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# **“FREEDOM TO DO BUSINESS AND TRADE IN INDIA: CONSTITUTIONAL PREROGATIVES AND JUDICIAL DYNAMISM”**

AUTHORED BY - DHILAN SARMA

## **ABSTRACT**

*The research paper examines India's laws pertaining to the freedom of commerce and business, as well as the part that judicial dynamism plays in them. All Indian citizens are free to practice any profession and to conduct any form of trade, business, or occupation, according to Article 19 (1) (g) of the Indian Constitution. With a few notable exceptions, Article 301 of the Indian Constitution guarantees the unimpeded movement of trade and commerce across the nation. It limits the legislative authority of the Union and the state in order to preserve the uninterrupted flow of these activities. In this paper we will be discussing about this two important provision relating to trade and business and other related provisions. Also we will be discussing some landmark judgements relating to trade and business laws. Also in this paper I discussed what are commercial laws? How they govern businesses. Keywords: Constitution, trade, freedom, business, commercial law, judiciary.*

## **TABLE OF CASES**

- M.C. Mehta v. Kamal Nath, (1997) 1 SCC 388.*
- State of Bombay v. R.M.D. Chamarbaugwala, 1957 AIR 699 1957 SCR 874.*
- Khoday Distilleries Ltd. v. State of Karnataka, 1995 (1) SCC 574.*
- Alagaapuram R. Mohanraj v. Tamil Nadu Legislative Assembly, AIR 2016 SC 867.*
- Sodan Singh v. NDMC, 1989 SCR (3)1038.*
- State of Gujarat v. Mirzapur Moti Kureshi Kassab, (2005) 8 SCC 534.*
- Kailash Nath v. State of U.P, AIR 1957 SC 790.*
- Atiabari Tea Co., Ltd. vs The State of Assam And Ors, AIR 1961 SC 232: 1961 1 SCR 809*
- Automobile Transport Ltd. vs State of Rajasthan, 1962 AIR 1406.*
- State of Mysore vs Sanjeeviah, 1967 SCR (2) 361.*
- G.K. Krishna vs State of Tamil Nadu, 1975 AIR 583.*

## STATUTES

Constitution of India

The Indian Contract Act of 1872

The Sale of Goods Act, 1930

The Indian Partnership Act, 1932

The Limited Liability Partnership Act, 2008

Companies Act, 2013

Arbitration and Conciliation Act, 1996

### TABLE OF ABBREVIATION

1	&	And
2	AIR	All India Report
3	ORS	Others
4	v.	Versus
5	Vol	Volume
6	SC	Supreme Court
7	SCC	Supreme Court Cases

## A. CHAPTER 1

### 1. INTRODUCTION

Unrestricted movement of people, products, and services both inside and across interstate borders is essential for preserving economic stability, prosperity, and cohesion in a country with a two-tier political structure. There are provisions in the Indian constitution that safeguard the liberty of commerce and interstate trade throughout Indian Territory. Federations must seek to eliminate as many obstacles as possible between the states, including tariffs, non-tariff barriers, quotas, and the like, in order to give residents the sense that they are all part of the same nation even though they live in different regions of the nation.

Assume, for instance, that Mr. A, a citizen of Gujarat, wishes to grow his company and market

his goods in other states. Assume for the moment that he want to work in Punjab in order to benefit from the freedom of trade, commerce, and intercourse guaranteed by article 301 of the constitution.

Trade has always been essential since no country or state can provide all the goods needed. Therefore, in order to regulate, oversee, and promote trade, laws and rules are needed. Part XIII of the Indian Constitution provides guarantees for the freedom of trade, commerce, and intercourse in Articles 301 through 307. Article 301 lays out the principles of trade and commerce, whereas Articles 302 through 305 describe the trade prohibitions. These clauses were adopted using the Australian Constitution as a model. Article 19(1) of the Constitution guarantees some fundamental rights, subject to the State's power to restrict how such rights may be exercised. Article 19 (1) (g) states that every citizen of the country is free to engage in any sort of activity, trade, or business and to practice any profession. As stated in Article 19(6) (2), however, this right is subject to a number of limitations. Stated otherwise, it forbids engagement in any unlawful commerce, enterprise, job, or occupation. It also forbids the freedom to select a job or career<sup>1</sup>.

