although constraints hamper freedom of trade and commerce, regulations like traffic laws encourage it. The payment of a toll or fee for the use of a road, a bridge, an airport, etc. does not act as a barrier to commerce or a hindrance to it.⁶⁰

A tax must be a direct levy with the intention of impeding trade movement in order to qualify as a forbidden

⁵⁹ *G.K. Krishna v. State of Tamil Nadu*, AIR 1975 SC 583.

⁶⁰ Dr., *supra* note 1 at 766.

tax. The freedom of trade and commerce cannot be restricted by a tax if it is compensating or regulatory in nature. The petitioners argued that the contested levy was not a compensating tax since it also covered the expense of building new roadways. He contended that the car tax could only be assessed for the usage of the existing road. The Court ruled that a compensatory tax—such as a mileage or non-mileage charge—is based on the type and extent of the use of the roads, as long as the proceeds are used for the repair, upkeep, maintenance, and depreciation of the relevant roads and the collection of the exaction does not substantially impede movement. The sheer concept of a compensation tax serves a purpose that is roughly equivalent to the tax imposed. No citizen has the right to conduct commerce or business without paying the cost of the state's unique service, which is a necessary component of running the enterprise. Roads of great width, hardness, and durability are needed by motor vehicles for their safe, effective, and cheap usage; maintaining such roads will be expensive for the government. In light of the special and direct relationship that users of public motor vehicles have with these roads and the special and direct benefits they receive from them, it does not seem unreasonable to ask them to contribute specifically to their upkeep in addition to their regular tax payments to the government. Thus, it was decided that the additional tax was legal.⁶¹

In *Indian Cement v. State of A.P.*⁶², the petitioners argued that Part III of the Constitution was violated by the Notifications that the States of Andhra Pradesh and Karnataka had issued under Section 8(5) of the Central Sales Tax Act, 1956, reducing the rate of Tax on sales of cement by local cement manufacturers to manufacturers of cement products in the State. The makers of cement from other states who had sales representatives in the State of A.P. were not eligible for the lower rate of tax. The Andhra Pradesh and Karnataka governments' contested notifications, according to the Supreme Court, violated Part III of the Constitution and should be revoked. The State Government had failed to demonstrate how the State Sale

Tax Act's rate cut would increase state income. The requirements of Part III forbid giving local producers precedence, which is what the notice indicates. Similar to how the Central Sale Tax Act's notice provided under Section 8(5) had an impact on free trade and commerce and produced local preference in violation of Part III, the difference in interstate sales tax rates had the same effect. The reasonable constraints envisioned in Part III must be supported by legislation, not by executive order, as long as they fall within the bounds set out in Part III's overall design.⁶³

In *State of Bihar v. Harihar Prasad Debuka*⁶⁴, the respondent argued that the Bihar Government announcement requiring anybody shipping goods via the State of Bihar to have licences in the required forms violated Articles 301 and 304 of the Constitution. Because the respondent was using a truck to carry 165 bags of mustard from the State of Rajasthan to Jamshedpur in the State of Bihar, the Court determined that the Notification was a regulatory instrument and, thus, constitutional. It did not obstruct or limit interstate commerce, and as a result, it did not violate Articles 301 and 304 of the Constitution. Goods transit was not forbidden. The necessity for a license was put in place to deter evasion and make it easier to calculate sales tax. By giving the carrier the ability to traverse state boundaries as required, the permit would encourage rather than discourage interstate commerce.⁶⁵

The Notification issued by the State of Uttar Pradesh under the U.P. Sales Tax Act, 1948, and the Central Sales Tax Act, 1956, exempting new units of manufacturers in respect of various goods for different periods ranging from 3 to 7 years from payment of sales tax, was held to not be in violation of Article 301 of the Constitution in the case of *Video Electronics Pvt. Ltd. v. State of Punjab*⁶⁶. The petitioners had argued that since manufacturers from other states were required to collect sales tax when they sold identical items in the State of Uttar Pradesh, the application of a sales tax was unfair and in

⁶¹ Dr., *supra* note 1 at 766.

⁶² *Indian Cement v. State of A.P.*, (1988) 1 SCC 743.

⁶³ Dr., *supra* note 1 at 767.

