

***PROJECT***  
***CONSTITUTIONAL LAW - II***  
***TOPIC***  
***INTERSTATE, TRADE & COMMERCE***  
***STUDY IN THE LIGHT OF***  
***ARTICLE 19 1 (g) OF THE CONSTITUTION***

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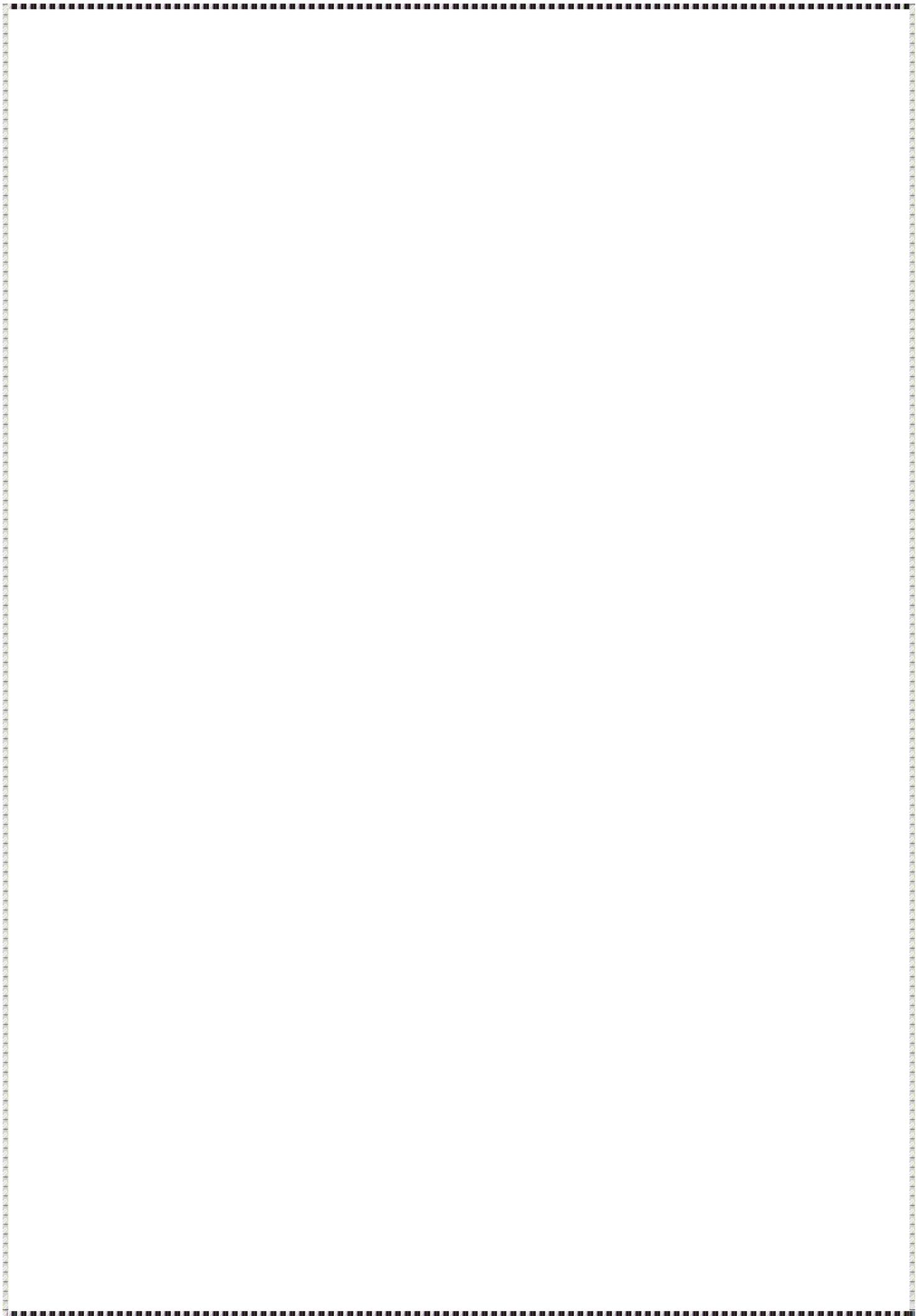
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## INTRODUCTION

- The Framers of the Indian constitution were fully conscious of the importance of maintaining the economic unity of the Union of India. Free movement and exchange of goods throughout the territory of India were essential for the economic unity of the country which alone could sustain the progress of the country.
  
- Prior of the integration of India and the new constitution there were in existence a large number of Indian states which in exercise of their sovereign powers, had created customs barriers between themselves and the rest of India thus hindering at several points which constituted the boundaries of those Indian states, the free flow of commerce.
  
- Thus the main object of Article 301 was obviously to break down the border barriers between the states and to create one unit with a view to encouraging the free-flow of stream of trade and commerce throughout the territory of India.
  
- Thus Article 19 (1)(g) provides “Freedom to practise any profession, or to carry on any occupation, trade or business”. Article 19(6) empowers the state to impose **Reasonable Restrictions** upon “Freedom to practise any profession, or to carry on any occupation, trade or business” guaranteed in Article 19(1)(g) in the interest of general public.<sup>1</sup>

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<sup>1</sup> Introduction from book  
Constitutional law ,Dr.J.N.PANDEY ,48<sup>TH</sup> Edition & M.P.JAIN, 4<sup>th</sup> Edition



**A) MEANING OF TRADE, COMMERCE & INTERCOURSE UNDER ARTICLE 301 OF THE CONSTITUTION OF INDIA :<sup>2</sup>**

1) **“TRADE”** : The word “Trade” means buying or selling of goods.