It is not permissible to use the fundamental right to carry out business in an illegally occupied space to defend unlawful behaviour or to stop a statutory authority from carrying out its mandated duties in a legal manner.

According to Article 19 (1) (g), every person is entitled to the freedom specified in this section, which includes the freedom to select their own job, engage in any trade, or pursue any vocation, subject only to any restrictions that the government may apply. Four terms are used in Art. 19(1) (g): trade, business, vocation, and profession. Even though their fields may overlap, each of them has unique content. They encompass all citizen actions that result in revenue or profit and can, therefore, be subject to regulation under Article 19 (1) (6).

### 1.1 AIM AND OBJECTIVE

The aim of this research paper is to analyse the constitutional prerogatives regarding business and trade in India. The objectives are:

1. To study the Article 19 (1) (g).

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<sup>1</sup> Mariya Paliwala, *Freedom of Trade, Commerce and Intercourse: Articles 301 - 307 of the Indian Constitution*, IPLEADERS (Jan. 17, 2020), <https://blog.ipleaders.in/freedom-trade-commerce-intercourse-articles-301-307-indian-constitution/> (last visited May 2, 2024).

2. To study the Article 301.
3. To discuss some landmark judgements.
4. To discuss about commercial laws.

## 1.2 SCOPE AND LIMITATION

The scope of this research paper is limited to the analysis of the constitutional prerogatives regarding trade and business in India. It doesn't go deeply with the commercial laws but rather, will just be introducing the topic.

## 1.3 RESEARCH QUESTIONS

1. Discuss broadly the constitutional prerogatives for trade and business in India?
2. Discuss some landmark judgements on business and trade in India?
3. What are commercial laws?

## 1.4 RESEARCH METHODOLOGY

This paper follows the analytical method of research in which I took reference to articles, research papers, books, online data sources like Jstor, manupatra, Hein online, SCC online etc. This paper follows the 20th Edition of Harvard Bluebook citation style.

## 1.5 LITERATURE REVIEW

**"Indian Constitutional Law" by MP Jain**, A trustworthy, enduring classic on Indian constitutional law is M P Jain's Indian Constitutional Law. The eighth edition of this book provides a thorough, rational, and approachable thematic presentation of the intricate and multifaceted topic of constitutional law. Students, researchers, judges, attorneys, legal academics, policy makers, and interested parties seeking up-to-date information on constitutional jurisprudence will find the book's in-depth viewpoints to be beneficial.

**"Introduction to the Constitution of India" by Durga Das Basu**, Anyone interested in learning about the origins and development of the Indian Constitution should read DD Basu's groundbreaking work, An Introduction to the Constitution of India. The Constitution is introduced in this book for general readers, legislators, journalists, statesmen, and administrative authorities.

## B. CHAPTER 2

### 2. FREEDOM OF TRADE AND BUSINESS

The two principal articles of the constitution pertaining to commerce and business are Article 301 and 19 (1) (g).

*Article 301. Freedom of trade, commerce and intercourse.—Subject to the other provisions of this Part, trade, commerce and intercourse throughout the territory of India shall be free<sup>2</sup>.*

*Article 19 (1) (g). To practise any profession, or to carry on any occupation, trade or business<sup>3</sup>.*

Since the framers of the Constitution felt that a nation should function as a single economic entity free from barriers and limits on internal trade, they intended to promote free trade and commerce within India. They believed that the nation's economic integration and unification would be the primary elements maintaining the stability and cultural cohesion of the federal polity.

To give citizens the impression that they are all a part of the same country even though they dwell in various parts of the country, federations must work to remove as many hurdles as they can between the states, such as quotas, tariffs, and non-tariff barriers<sup>4</sup>.

Freedom to trade, business, and intercourse in Article 301. It declares that the freedom to engage in these activities should be unrestricted, subject to certain rules under Part XIII.

Here, "freedom" refers to the unrestricted ability to transport people, property, and other things—both tangible and intangible—across state borders and within a state (intra-scale)<sup>5</sup>.

