

International Journal of Innovative Research in Science, Engineering and Technology

(An ISO 3297: 2007 Certified Organization)

Website: www.ijirset.com

Vol. 6, Issue 9, September 2017

Critical Analysis of Freedom of Trade and Commerce under Constitutional of India

Paramita Choudhary¹

Department of Law, Galgotias University, Yamuna Expressway Greater Noida, Uttar Pradesh, India¹

paramita.choudhury@Galgotiasuniversity.edu.in¹

ABSTRACT: The great problem with every federal system is to keep local and regional interests from rising, which are not beneficial to the country as a whole's interest. The framer of the federal constitution finds it completely important to introduce a free trade provision that would guarantee economic unity within the nation in order to prevent any commercial rivalries and jealousies among the units. Generally speaking, trade involves purchasing and selling goods, whereas other modes of travel, such as land, air or sea, are protected by the word trade. In other words, coordinated practices are called trade or trading with a view to gaining money. The right to trade, though, certainly does not mean the right to commit crime. Activities such as recruiting a criminal to commit murder, distributing lewd photographs or trafficking in human beings should also not adequately be found in the definition of commerce and trade. There are, however, several problems relating to the existence and reach of the terms commerce and trade; owing to various factors, they have generated difficulties for the court. In the one hand, tradition acts as a binding basis of legislation and it is usually applied by judges, while on the other hand, certain judges tend to adopt the sociological way of thought and thereby try to harmonize the individual interest with the contemporary interest. Further, if one analyses, the Realist jurisprudential thought, he will easily find out how social status, background and experiences of the judges influence the judgments.

KEYWORDS: Analysis of Freedom, Commerce, Constitution, Freedom, Liberty, Trade.

I. INTRODUCTION

Now that its previous judgment in *Atiabari Tea Co., Ltd. v. State of Assam* in *Automobile Transport (Rajasthan), Ltd. v. State of Rajasthan* has been re-examined by the Supreme Court of India, it would not be inappropriate to attempt a brief critical and analytical account of the two judgments and the issue of freedom of trade, trade and intercourse within the territory of India with which it is concerned. The role is not easy, as will presently appear[1].

Firstly, because the writing of the articles in Part XIII of the Constitution leaves much to be desired and, secondly, because the wide range of judicial opinion revealed in the cases of *Atiabari* and *Rajasthan* does not make the role of the commentator any easier.

The makers of the Constitution wished to encourage the free movement of commerce and trade in India because, according to them, a country they perceived that economic unity and the nation's integration would be the federal government's main sustaining power for stability and cultural unity. It is necessary in a federation to reduce as much as possible the obstacles (tariffs, non-tariffs, quotas, etc.) between states so that citizens know that they are members of the same country, even though they reside in various geographical areas of the country. Article 301 deals with the freedom of commerce, trade and intercourse in the country. It states that the freedom to carry out such activities is free, subject to the other provisions of Part XIII. Freedom here means the right of freedom of travel for individuals, goods, objects that can be physical or intangible, free of obstacles within the state (intra-scale) or through states (inter-scale).[2]

International Journal of Innovative Research in Science, Engineering and Technology

(An ISO 3297: 2007 Certified Organization)

Website: www.ijirset.com

Vol. 6, Issue 9, September 2017

For profit-making purposes, commerce involves the purchasing and export of commodities. Under Article 301, the term exchange implies an individual transaction with a specific intent or intent, arranged & regulated.

II. DISCUSSION

The term trade is used interchangeably with industry for the purposes of Article 301. Commerce means transmission or travel by air, sea, telephone, telegraph or some other means; shipment or transmission, and not benefit or advantage, is necessary for trade under Article 301. It implies the passage from one location to another of commodities. It encompasses both corporate and non-commercial movements and purchases.[3]

Travel and all ways of dealing with others must be included. It is claimed, however, that the equality granted in Article 301 does not, in its broadest sense, apply to intercourse. There are two justifications for this. First of all, in juxtaposition with the terms "trade and trade," the word "intercourse" is used and hence this word here would mean "commercial-intercourse" and not purposeless motion.

The second explanation is that while Article 301 imposes a restriction on the powers of the Legislature and Parliament (provided to them pursuant to Articles 245 and 246), the word intercourse is not included in the Seventh Schedule as a matter of law (as the terms commerce and trade were) and thus the word intercourse cannot be inferred as having the with. In Article 301, the use of the term 'free' does not equal freedom from the laws and rules regulating the land. There is a strong distinction between legislation obstructing freedom and laws providing rules and regulations for the proper operation of business operations in a simple and simple manner. Article 301 gives freedom of travel, trade and intercourse, although those activities may be covered by commerce, trade or intercourse activities but are not secured by free exchange, trade or intercourse activities.[4]

In the case of *State of Bombay v. R.M.D. Chamarbaugwala*, the ban on such criminal acts was upheld by the Supreme Court (1957). In that case, it was held that no immunity under Article 301 can be extended to any actions of a criminal nature or certain activities which are unacceptable. Examples of such practices can include the snapping of lewd pictures for currency, the selling in women and children, the recruiting of gondolas or terrorists, etc. Article 302 grants the Parliament the right to place limits on the freedom of trade, trade or intercourse in any state or by any state in any part of the territories of India.