⁶⁴ *State of Bihar v. Harihar Prasad Debuka*, (1989) 2 SCC 192.

⁶⁵ Dr., *supra* note 1 at 767.

⁶⁶ *Video Electronics Pvt. Ltd. v. State of Punjab*, AIR 1990 SC 820.

violation of Article 301. The exemption is based on natural and commercial considerations, which serves as a motivation for local manufacturers. The challenge raised in accordance with Article 304 was likewise rejected. The exception to Article 301 is Article 304. Only in the event that Articles 301 and 303 apply to the contested tax would it be necessary to use an exemption.⁶⁷

The constitutionality of clause 3 of the Tamil Nadu (Movement Control) Order, 1982 was contested as a violation of Article 301 in the case of *State of Tamil Nadu v. M/s. Sanjeeth Trading Company*⁶⁸. A comprehensive prohibition on the transportation of wood from the State of Tamil Nadu to any location outside the State was enforced after it was determined to be an essential product by notification. It was determined that it was a regulatory action permitted by Articles 301 and 304(b) to ensure that wood was accessible to the general public at a fair price.⁶⁹

In the case of *M/s B.R. Enterprises v. State of U.P.*⁷⁰, the legitimacy of the Lotteries (Regulation) Act, 1998, a law approved by the Parliament, was contested by the petitioners. Due to the authority granted under Section 5 of the contested Act, the State of Uttar Pradesh issued a decree outlawing lottery in other states. They argued that the U.P. and Section 5 of the Act were illegal. Order was illegal because it violated Articles 301, 302, and 303 of the Constitution. The Supreme Court ruled that since lotteries have an element of chance, they are not considered trade or commerce under Article 301 of the Constitution. Lottery is a risk because of this element of chance. A lottery that is a res-extra-commercium does not become commercial simply by donning a state-issued robe. The sale of lottery tickets, even those coordinated by the State, cannot be regarded as "trade and commerce" as that term is used in Article 301 or in everyday speech. As a result, the Act is legal and does not contravene Articles 301 and 302.⁷¹

There is no mention of what actions would fall within the purview of Article 301 of the Indian

Constitution. It is uncertain if the mentioned Article covers both fiscal and non-fiscal actions. Non-fiscal measures include those that impede the free flow of trade, such as licensing laws and laws regarding commodity control, which directly affect the free flow of trade. Fiscal measures are those that are passed in the exercise of the taxation power, such as taxes on the entry of goods, taxes on goods and passengers.⁷²

The Bombay Sales Tax Act of 1952 was successfully challenged in *State of Bombay v. United Motors (India) Ltd.*⁷³ for being *ultra vires*. In this case the Supreme Court noted that the principle of freedom of interstate trade and commerce stated in Article 301 is expressly subordinated to the State power of taxing goods from sister States, provided that no preference is given to similar goods of local origin.⁷⁴ However the High Courts of Rajasthan⁷⁵ and Bombay took the view that taxation might violate the freedom of trade and commerce.

In *State of Bombay v. R.M.D. Chamarbaugwala*⁷⁶, the State of Bombay was accused of violating Article 301's protection of freedom by levying a fee on entry into prize contests. It was argued that taxes did not come within the purview of Article 301 at all since it dealt with limits other than taxation.⁷⁷

FREEDOM OF TRADE, COMMERCE AND INTERCOURSE UNDER ARTICLE 19(1)(G)

The Indian Constitution's Part III safeguards the basic right to freedom of movement in Article 19(1)(d). It ensures that Indian nationals have the freedom to roam throughout the country without restriction. This right is also covered by Article 19(1)(e), which refers to the freedom to dwell anywhere in the nation. The term "freely" means "without any rigid limitations." One is unrestricted in his movement and free to go anywhere and however he pleases. However, as stated in Article 19(5) of the Constitution, this

⁷² BAHARUL *supra* note 6 at 93.

⁷³ *State of Bombay v. United Motors (India) Ltd.*, AIR 1953 SC 252.

⁷⁴ *Id* at p. 257.

⁷⁵ *Automobile Transport (Rajasthan,) Ltd. v. State of Rajasthan*, AIR 1958 Raj. 114 (P.B); *Surajmal v. State of Rajasthan*, AIR 1954 Raj. 260 DB.