<sup>2</sup> constitution pdf - Google Search,

[https://www.google.com/search?q=constitution+pdf&sca\\_esv=0f51fc7f84b82f2c&sxsrf=ADLYWILF6oCEUgJupyxIZN\\_hu5DHtBaqiA%3A1715543307849&ei=Cx1BZpbBM5\\_Avr0P\\_tKV2A4&ved=0ahUKEwjW8tfr8LiGAXUfoK8BHX5pBesQ4dUDCBE&uact=5&oq=constitution+pdf&gs\\_lp=Egxnd3Mtd2l6LXNlcnAiEGNvbnN0aXR1dGlvbiBwZGYyChAjGIAEGCcYigUyBRAAGIAEMgUQABiABDIFEAAyGaqYBRAAGIAEMgUQABiABDIFEAAyGARI\\_yNQ5QdYsiJwAXgBkAEAmAGZAqABuBmqAQYwLjEwLja4AQPIAQD4AQGYAhGgAqsaqAIUwgIHECMYJxjqAsICFBAAGIAEGJECGLQCGIoFGOoC2AEBwgIWEAAYAxioAhjLAhjqAhiMAxiPAdgBAsICBBAjGCfCagoQABiABBhDGloFwgINEAAYgAQYsQMYQxiKBcICCxAAGIAEGLEDGIMBwgIOEAAYgAQYsQMYgwEYigXCAgsQABiABBiRAhiKBcICDhAAGIAEGJECGLEdGIoFwgIKEAAYgAQYFBiHAsICCBAAAGIAEGLEDmAMRugYGCAEQARgBugYGCAIQARgLkGcGM54xMC42oAfJkQE&sclient=gws-wiz-serp](https://www.google.com/search?q=constitution+pdf&sca_esv=0f51fc7f84b82f2c&sxsrf=ADLYWILF6oCEUgJupyxIZN_hu5DHtBaqiA%3A1715543307849&ei=Cx1BZpbBM5_Avr0P_tKV2A4&ved=0ahUKEwjW8tfr8LiGAXUfoK8BHX5pBesQ4dUDCBE&uact=5&oq=constitution+pdf&gs_lp=Egxnd3Mtd2l6LXNlcnAiEGNvbnN0aXR1dGlvbiBwZGYyChAjGIAEGCcYigUyBRAAGIAEMgUQABiABDIFEAAyGaqYBRAAGIAEMgUQABiABDIFEAAyGaqYBRAAGIAEMgUQABiABDIFEAAyGARI_yNQ5QdYsiJwAXgBkAEAmAGZAqABuBmqAQYwLjEwLja4AQPIAQD4AQGYAhGgAqsaqAIUwgIHECMYJxjqAsICFBAAGIAEGJECGLQCGIoFGOoC2AEBwgIWEAAYAxioAhjLAhjqAhiMAxiPAdgBAsICBBAjGCfCagoQABiABBhDGloFwgINEAAYgAQYsQMYQxiKBcICCxAAGIAEGLEDGIMBwgIOEAAYgAQYsQMYgwEYigXCAgsQABiABBiRAhiKBcICDhAAGIAEGJECGLEdGIoFwgIKEAAYgAQYFBiHAsICCBAAAGIAEGLEDmAMRugYGCAEQARgBugYGCAIQARgLkGcGM54xMC42oAfJkQE&sclient=gws-wiz-serp) (last visited May 3, 2024).

<sup>3</sup> *Id.* (Page 41).

<sup>4</sup> Paliwala, *supra* note 2.

<sup>5</sup> *Freedom of Trade, Commerce and Intercourse under the Indian Constitution, 1950*, CENTURY LAW FIRM BLOG (Aug. 24, 2023), <https://www.centurylawfirm.in/blog/freedom-of-trade-commerce-and-intercourse-under-the-indian-constitution-1950/> (last visited May 3, 2024).

## **2.1 WHAT DOES THIS THREE TERMS MEAN: TRADE, COMMERCE, INTERCOURSE**

Trading is the act of purchasing and selling goods with the goal of turning a profit. Article 301 defines "trade" as an authentic, methodical, and structured activity having a specific aim or target. For the purposes of Article 301, "business" and "trade" are synonymous.

Commerce, defined as the movement of products by air, sea, land, telephone, telegraph, or any other means, requires transit or transmission, not gain or profit, according to Article 301.

Intercourse is the movement of things from one location to another. It covers both business-related and non-business-related transactions and activities. It would cover travel as well as all kinds of interpersonal interactions. Some contend, however, that Article 301's protection of free speech does not extend to the broad meaning of sexual relations. This is due to two factors. Firstly, when the term "intercourse" is employed in opposition to the terms "trade and commerce," it refers to "commercial-intercourse," not meaningless motion."<sup>6</sup>

The second reason is that, unlike the terms "trade" and "commerce," "intercourse" is not listed as a subject of legislation under the Seventh Schedule, so it cannot be taken to have the broadest meaning when used in this context, even though Article 301 restricts the powers assigned to the Legislature and Parliament by Articles 245 and 246.

