



## Freedom of trade, commerce and intercourse in India

Ram Gopal

Assistant Professor, UILMS, Gurugram, Haryana, India

### Introduction

India is the 7th largest country in the world and largest democratic country in the world.

India is one of the oldest Civilizations in the world with a variety and rich cultural heritage. When India attained independence, it had innumerable problems and challenges. Economically India's situation was miserable. The social and economical inequality was all pervasive. The Constitution makers were very much aware of the problems. That is why they decided that India would be a welfare state. Development in the economy of the country was the need of the hour. The economic growth is associated with the economic progress and advancement. Economic growth can be defined as positive changes in the level of goods and services produced by a country in a certain period of time. The trade and commerce are the very important aspect of the economic growth. To facilitate the economic growth trade, commerce and intercourse should be free from the barriers in a State. The Constitution of India secures the freedom of trade, commerce and intercourse within the territory of India under Article 301 subject to the reasonable restrictions and public interest as provided in Articles 302-307. In this paper an attempt has been made to understand the concept of freedom of trade, commerce and intercourse within the territory of India and analyze the factors responsible for the current position of the interstate trade and also the effect of the Part XIII of the Constitution of India.

### General

In a layman language any kind of tax that is levied on any particular activity which involves interstate transaction can be taken to a restriction on the freedom of trade but as taxes are also necessary for the proper functioning of the Government of the nation it cannot be said that all the taxes are comes in the definition of the restrictions. Freedom of trade in India is a constitutional right given by the Constitution itself. The framers of Indian Constitution desired the free flow of goods for trade commerce and intercourse that may helps in sustaining the stability of the cultural and political unity of the federal polity. Reduce the internal barriers and make the Indian economy a single economic unit is one of the main object behind the insertion of the part XIII of the Constitution of the India.

### Provisions

Articles 301-307 Part XIII of the Constitution of India contains provisions relating to the freedom of trade, commerce

and intercourse within the territory of India. While the general rule of freedom of trade, commerce and intercourse is enunciated in Article 30, it may be subjected to the restrictions contained in Articles 302-305. Part XIII of the Constitution of India seeks to make the Indian country a single economic unit. After India got independence from colonial rule in 1947, the process of rebuilding the economy started. India went for centralized planning. Article 301 of the Constitution of India was the Section 297 of the Government of India Act, 1935. The origins of the provisions relating to the Freedom of trade, commerce and intercourse can be traced directly to the Section 92 of the Australian Constitution. And object of the said provisions was to abolish the state trade barriers. The Constitution makers have borrowed this concept of Freedom of trade from the Australian Constitution but Indian version has couple of changes in the scope of its application.

The Section 297 (1) <sup>[1]</sup> was as follows:

“Sec.297 (1) No Provincial Legislature or Government shall –  
(a) by virtue of the entry in the Provincial Legislative list relating to trade and commerce within the Province, or the entry in that list relating to the production, supply and distribution of commodities have power to pass any law or take any executive action, prohibiting or restricting the entry into, or export from, the province of goods or any class or description; or  
(b) by virtue of anything in this Act have power to impose any tax, cess, toll or due which, as between goods manufactured or produced in the province and similar goods not so manufactured or produced, discriminates in favour of the former, or which, in the case of goods manufactured or produced outside the Province, discriminates between goods manufactured or produced in one locality and similar goods manufactured or produced in another locality. Any law passed in contravention of this section shall, to the extent of the contravention, be invalid.”

Article 301 <sup>[2]</sup> of the reads a “Subject to the other provisions of this part, trade commerce and intercourse throughout the territory of India shall be free.” The freedom as contained in Article 301 <sup>[3]</sup> may be limited to the free movement that is one place to other place of the persons as well as goods. It can be said that freedom requires no barriers in the movement of goods that may be commercial or non commercial. Section 92 <sup>[4]</sup> reads as under:

“trade, commerce and intercourse among the States, whether by means of internal carriage or ocean navigation, shall be absolutely free.” By reading the both section 92 <sup>[5]</sup> and Article 301 <sup>[6]</sup> it can be concluded that while Section 92 <sup>[7]</sup> guarantees

the freedom among the States and Article 301<sup>[8]</sup> guarantees the freedom of trade throughout the territory of India, inter-State as well as intra-State (within a State).

In A.K. Gopalan<sup>[9]</sup> Supreme court said that in a federation, it is necessary to minimize the inter-State barriers as much as possible, so as to inculcate in the minds of the people the feeling that they are members of one nation, though residing in different geographical divisions of the country.

### Restrictions

The freedom as are stated in the Part XIII<sup>[10]</sup> is not absolute. Freedom stated is subject to the Articles 302-305<sup>[11]</sup>. The regulatory power is vested with the Union government and also with the State governments. In Nataraja<sup>[12]</sup> Supreme court said the power of the Union or the State to exercise legitimate regulatory control is independent. But restrictions as mentioned can be imposed by the legislature and not by the executive. It can be said that restrictions can be imposed under Parliamentary law and under State law. Following are the general restrictions on the freedom of trade, commerce and intercourse that can be imposed under Part XIII<sup>[13]</sup>:

1. In the public interest;
2. For the purpose of dealing with a scarcity of goods arising in any part of India;
3. Taxes may be imposed by States on Goods imported from other States similarly as on goods produced within the State;
4. By existing laws e.g., an Act passed before the commencement of the Constitution of India. And if such laws providing for State monopolies to continue except in so far as provided otherwise by an order of the President; and
5. Any restriction that is necessary for carrying the purpose of Articles 301-304.