⁷⁶ *State of Bombay v. R.M.D. Chamarbaugwala*, AIR 1956 Bom. I. (DB) p.14.

⁷⁷ BAHARUL *supra* note 6 at 93 – 94.

⁶⁷ Dr., *supra* note 1 at 767.

⁶⁸ *State of Tamil Nadu v. M/s. Sanjeeth Trading Co.*, AIR 1993 SC 237.

⁶⁹ Dr., *supra* note 1 at 767.

⁷⁰ *M/s B.R. Enterprises v. State of U.P.*, AIR 1999 SC 1867.

⁷¹ Dr., *supra* note 1 at 767.

freedom is subject to reasonable limitations imposed by the law. According to Article 19(5), governments may impose limits on the freedom of persons to relocate either for the preservation of the rights of the scheduled tribes or in the benefit of the broader public.

The East Punjab Public Safety Act, 1949, was contested as being unconstitutional in *Dr. N.B. Khare v. The State of Delhi (1950)*. On the basis that it gives the District Magistrate and State Government the authority to issue an externment order restricting travel within a location and that the petitioner had already received one ordering him not to remain in Delhi, it was challenged. He said that this Act doesn't provide a maximum time limit for the same and that it instead leaves it up to the Executive's subjective judgement as to whether the individual should be the. The Supreme Court rejected these arguments, stating that the Act is not invalid simply because the subject satisfaction is satisfied because such a restriction is reasonable in times of emergency and that since the Act is inherently temporary, there should be no argument that the orders for externment are indefinite. In a similar case, *State of MP v. Baldeo Prasad (1960)*, the High Court acknowledged the petitioner's argument and concluded that the government should only limit a right after providing a valid justification or circumstances that make it necessary to do so.

When the right to travel freely is compromised, so is the right to trade freely. Only when the limitations on freedom of movement are unreasonable does it become actionable. Lockdown is one example of a reasonable limitation for which the defense of *force majeure* may be used. Therefore, determining the application of Article 19(1) is crucial (g).

It is essential to navigate the stated and implicit restrictions imposed on a particular provision by the *lex loci* in order to emancipate its reach. The basic freedoms protected by the Indian constitution are not unalienable; the state may impose some limitations in accordance with the legal process. These limitations must be sensible nevertheless, not capricious. These essential rights are

outlined in Article 19, along with the limitations that may be placed on them.

While Article 19's clause (1)(g) guarantees the freedom of trade, commerce, and intercourse, Article 19(6) also includes certain limits and gives the state the authority to put reasonable limitations on such rights in order to protect the wider interests of society as a whole. According to Article 19(6), the state is not prohibited from passing legislation restricting the enjoyment of a basic right in a reasonable manner for the benefit of the general populace. For one to practise a profession, there must be a legislation governing technical or professional credentials. Article 19 will provide protection for laws that establish professional qualifications (6). Nothing in Subclause(g) of Clause (1) of Article 19 shall hinder the State's ability to conduct any trade, business, industry, or service, whether it be to the total or partial exclusion of citizens or otherwise if it is not in the interest of the general public, according to Article 19(6)(ii). If the State is not engaged in commerce, Article 19(6)(ii) will not apply.⁷⁸

Rights available to Citizen Only

Only citizens, not aliens or foreigners, are entitled to the rights protected by Article 19(1), including the freedom to commerce. A non-Indian citizen is referred to as a "foreigner," and they are unable to assert any rights under Article 19 as a result.⁷⁹ A corporation or firm cannot assert a right under Article 19 since they are not natural people and the term "citizens" used in Article 19 only refers to natural individuals. This is true even whether they are a juristic person or an artificial person.⁸⁰ However, now the judicial trend seems to be diverting from its disposition on this very point. In the infamous *Bank Nationalization case* i.e. the 1969 case of *Cooper v. Union of India*⁸¹, the court determined that even though a corporation cannot assert a right under Article 19, its shareholders may assert the rights protected under Article 19 if their rights are harmed by a

⁷⁸MCRHRDI, <http://www.mcrhrdi.gov.in/91fc/coursematerial/pcci/Part3.pdf>

⁷⁹ Louis De Raedt v. Union of India, (1991) 3 SCC 554.