Article 19 (1) (g) limits the right to do commerce to Indian citizens solely. Citizens for the purposes of this Section comprise:

A legal person, a religious sect, or a company established in line with the Companies Act. The Court has argued repeatedly that any state or group that qualifies as a state is entitled to the fundamental rights accorded to Indian people under Article 19 (1) (g). Any claim that someone's rights have been infringed upon cannot be filed under this article; instead, it must be filed under a different tort or civil law.

## **2.2 RESTRICTION IMPOSED UNDER ARTICLE 19 (1) (G)**

The rights mentioned in Article 19 (1) (g) are subject to specific limitations and are not unqualified. The following is an overview of the limitations outlined in Article 19 (6):

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<sup>6</sup> Mariya Paliwala, *Freedom of Trade, Commerce and Intercourse: Articles 301 - 307 of the Indian Constitution*, IPLEADERS (Jan. 17, 2020), <https://blog.ipleaders.in/freedom-trade-commerce-intercourse-articles-301-307-indian-constitution/> (last visited May 13, 2024).

**Restrictions in the interest of the general public:** The Article gives the State the authority to impose restrictions that would be detrimental to the public interest. The Court may read this in several ways.

**Prescribe any professional or technical qualifications:** To practice a career, one must be compliant with laws pertaining to professional or technical credentials. Article 19(6) provides protection for a statute that establishes professional qualifications. For instance, a lawyer needs to pass the Bar Council Exam and earn a degree in order to practice law in a court of law. However, this restriction must also pass the reasonability and objectivity tests<sup>7</sup>.

**State Monopoly:** The 1951 First Constitutional Amendment inserted Article 19(6) (ii). Article 19(6) (ii) gives the state the authority to enact laws that exclude private citizens entirely or in part in order to establish governmental monopolies in any trade, company, industry, or service. The state may engage in any kind of commerce for administrative purposes, to lessen the negative effects of the industry, or even just to increase revenue for the government coffers.

### 2.3 ARTICLE 19 (1) (g): ENVIRONMENTAL CONCERNS

One of the circumstances under which the rights to enterprise protected by Article 19 (1) (g) may be limited is the threat to the environment. However, courts have typically ruled that the need to protect the environment must coexist with the freedom to pursue any kind of commerce, company, or job. Tanneries, distilleries, firms that manufacture acid, and tie and dye companies make up the bulk of industrial sectors that cause environmental pollution. Therefore, in the name of fundamental rights, it is forbidden to practice any profession, trade, or company that harms the environment or people. The Supreme Court ruled in *M.C. Mehta v. Kamal Nath*<sup>8</sup> that any disruption of the fundamental environmental components—soil, water, and air—that are required for "life" would be dangerous to human life and that such restrictions would be protected under Article 19(1) (g).

### 2.4 ACTIVITIES WHICH ARE NOT CONSIDERED TRADE

Even though they may entail transactions, some activities are not classified as trade under Article 301. This covers illicit pursuits such as gaming, lotteries, and other criminal activities. In *State of*

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<sup>7</sup> Freedom of Trade, Commerce and Intercourse under the Indian Constitution, 1950, <https://www.centurylawfirm.in/blog/freedom-of-trade-commerce-and-intercourse-under-the-indian-constitution-1950/> (last visited May 3, 2024).

<sup>8</sup> *M.C. Mehta v. Kamal Nath*, (1997) 1 SCC 388.

*Bombay v. R.M.D. Chamarbaugwala (1957)*<sup>9</sup>, the Supreme Court affirmed the prohibition on these illicit practices. It was decided in this case that no activity that is criminal in character or that is unpleasant would be protected under Article 301.

Such acts include, but are not limited to, employing terrorists or goondas, trafficking in women and children, and taking pornographic photos in exchange for money. Article 301 does not encompass extra-commercial activities, even though they may employ trade forms, techniques, and procedures.

