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Freedom of trade and commerce in India under the different constitutional provisions

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Abstract

Different rights are provided in the constitution of India under the different heads and all the parts under which different rights are provided have their own importance. Right to Freedom of trade and commerce is provided under the scheme of Fundamental Rights and also under the Part XIII that deals with the Freedom of Trade, Commerce and Intercourse. Apart from the said two parts some provisions are also dealing with the Freedom of trade, Commerce and Intercourse contained in the Directive Principle of State Policy. An attempt has been made to discuss the Freedom of trade, commerce and Intercourse under the different heads.

Keywords: Article 301, Freedom of Trade, Commerce and Intercourse, Directive Principle of State Policy. Article 19(1)(g), Free Trade

Introduction

We have been given different rights under the Constitution and different measures are provided for the implementation of these rights. A right without having means of enforcement is worthless. Constitution provides for the different right some of falls in category of fundamental right and rest of are only Constitutional rights. Since the adoption of the Constitution of India the work of interpretation of different provisions of the Constitutions continued. The right to freedom of trade and commerce is one of the significant among the other provided in the Constitution. The right to freedom of trade and commerce is provided in some provisions mainly in two different Parts namely Part III and Part XIII. Part Third provides for the Fundamental Rights and Part XIII Freedom of Trade, Commerce and Intercourse. Apart from the two Parts of the Constitution some provisions of the Part IV that deals with the Directive Principle of State Policy is also concerning with the freedom of trade and commerce. In the present paper an endeavour has been made to discuss these different provisions simultaneously and find the object of putting the provisions concerning Freedom of trade and commerce in different heads.

Right to Freedom of Trade and Commerce under Part Xiii of the constitution

Part XIII specially Article 301 talks about the “freedom of trade, commerce and intercourse”, and reason for the adoption of this part was the economic Unity of the Nation. For that purpose it was considered necessary that free movement and exchange of goods in India must be there and also for sustaining and advancing the living standard of the country ^[1]. Free trade prompts an expansion the way of life which is accomplished in two different ways; right off the bat, by advancement of exchange; and besides, by amplification of Production. The above directives are likewise cherished in Article 303 (1), which deny trade boundaries of what Justice Cardozo calls the policy of “economic isolation”, and Article 304 (a) enables the State Legislature to collect just those expenses which don't make levy dividers. The financial program is additionally reflected in the later part of Article 305, which absolves any law identifying with Sate restraining infrastructure instituted before the initiation of the Constitution (Fourth Amendment) Act. 1955. Article 304(b) enables the State Legislature to make segregation or preference, if it is reasonable and in the interest of public. Article 307 provides for the appointment of authority by Parliament as it thinks about fitting for completing the object behind Part XIII

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Right to freedom of trade and commerce as fundamental rights

Article 19(1)(g) provided for the right to practice any profession or to carry on any occupation, trade or business and this right is given exclusively to all Indian Citizens only. Fundamental Rights are given under the Constitution of India, some of which can be asserted distinctly by a citizen of India while others can similarly be guaranteed to non-residents and groups also. A law which violates any of the rights of Part III of the Constitution is void. The Legislature as well as Executives are bound by the Fundamental Rights ^[2]. A Fundamental Right can't be removed even by an amendment in the Constitution if it frames the basic structure of the Constitution.

Talking about the significance of fundamental rights in the noteworthy judgment of *Maneka Gandhi v. Union of India*, Justice Bhagwati observed that fundamental rights speak to the fundamental qualities valued by the individuals of India since the Vedic occasions and they are determined to ensure the nobility of the individual and make conditions in which each individual can build up his character to the furthest reaches. They weave a "patters of guarantee" on the fundamental structure of human rights and force negative commitment on the State not to infringe on individual freedom in its different measurements.

Article 19(1)(g) of the Constitution of India provides for the fundamental right of all citizens to practice any profession, or to carry on any occupation, trade or business in any area of territory of India. Guarantee given by this article is not absolute rather it is subject to certain Clause 6 of the said Article. Clause 6 of Article 19 permits restrictions in certain matters.

Clause (6) exempts any law imposing restriction in the public interest, any law in respect of any qualification for any particular practice which requires it mandatory, and any other qualification relating to any profession or occupation and also any law relating to State monopoly i.g. law relating to rail transport.

Article 19 1(g) only provides for guarantee to practice only legal and moral profession it does not include any illegal or immoral profession. The State has power to restrict or even to prohibit the illegal or immoral trade or any other trade which is injurious to the health and welfare or the general public ^[3].

A business of employing out goondas to commit assault, murder, strike etc, selling obscene articles or trafficking in women ^[4], selling pan masala and gutkha ^[5], butchering of COWS and calves ^[6], business in alcohols as beverage ^[7], State lotteries and gambling ^[8] won't get the protection of Article 19(1)(g).