⁸⁰ Tata Engineering and Locomotive Co. v State of Bihar, AIR 1965 SC 40.

⁸¹ AIR 1970 SC 40.

State action. When shareholders get together to create a firm, their basic rights as citizens are not compromised. By generously interpreting Article 19, natural beings connected to a juristic person now have the same rights as citizens.⁸²

Territorial Extent of the Freedom of Trade

The right to trade under Article 19(1)(g) of the Indian Constitution is extended to the entirety of India, including the Union Territories of Jammu and Kashmir and Ladakh (after Article 370 is repealed by the Jammu and Kashmir (Reorganization) Act, 2019). This is when read with Articles 301 to 307 of the Indian Constitution. However, the scope of its practise is constrained by national and state-specific limitations on trade, commerce, and sexual relations as explained in the aforementioned chapters. Thus, it is impossible to draw any firm conclusions about the geographical scope, but it may be noted that, unlike freedom of speech and expression, which is unrestricted by national borders, the right to commerce is governed by *lex loci* that are unique to a given region.

Reasonable Restrictions on Freedom to Trade by Legislature

The restrictions on the rights under Article 19(1) can only be imposed through a legislation and not any executive or departmental instructions. According to Article 19(6)'s phrase "appropriate constraints," a person's right to exercise it shall not be subject to arbitrary or disproportionate restrictions that go beyond what is necessary for the good of the community.⁸³ The term "reasonable" suggests thoughtful consideration and judgement, which reason requires. Without striking a balance between the rights provided by Article 19 (1) and the societal restrictions imposed under clause (6) a legislation that arbitrarily or unduly intrudes on a person's rights cannot be regarded to be fair.⁸⁴ The requirement that a restriction should be reasonable means that it is for the courts to determine whether any restriction is reasonable or not. If the courts are of the opinion that a particular

restriction is devoid of reasonability then it may declare it to be void by the virtue of Article 13 of the Indian Constitution. However, there is no definitive doctrine or absolute test to ascertain the reasonableness of a restriction.⁸⁵

The phrase "reasonable constraints" aims to create a balance between the liberties provided by any of the subclauses of Article 19(1), such as, for example, the freedom of trade, commerce, and intercourse under subclause (g), and the social control allowed by Article 19 of the Constitution (6). What are the fundamental standards established by the Supreme Court in this regard for distinguishing between acceptable and arbitrary limits must be determined. The Supreme Court in the case of *Dwarka Prasad v. State of U.P.*⁸⁶ ruled that a restriction is appropriate if it strikes the right balance between an individual's and society's rights. Therefore, the reasonableness standard should be applied to each specific statute being challenged, rather than an overarching standard of reasonableness that may be shown as being relevant in all circumstances. The type of the right allegedly violated, the reason for the restrictions placed, the severity and urgency of the wrong being attempted to be corrected, the disproportionality of the imposition, and the circumstances at the time should all be taken into account before reaching a decision.⁸⁷ Therefore, the government's subjective satisfaction formula, which aims to supersede a fundamental right guaranteed to "citizens," can only be justified in the most extreme cases and within the strictest constraints. It cannot be used to restrict a right under these conditions.⁸⁸

According to the Supreme Court, one must consider whether a statutory provision is reasonable and whether it violates the fundamental rights protected by Article 19 while determining whether it is reasonable.

- i. The Directive Principles of State Policy;

⁸² DR. *supra* note 1 at p. 210.

⁸³ DR. *supra* note 1 at p. 209.

⁸⁴ Chintamani Rao v. State of M.P., AIR 1951 SC 118.

⁸⁵ DR. *supra* note 1 at p. 209.

⁸⁶ Dwarka Prasad v. State of U.P., (1954) SCR 803.

⁸⁷ State of Madras v. Row, (1952) SCR 597 (607).

⁸⁸ Bhadrappa v. Tolacha Naik, (2008) 2 SCC 104 (107).