## 2.5 DOCTRINE OF RES EXTRA COMMERCIIUM

The court initially presented the concept of Res Extra Commercium in *Khoday Distilleries v. State of Karnataka*<sup>10</sup>. The theory spares the State from ever having to pass the reasonableness test, allowing it to violate citizens' civil rights and maintain a stagnant moral standard. It gave the States the authority to control citizens' private liberties for the greater good.

The Court went on to say that trading or conducting business in alcoholic liquors may be completely outlawed and that doing so does not constitute a fundamental right. The selling of alcoholic liquors is thought to be outside the bounds of rights because alcohol is so destructive and corrosive. But the State must strike a balance between the parties' civil rights and its welfare responsibilities.

## C. CHAPTER 3

### 3. ARTICLE 301 AND ARTICLE 19(1) (G): INTERRELATIONSHIP

The term "trade" refers to the purchasing or selling of things, whereas "commerce" refers to any modes of land, air, or sea transportation. The transfer of products from one location to another is referred to as intercourse. All acts that might not fall under the purview of trade and commerce will be covered by discourse<sup>11</sup>.

Article 19 (1) (g) of the Constitution grants citizens the right to labour in any industry or trade. The relationship between Art.19 and 301 is not evident. According to one reading, Article 19(1) (g) addresses individual rights whereas Article 301 protects trade activities as a whole,

<sup>9</sup> State of Bombay v. R.M.D. Chamarbaugwala, 1957 AIR 699 1957 SCR 874.

<sup>10</sup> Khoday Distilleries Ltd. v. State of Karnataka, 1995 (1) SCC 574.

<sup>11</sup> Manupatra, *Freedom of Trade, Commerce and Intercourse in India*, <https://articles.manupatra.com/article-details?id=undefined&ifile=undefined> (last visited May 3, 2024).

independent of an individual's right to do so. However, it is hard to stick to this opinion. It has been decided that the Australian Constitution's Section 92, which forms the foundation of Article 301, violates people's rights. This should also be the situation in India. According to the Supreme Court, Article 301 only protects freedom "in abstract and not on the individuals."

According to Article 19(1) (g), a person's right to trade is only one aspect of freedom of trade, commerce, and intercourse. Art. 19(1) (g) is suspended in an emergency, thus courts may apply Art. 301 to decide whether a trade and commerce limitation is legal. In contrast, a corporation or even the State may claim discrimination under the freedom of trade, commerce, and intercourse granted by Art. 301. There doesn't seem to be a good explanation for the relationship between the two articles.

In conclusion, we can say that in order to guarantee trade and commerce freedom, both clauses are essential. Article 19(1) (g) gives people the freedom to engage in any kind of employment, commerce, or business, whereas Article 301 concentrates on the unrestricted movement of goods across the nation. Art. 19 (1) (g) is a fundamental right and Art 301 is a constitutional right<sup>12</sup>.

### 3.1 JUDICIAL INTERPRETATION UNDER ARTICLE 19 (1) (G)

**Article 19(1) (g) prohibits the term "occupation" to apply to the office of MLA:** In the matter of *Tamil Nadu Legislative Assembly v. R. Mohanraj of Alagaapuram*<sup>13</sup>, The court found that running for office in the constitutionally established legislative bodies is not a fundamental right. Consequently, it would be difficult to accept the argument that participation in legislative body proceedings is guaranteed under Article 19(1) (g).

**Street hawking under Article 19(1) (g):** In the case of *Sodan Singh v. NDMC*<sup>14</sup>, because pavements as specified by Article 19(1) (g) of the Constitution are principally intended for passing or re-passing, the court held that it is unconstitutional to restrict the ability to engage in a trade or business on such pavements. Unrestrained commercial freedom will almost certainly result in unfavourable competition, fights between merchants and the general public, and sometimes even within traders, which could end in chaos.

**The State of Gujarat v. Mirzapur Moti Kureshi Kassab**<sup>15</sup> case featured a petitioner who claimed that the prohibition on cow slaughtering was unconstitutional under Article 19(1) (g).

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<sup>12</sup> [Solved] The concept of the Freedom of trade in India's Constitut, TESTBOOK, <https://testbook.com/question-answer/the-concept-of-the-freedom-of-trade-in-indias--5fc09fbb4a4b427af7cfb2f0> (last visited May 3, 2024).

<sup>13</sup> *Alagaapuram R. Mohanraj v. Tamil Nadu Legislative Assembly*, AIR 2016 SC 867.

<sup>14</sup> *Sodan Singh v. NDMC*, 1989 SCR (3)1038.