Broadly it can be said that power to impose restrictions are vested with the Union as well as State Governments.

### Restrictions by Union Law

Article 302<sup>[14]</sup> reads as under:

“Parliament may by law impose such restrictions on the freedom of trade, commerce and intercourse between one state and another or within any part of the territory of India a may be required in the public interest.”

And Article 303<sup>[15]</sup> stated that:

1. “Notwithstanding anything in Article 302<sup>[16]</sup>, neither Parliament nor a State Legislature shall have power to make any law giving any preference to one State over another, or making any discrimination between one state over another, by virtue of nay entry relating to trade and commerce in any of the lists in the seventh schedule.
2. Nothing in clause (1) shall prevent Parliament from making any law giving, or authorising the giving of, any preference or making, or authorizing the making of, any discrimination if it is declared by such law that it is necessary to do so for the purpose of dealing with a situation arising from scarcity of goods in any part of the territory of India.”

Non discrimination is the fundamental principle when Union Government decides to impose restriction on freedom of trade; commerce and intercourse as in mentioned in part XIII

<sup>[17]</sup>. But in case it is necessary for dealing with a situation of scarcity of goods restriction may be imposed on that particular State in which said problem of scarcity arise.

### Restrictions by State Laws

Article 304 reads as:

“Notwithstanding anything in article 301 or article 303, the Legislature of a State may by law:

- a. Impose on goods imported from other States or the Union territories any tax to which similar goods manufactured or produced in that State are subject, so, however, as not to discriminate between goods so imported and goods so manufactured or produced; and
- b. Impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in the public interest:

Provided that no Bill or Amendment for the purposes of clause shall be introduced or moved in the Legislature of a State without the previous sanction of the President.

The said article is an exception to Article 301<sup>[18]</sup>. State Government is empowered under Article 304 (a) to impose any tax on goods imported from other State if similar goods in the State are subject to similar tax so as not to discriminate between goods so imported and goods manufactured or produced in the State. Sub section (b)<sup>[19]</sup> provides that in Public Interest State can impose restrictions on the freedom of trade, commerce and intercourse.

Case: Jindal Stainless Ltd. (2) v State of Haryana<sup>[20]</sup>.

### FACTS

The Jindal Stainless Ltd., an industry manufacturing products within the State of Haryana, purchased raw materials from outside the State and sent finished products to other State on consignment basis or stock transfer basis. By virtue of Haryana Local Development Tax, 2000, the entire State was divided into local areas. The impugned Act provides for levy and collection of tax on the entry of goods in to the local areas of the State for consumption or use therein. The entry tax fell on concerns like the Jindal Stainless, which by virtue of the Central Sales Tax Act, 1956, pay sales tax on the purchase of raw material and sale of finished goods to the other States and do not pay sales tax to the Haryana State.

### ISSUE

The question was that whether a (compensatory) tax imposed on traders having no direct nexus with trading facilities but used for purpose the benefit whereof to the trader was only indirect or incidental, covered and saved by Article 304.

### HELD

The impugned Act is violative of Article 301 of the Constitution of India and is not saved by Article 304<sup>[21]</sup>. The Act, in fact, seeks to levy sales tax on inter-State sales, which is outside the competence of the State Legislature.

Following conditions must be satisfied to validate the law passed by State legislature to regulate inter-state trade and commerce:

1. Previous sanction of the president must be obtained,
2. The law must be in the public interest;
3. Restrictions imposed by such a law must be reasonable.

By the above observation it can be said that even State Government is empowered to impose the restriction under Article 304 of the Indian Constitution but in real sense State cannot make regulatory laws without the sanction of the President. In *Atiabari's* <sup>[22]</sup> case Supreme Court held that State tax on the movement of goods was invalid on the ground that it was passed without the previous permission of the President. It can be concluded that term freedom means the freedom from the arbitrary restrictions but it does not include the freedom from regulation.

### References

1. The Government of India Act, 1935.
2. Constitution of India, Article 301.
3. Ibid.
4. Australian Constitution, Section 92.
5. Ibid.
6. Constitution of India, Article 301.
7. Ibid.
8. Constitution of India, Article 301.
9. *AK Gopalan V. State of Madras* AIR 1950 SC 24.
10. Constitution of India, 13.
11. Constitution of India, Arts. 302-305.
12. *State of Madras v. Nataraja* AIR, 1969, 147.
13. Constitution of India, 13.
14. Constitution of India, Article 302.
15. Constitution of India, Article 303.
16. Constitution of India, Article 302.
17. Constitution of India, 13.
18. Constitution of India, Article 301.
19. Constitution of India, Article, 304(b).
20. *Jindal Stainless Ltd. (2) v State of Haryana*. 2006; 7:241.
21. Article 304 of the Constitution of India.
22. *Atiabari Tea Co. V State of Assam*, AIR, 1961, 232.