- ii. The Restrictions must not be arbitrary or excessive, going beyond the necessity of the general public's interest;
- iii. No abstract or general pattern or a mixed principle to judge the reasonableness of the restrictions can be laid down so as to be of universal application and the same will vary from case to case as well as with regard to the changing conditions, values of human life, social philosophy of the time, and other factors.
- iv. It is necessary to strike a fair balance between the restrictions put in place and the social control envisioned by Article 19(6);
- v. Prevalent social ideals as well as social needs that the restrictions are meant to address. A just balance has to be struck between the restrictions imposed and social control envisaged by Article 19(6);⁸⁹

Under clause (6) of the Article 19, the State is authorized to impose restrictions on the right to carry on trade, profession or business. The condition is that the restrictions must be:⁹⁰

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

Being a fundamental right, the ability to conduct business is only constrained by legal restrictions made in the interest of the general public under Article 19. (6). It is crucial to define the meaning of the phrases "reasonable" and "public interest" in light of the judicial developments since independence in order to determine what is "reasonable" and what is in the "public interest." The definition of "Public Interest" in Strouds Judicial Dictionary, Volume 4 (IV Edition), is as follows:

“a matter of public or general interest does not mean that which

is interesting as gratifying curiosity or a love of information or amusement but that in which a class of the community have a pecuniary interest, or some interest by which their legal rights or liabilities are affected.”

In *Black's Law Dictionary (Sixth Edition)*, “public interest” is defined as follows:

“Public Interest something in which the public, or some interest by which their legal rights or liabilities are affected. It does not mean anything the particular localities, which may be affected by the matters in question. Interest shared by national government....”

In his book, Dr. J.N. Pandey⁹¹ explains that the phrase "in the benefit of the general public" in Article 19(6) has a broad meaning that encompasses public order, public health, public security, morals, community economic well, and the goals listed in Part IV of the Indian Constitution. Nobody can argue against a law that guarantees the fundamental rights of human labourers as a social welfare policy⁹². The court must examine the issue from the perspective of advancing the social interest that the legislation is meant to advance in order to determine its legality.

In *Nagar Rice and Flour Mills v. N.T.G. and Bros.*⁹³ According to section 8(3)(c) of the Rice Milling Industry (Regulation) Act, 1958, the Government issued an order approving the relocation of the rice mill from its former location to the new site. The respondent challenged the decision on the grounds that the appellant's mill was relocated to a location close to their rice mill and as a result, their business was likely to be negatively impacted, constituting an unreasonable limitation on his ability to

⁹¹ DR. supra note 1 at p. 260.

⁹² Municipal Corporation, Ahmedabad v. Jan Mohd. Usmanbhai, (1986) 2 SCC 20.

⁹³ Nagar Rice and Flour Mills v. N.T.G. and Bros., AIR 1971 SC 246.

⁸⁹M.R.F. Ltd. v. Inspector Kerala Govt., (1998) 8 SCC 227, ¶ 13.

⁹⁰ DR. supra note 1 at p. 260.

conduct business. The order was deemed lawful by the court. The restrictions imposed in the interest of the "general public" and not because it has a negative impact on other people's businesses apply only to the exercise of the right under Article 19(1)(g).⁹⁴

However, a law that favours the government over private traders when allocating waggons for transporting coal does not impose a complete ban on the business of supplying coal by the private traders; instead, it only imposes reasonable restrictions on their ability to carry on trade in accordance with Article 19(1)(g), making it valid. There are other transportation options besides the railroad. The Petitioner's trade as coal merchants is in no way interfered with the railways by not being able to provide transport facility.⁹⁵

CONCLUSION

According to the aforementioned interpretation, the Article 301, taken as a whole, assumes that goods can move freely both within and between States, allowing for the unfettered selling of items made in any State in any other State with no legal restrictions. The Article 301 may be violated by hostile action both within the State of origin of the goods and at the border through prohibitions on entrance and exit as well as by regulations that forbid or restrict the sale or exchange of commodities to the markets for which they are intended. The freedom of trade proclaimed by Article 301 extends to goods that have been consigned to the market as well as goods that have already been sold and are in the process of delivery, meaning that consignment and delivery, as components of commercial intercourse, cannot be prevented or hindered by State legislation.⁹⁶