<sup>15</sup> *State of Gujarat v. Mirzapur Moti Kureshi Kassab*, (2005) 8 SCC 534.

The court maintained the restriction, ruling that in order for a complete ban to be approved, it must also satisfy two prerequisites: it must be in the public interest and a lesser alternative would not be sufficient.

**Taxation not restriction:** The government imposes taxes on people's fundamental right to pursue any profession, trade, or business venture. According to *Kailash Nath v. State of U.P.*<sup>16</sup>, no citizen has the right to operate a business without paying taxes that the government properly levies.

### 3.2 ROLE OF THE JUDICIARY IN UPHOLDING FREEDOM OF TRADE

The Indian legal system has played a crucial role in understanding and upholding the concepts related to trade freedom. Through significant decisions, the courts have ensured that trade and commerce flourish without unjustified restrictions and that the spirit of the Constitution is upheld.

**Judicial Interpretation:** The judiciary has been essential in interpreting Part XIII's provisions over the years, maintaining the freedom of trade, commerce, and intercourse while striking a balance with the necessity of regulations.

**Public Interest vs. Freedom of Trade:** The courts have frequently been left to walk the delicate line between what might be considered an unreasonable restriction on trade and what is in the public interest<sup>17</sup>.

### 3.3 LANDMARK JUDGEMENTS

In the case of *Atiabari Tea Co. vs the State of Assam*<sup>18</sup>, The Assam Taxation Act levied a charge on products shipped by road and inland waterways. The petitioner was subject to this Act's taxes when they shipped tea from Assam to Calcutta. The Supreme Court decided that the tax violated Article 301 because it directly impeded the flow of commodities. The tax was ruled to be unlawful. A significant case that highlighted Article 301's significance. The court determined that unless a restriction on trade or commerce was supported by later legislation, it would be unlawful. In the case of *Automobile Transport Ltd. vs State of Rajasthan*<sup>19</sup>, In Rajasthan, there was an annual tax on automobiles. The government claims that this was done to prevent unhealthy rivalry between regular buses and omnibuses. The Supreme Court decided that because the tax was regulatory and compensatory, it did not violate Article 301. This ruling, which concluded that compensatory taxes or regulatory measures would not be in breach of Article 301, further

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<sup>16</sup> *Kailash Nath v. State of U.P.*, AIR 1957 SC 790.

<sup>17</sup> Team, *supra* note 1.

<sup>18</sup> *Atiabari Tea Co., Ltd. vs The State of Assam And Ors*, AIR 1961 SC 232 : 1961 1 SCR 809

<sup>19</sup> *Automobile Transport Ltd. vs State of Rajasthan*, 1962 AIR 1406.

clarified the boundaries.

In the case of *State of Mysore vs Sanjeeviah*<sup>20</sup>, Produce from forests could not be moved between sunrise and sunset, according to the Mysore Forest Act, 1900. The Supreme Court declared the act unconstitutional, citing its restrictive rather than merely regulatory nature. Such a restriction would have been contrary to the protection of freedom found in Article 301. The court stressed the role of the state in this ruling, concluding that it was legal for them to regulate trade if doing so promoted the general welfare.

In the case of *G.K. Krishna vs State of Tamil Nadu*<sup>21</sup>, The Madras Motor Vehicles Act prompted a government notification raising the omnibus motor vehicle tax. In order to stop the unhealthy competition between omnibuses and regular stage carriage buses, the government justified this increase. The tax was maintained by the Supreme Court, which found that it was a compensating and regulatory measure. The charge was not seen as a direct impediment to commercial freedom, but rather as a way to foster organized and fair trade operations.

A historic ruling that went further into the interpretation of Article 301's definition of "freedom," highlighting that it meant freedom from restrictive rather than regulatory measures.

## D. CHAPTER 4

### 4. WHAT ARE COMMERCIAL LAWS?

Trade law is the corpus of laws that regulates transactions involving the acquisition, sale, or exchange of goods and services. It is sometimes known as business law or commercial law. It is applicable to both individuals and businesses engaged in these activities.

Both public and private realms are included in this topic of law. Public commercial law, which governs matters such as consumer protection and interstate commerce, guarantees fair trading practices. On the other hand, contracts pertaining to mergers and acquisitions and the transfer of securities, such stocks and bonds, between private corporations are the focus of private commercial law.