These limits should only be enforced with due respect to the public's needs. The authority to determine whether or not anything is in the public interest is granted specifically to Parliament. It can be seen that in the case of *SurajmalRoopchand and Co v/s*, under the Defense of India Laws, the State of Rajasthan (1967) placed limits on the transportation of grain in the interest of the general public.

III. CONCLUSION

Article 303 of the Power of Parliament in Article 302 is kept in check.

Article 303(1) states that, by virtue of its entrance into trade, the Parliament should not have the right to create any legislation that would hold one State in a more preferable role than the other One. However, Clause (2) states that if it is declared by law that it is necessary to make certain provisions or regulations, Parliament may do so, because there is still a shortage of goods in some parts of the world.

The right to determine whether or not there is a lack of products in certain areas of the territory is vested in Parliament's possession, ensuring that no discrimination occurs between goods manufactured within the State and goods purchased from certain other Nations. The following requirements must also be met by a statute enacted by the State to control interstate commerce—

These situations make it clear that the authority of Parliament to control commerce and trade is stronger than that of the Executive. Article 305 of the Indian Constitution saves the laws and laws already existed and provide for state

International Journal of Innovative Research in Science, Engineering and Technology

(An ISO 3297: 2007 Certified Organization)

Website: www.ijirset.com

Vol. 6, Issue 9, September 2017

monopolies. Article 305 may do that only after the President has authorized anything that is contradictory to it or otherwise to the legislation already established. In *Saghir Ahmad v/s The State of UP*, (1954), the Supreme Court asked whether, pursuant to Article 301, an Act allowing for State monopoly in a particular sector or trade would be held to be contrary to the Constitution of India.[5]

Article 19(1)(g) was modified by the First Constitutional Amendment, which excluded certain activities from the scope of Article 19(1) of the Constitution (g). And now since the 4th Amendment to the Constitution, rules and laws made hereafter for S have already been established.[6]

REFERENCES

- [1]<https://indiankanoon.org/doc/121190/>
- [2]https://legislative.assam.gov.in/sites/default/files/swf_utility_folder/departments/legislative_medhassu_in_oid_3/menu/document/The%20Assam%20Taxation%20%28on%20goods%20carried%20by%20Roads%20or%20Inland%20Waterways%29%20%28Amdt.%29%20Act%2C%201954..pdf
- [3] “The parliament shall, subject to this Constitution, have power to make laws for the peace, order and good government of the Commonwealth with respect to Trade and Commerce with other countries and among the States”
- [4] “The power of parliament to make laws with respect to trade and Commerce extends to navigation and shipping, and to railways property of any State”
- [5] “The Commonwealth shall not, by any law or regulation of trade, commerce or revenue, give preference to one State or any part thereof over another state or any part thereof”
- [6] “The Commonwealth shall not by any law or regulation of trade or commerce abridge the right of a state or of the residents therein to the reasonable use of the waters or rivers for conservation or irrigation
- [7] V.M. Prabhakaran and Dr.GokulKrubaShankerS.Balamurugan ,R.P.shermey, “Internet of Ambience: An IoT Based Context Aware Monitoring Strategy for Ambient Assisted Living,” *International Research Journal Of Engineering and Technology*(2016)
- [8] S.Balamurugan , L.Jeevitha, A.Anupriya and Dr.R.GokulKrubaShanker, “Fog Computing: Synergizing Cloud, Big Data and IoT- Strengths, Weaknesses, Opportunities and Threats (SWOT) Analysis”, *International Research Journal of Engineering and Technology (IRJET)*, Volume 3 issue 10, e-ISSN: 2395 -0056, p-ISSN: 2395-0072, 2016
- [9] S.Balamurugan, S.Dharanikumar, D.GokulPrasanth, Krithika, Madhumitha, V.M.Prabhakaran and Dr.R.GokulKrubaShanker, “Internet of Safety: Applying IoT in Developing Anti Rape Mechanism for Women Empowerment”, *International Research Journal of Engineering and Technology (IRJET)*, Volume 3 issue 10, pp.713-719, e-ISSN: 2395 -0056, p-ISSN: 2395-0072, 2016
- [10] Abhishek Kumar, Bishwajeet Pandey, D M Akbar Hussain, Mohammad Atiqur Rahman, Vishal Jain and AyoubBahanasse, “Low Voltage Complementary Metal Oxide Semiconductor Based Energy Efficient UART Design on Spartan-6 FPGA”, "2019 11th International Conference on Computational Intelligence and Communication Networks (CICN)" during 3rd - 6th January, 2019 at University of Hawaii, USA.
- [11] Abhishek Kumar, Bishwajeet Pandey, D M Akbar Hussain, Mohammad Atiqur Rahman, Vishal Jain and AyoubBahanasse, “Frequency Scaling and High Speed Transceiver Logic Based Low Power UART design on 45nm FPGA”, "2019 11th International Conference on Computational Intelligence and Communication Networks (CICN)" during 3rd - 6th January, 2019 at University of Hawaii, USA.