When the Constitution grants commerce freedom, this freedom cannot be unrestricted. As a result, Articles 302 to 305 create limitations and guarantee that trade is done lawfully across all of the states and the nation. Together, these provisions guarantee that the freedom of

trade, commerce, and sexual activity is given constitutional status. At least there wouldn't be any arbitrary impediments to trade and commerce based on geographic differences or other factors.⁹⁷

It is clear that the freedom granted by Article 301 entails freedom from restrictions, burdens, and impediments to trade, commerce, and intercourse in all of its facets, free from all barriers, regulations, and controls. On the other hand, the word "free" in Article 301 cannot imply complete freedom or the invalidity of any trade or commerce-related restrictions. It is noted that the freedom of trade and commerce guaranteed by this Article includes freedom from any limitation that would directly and immediately impair the free flow of trade. Therefore, Article 301 does not apply to restrictions on trade, commerce, or intercourse that are indirect or insignificant. Perhaps there are some acceptable restrictions to the freedom guaranteed by the Indian Constitution.⁹⁸

It is evident that Article 301 places a broad restriction on State activity. The freedom granted by Article 301 cannot be restricted by legislation passed by either the Centre or the State Legislatures. In order to balance the given freedom with the right to enact laws, Articles 302 and 304 specify the process and manner in which each group of legislators shall exercise that power. Parliament will be free to enact any legislation that a complex society in the age of planning requires, despite the freedom. Additionally, the freedom does not significantly curtail the authority of state legislatures. Perhaps in order to exceed the limit, they will need permission from the Union government. They also need to be cautious because the law may ultimately be challenged in court on the grounds that the restrictions are justified.⁹⁹

In no modern State can there be absolute and unlimited individual rights. Unrestricted freedom turns into a licence and endangers the freedom of others. "Civil Liberties as guaranteed by the Constitution imply the

⁹⁴ DR. *supra* note 1 at p. 260 & 261.

⁹⁵ DR. *supra* note 1 at p. 261; AIR 1971 SC 246.

⁹⁶ BAHARUL *supra* note 6 at p. 127.

⁹⁷ BLOG I-PLEADERS, <https://blog.iplayers.in/freedom-trade-commerce-intercourse-articles-301-307-indian-constitution/#Commerce>

⁹⁸ BAHARUL *supra* note 6 at p. 128.

⁹⁹ BAHARUL *supra* note 6 at p. 128.

existence of an organized society maintaining public order without which liberty itself would be lost in the excess of unrestrained abuses".¹⁰⁰ They won't respect each other's rights and obligations if people are granted total freedom without any form of social supervision, which would lead to total chaos in society. Therefore, it's important to create a balance between the necessity for social constraints and individual freedom. Social constraints will stop crimes while freedom will assure economic progress. Only by jointly exercising the authority of judicial and non-judicial bodies will this balance be attained. To protect individual rights, judicial entities must prevent the arbitrary use of authority where non-judicial bodies are not allowed to do so.

The judiciary has laboriously tried to interpret the laws in light of the current situations and the extent of technological development. The notion of trade, business, and interaction would alter as society became more modern, just as it did when e-commerce was introduced with the development of the internet. Consequently, it is vital that court decisions be made in line with how society is developing. When the world's conditions are uncertain, the court is ardently needed to support the dynamic idea of freedom of trade, commerce, and sexual interaction.

The Supreme Court of India has unrestricted authority under Article 13 of the Indian Constitution to declare any statute in conflict with the fundamental rights guaranteed by the Constitution to be unconstitutional and void. The Doctrine of Severability, Eclipse, Waiver, and Nullity governs this "Judicial Review" power. The independence of the court and the spirit of the constitution are safeguarded by this authority. It effectively supports Article 32's fundamental rights enforcement. The Court ensures that the citizens' fundamental rights are not violated by filing a complaint against the government's arbitrary exercise of power. As trade, commerce, and sexual activity have grown in popularity, so has the demand for judicial activism and judicial scrutiny.

As a result, the judiciary has played and will continue to play a crucial part in the creation and formulation of the idea of freedom of trade, commerce, and interaction throughout the nation.

¹⁰⁰ Fox v. New Hampshire, (1941) 312 US 569 at p. 574.