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<sup>20</sup> State of Mysore vs Sanjeeviah, 1967 SCR (2) 361.

<sup>21</sup> G.K. Krishna vs State of Tamil Nadu, 1975 AIR 583.

## 4.1 INDIAN COMMERCIAL LAWS

Commercial laws govern business contracts, agreements, partnerships, and corporate entities in India. These regulations establish guidelines for managing many facets of corporate operations, guaranteeing protection, transparency, and equity for all parties. The main commercial laws in India, their objectives, and how they affect businesses are listed below.

### **The Indian Contract Act of 1872:**

This legislation defines what constitutes a legally binding contract and establishes the basic guidelines for contracts in India<sup>22</sup>. Important components including offer, acceptance, consideration, contracting capacity, and permission are covered. The Act guarantees the enforceability of contracts in court and offers redress for those who violate them. In order to protect the rights of all parties concerned, it also establishes guidelines for carrying out, terminating, and amending contracts.

### **The Sale of Goods Act, 1930:**

The rights, obligations, and liabilities of both purchasers and sellers are outlined in this Act, which regulates the sale of products in India. It covers a number of topics, including delivery, payment, ownership transfer, terms and warranties, and delivery.

It offers a structure for settling conflicts resulting from broken sales agreements, missing deliveries, or faulty merchandise.

### **The Indian Partnership Act, 1932:**

The relationships between partners in partnership firms and partnerships are governed by this Act. It outlines the responsibilities, rights, and obligations of partners as well as the processes for creating, ending, and managing partnerships. The Act encourages responsibility, fairness, and transparency in partnerships, which builds mutual trust and cooperation.

### **The Limited Liability Partnership act, 2008:**

The limited liability partnership (LLP) laws in India are outlined in this Act, which also provides guidelines for LLP formation, dissolution, and operation. In partnerships, it guarantees accountability, equity, and openness, encouraging collaboration and mutual trust.

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<sup>22</sup> Relationship between Corporate and Commercial Laws, <https://www.ezylegal.in/blogs/what-is-the-relationship-and-difference-between-corporate-and-commercial-law> (last visited May 3, 2024).

**Companies Act, 2013:**

LLP Act, which brought a new corporate entity, the LLP, to India. It combines the advantages of a partnership with a firm and offers partners limited liability. The Act governs LLP creation, administration, and operation as well as the rights and responsibilities of partners and the conversion, merger, and winding up procedures<sup>23</sup>.

**Arbitration and Conciliation Act, 1996:**

This act creates a legal framework for using conciliation and arbitration to settle corporate conflicts. It promotes alternative conflict resolution procedures, which are less expensive and quicker than going to court<sup>24</sup>. In order to promote prompt and equitable settlement of commercial disputes, the Act governs arbitrator selection, enforcement of arbitral rulings, and arbitration procedures.

**4.2 CONCLUSION**

The Indian Constitution has created a strong foundation for commerce and business with its vision. It strikes the perfect balance between upholding necessary restrictions and preserving individual freedom. As India develops, these steps will be critical in defining its future economic environment. Trade freedom is guaranteed by the Constitution, but it cannot be unrestricted. As a result, Articles 302 through 305 impose limitations and guarantee that trade is allowed across all states and the nation. The freedom of trade, commerce, and intimacy guaranteed by the Constitution is upheld by these clauses taken together. At least now there would be no unjustifiable barriers or geographical differences to trade and business. Unchecked power could result in arbitrary decisions. The rights outlined in Article 19 of the Constitution are likewise covered by this. It needs to be contained within sensible bounds. Art. 19(1) (g) of the Constitution guarantees this fundamental right for the prosperity and well-being of every member of society. Any trade, occupation, or business that the law judges will result in the loss of property or human life is neither acceptable nor permitted. Any operations that endanger the public's health and safety shall not be allowed.

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<sup>23</sup> Mridula Sharma, *Commercial Laws, Meanings, Areas, Legal Issues*, PHYSICS WALLAH (Apr. 13, 2024), <https://www.pw.live/exams/ca/commercial-laws/> (last visited May 3, 2024).

<sup>24</sup> Commercial laws in India a Bird's-eye view | Lawsisto Article News, <https://lawsisto.com/artcileread/Mzg0/Commercial-laws-in-India-a-Birds-eye-view> (last visited May 3, 2024).