The right given in Article 19(1)(g) is dependent upon reasonable restrictions in the interest of general public. An occupation which is dangerous or not moral might be disallowed in the interest of general public ^[9]. If the State requires that whoever want to deal in the essential commodities should take license from the concerned State authority it would not be considered as against the interest of general public reason being it is in the public interest ^[10]. Further it is also in the interest of general public, if the assembling or stocking of hazardous things like dangerous are subject to certain conditions ^[11].

Right to freedom of trade and commerce and directive principle of state policy

The Constitution of India in Part IV talks about the "Directive

Principles of the State Policy." It pursues the Precedent of the Irish Free State. The Irish Constitution, 1937, sets out certain "Principles of Social Policy" for the general direction of the Oireachtas (Parliament), not cognisable by any Courts. These mandates are by and large directives to the Legislature, having no legitimate implementation in the system of the organic law itself ^[12].

The Provisions enshrined in Part IV of the Constitution are not enforceable by any Court. Article 37 gives that the provisions contained in this part will not be enforceable by any Court, however the principles in that set down are all things considered fundamental in the administration of the nation and it will be the obligation of the State to apply these principles in making laws. Article 37 throws a positive commitment on the State to apply those principles while making laws. Be that as it may, inasmuch as such laws are not made, the current laws are authoritative and neither an individual nor the State can cross past a current rule to execute or following any of the directives ^[13]. Further, the words "in making laws" as such don't present any administrative power upon the Legislature. The wellspring of authoritative power is explicitly furnished in Article 246 read with Legislative List in the Seventh Schedule, and not in any of the Articles of Part IV.

In *re Kerala Education Bill*, the Supreme Court gave a better status to the Directive Principle when it come again on this question and observed:

"The Directive Principle have to conform to and run subsidiary to the Chapter on Fundamental Rights. Nevertheless, in determining the scope and ambit of the Fundamental Rights relied on by or on behalf of any person or body the Court may not entirely ignore these Directive Principles of the State Policy laid down in Part IV of the Constitution but should adopt the principles of harmonious construction and should attempt to give effect to both a much possible." ^[14]

It appears that the above decision may likewise be applied in the event of contention between the provisions of Part IV and that of Part XIII of the Constitution of India. Article 301 start with the words "subject to the other provisions of this Part", which implies that the freedom given in Article 301 of the Constitution of India is subject to only those provisions which are given in different Articles of Part XIII and to no others. In this manner any limitation on the freedom of trade by virtue of the arrangements in the directive principles should fulfill the condition set down in Part XIII, and it can't abrogate the provisions of that Part.

Conclusion

From the above examination it is seen that both Parliament and State Legislature is prohibited under Article 303(1) and Article 14 from enacting any discriminatory law giving preference to one State over another. The equality purported in both the Articles isn't same. In exceptional cases to Article 14, the Parliament and State can make reasonable classification while the restriction of Art 303(1) is dependent upon exceptions, set out in Part XIII of the Constitution of India. Article 303(2) evacuates the restraint in Article 303(1) for Parliament, when it is important to meet a circumstance emerging from shortage of merchandise, and Article 304(b) engages the State Legislature to confine freedom of trade on the off chance that it is reasonable in the public interest and the President has assented to it.

Article 19(1)(d) of the Constitution of India provides for the free movement throughout the territory of India by Indian citizens. The “freedom of movement is a part trade” under Article 301 of the Constitution of India. Article 19(1)(g) gives fundamental rights to the citizens of India while Article 301 gives just a statutory right. The privilege under Article 19(1)(g) can be availed by citizens, but the rights under Article 301 can be claimed by any one. Like the other fundamental rights, in Article 19 freedom is not absolute. Article 19(6) provides for certain restrictions on this right. The Article 19(1)(g) and that of Article 301 appear to have certain similarities and distinction as examined previously. It is submitted that any law made by any Legislature in India, must be subject to the restrictions contained in Part III of the Constitution. Article 301 doesn't explicitly avoid the restrictions of Part III, thus, any law made under Article 302-304 should likewise subject to the restrictions forced by Part III of the Constitution. Further, in exercise of its capacity under Article 301, Parliament is not conferred with the power to pass any discriminatory or arbitrary enactment, infringing upon Article 14 or an absurd limitation which would offend Article 19(1)(g). If any provisions found to be infringing Article 301 and 304 may, and ordinarily will violate Article 19 (1)(g) can be challenged under Article 19(1)(g).

It is seen that the provisions of Part IV are not enforceable yet it is a piece of the fundamental law of land that everyone must follow, the Courts are paying significance to these principles in interpreting the words like “public interest” or “reasonable restrictions”. Article 304(b) likewise provides for “reasonable restrictions” in the public interests. While analyzing the reasonableness of restrictions, the Courts may take help of the directive principles in exercising their power of judicial review.

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