2) **” COMMERCE “** : The word” commerce “ means including all forms of transportation such as by land ,air or water.

3) **“INTERCOURSE”** : The word “ Intercourse” means movement of good from one to another place.

Thus ,the words’ trade ,commerce and intercourse covers ,all kinds of activities which are likely to come under the nature of commerce.

Article 301 of the Indian constitution is modelled on section 92 of the Australian constitution . But wording that are used under the Indian constitution is much wider than section 92 of the Australian constitution this is because section 92 deals only with inter-state trade where as Art. 301 includes both Inter-state as well as Intra-state

● **ARTICLE 301 IN DETAIL AS UNDER** :

**Article 301:** of the constitution of India declares that trade, commerce & intercourse throughout the territory of India shall be free.

**Article 301:** Applies not only to inter-state trade but also intra-state trade, commerce and intercourse.

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<sup>2</sup> Meaning of trade ,commerce&intercourse from book Constitutional law ,Dr.J.N.PANDEY ,48<sup>TH</sup> Edition & M.P.JAIN, 4<sup>th</sup> Edition

-Thus Article 301 will be violated where restrictions are imposed at the frontier of a state on any stage prior or subsequent.

-The Freedom guaranteed by Article 301 is freedom from all restrictions, except those which are provided for in the other provisions of part XII ,i.e. Articles 302 to 305.

-The Freedom guaranteed by Article 301 is in the widest terms and applies to all forms of trade, commerce and intercourse.

-It is subject only to restrictions specified in Articles 302 to 305.

- These provisions clearly show that the guarantee under Article 301 cannot be taken away by an executive action.

- Restrictions from which the freedom is guaranteed should be such restrictions as directly and immediately restrict the free-flow of movement of trade and not **incidental** or **indirect restriction**.

-The word “free” in Article 301 does not mean freedom from laws or regulations. .

-There is a clear distinction between laws interfering with freedom to carry out activities constituting trade and law imposing rules of proper conduct or other restraints for the due and orderly manner of carrying out the activities. The distinction is known as regulations.

- A purely” **regulatory and compensatory**”<sup>3</sup> law cannot be regarded as violative of the freedom of trade and commerce. Such laws are intended merely to regulate trade and commerce, they to facilitate, and not restrict or restrain freedom or trade.

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<sup>3</sup>Regulatory & compensatory measures from book  
Constitutional law ,Dr.J.N.PANDEY ,48<sup>TH</sup> Edition & M.P.JAIN, 4<sup>th</sup> Edition

-Thus, such **measures** as traffic regulations, licensing of vehicles, charging for the maintenance of roads, marketing and health regulations, price control, economic and social planning, and prescribing minimum wages are purely regulatory measures.

- Likewise a law which levies a tax or toll for the use of a road or bridge is not a barrier or burden on a trade but in reality helps the free- flow of trade by enabling the provision of a more convenient and less expensive route.

-Such compensatory taxes are no hindrance to any such freedom of trade so long as they are within reasonable limit, if the amount of such taxes are unduly high it certainly would hamper trade.

- In this connection the court has pointed out that the distinction between “freedom” in Article 301 & restriction in Articles 302 &304 must be kept in mind, and that which in reality facilitates trade cannot be a restriction while that which actually hampers trade will be restriction.<sup>4</sup>

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<sup>4</sup> Restriction & compensatory restriction from book  
Constitutional law ,Dr.J.N.PANDEY ,48<sup>TH</sup> Edition & M.P.JAIN, 4<sup>th</sup> Edition

## ●RESTRICTIONS ON TRADE AND COMMERCE●<sup>5</sup>

-Article 301 is subject to the restrictions imposed under Article 302 to 305

-Article 301 itself imposes restrictions. It starts with the phrase “ subject to the other provisions of this part”

This phrase indicates that the freedom is not absolute. Further this freedom is restricted and regulated by Articles from 302 to 307.

### 1) PARLIAMENT'S POWER TO REGULATE TRADE AND COMMERCE IN THE

PUBLIC INTEREST: - Article 302 empowers the parliament to impose restrictions on trade ,commerce and intercourse between one state and another or within any part of the territory of India as may be required in the public interest.

### 2) RESTRICTIONS ON LEGISLATURES

- Article 303 provides that notwithstanding anything in Article 302 neither parliament nor the legislature of a state shall have power to make any law giving or authorising the giving of any, preference to one state over another or making ,or authorising the making of any discrimination between one state and another by virtue of any Entry relating to trade and commerce in any one of the list in the seventh schedule

At the same clause (2) of Article 302 empowers the parliament may, however, discriminate among states if it is declared by a 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.

### 3) STATE'S POWER TO REGULATE TRADE AND COMMERCE;

- Article 304(a) empowers the state to impose any tax on goods imported from other if similar

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<sup>5</sup> Restrictions on trade & commerce from book  
Constitutional law ,Dr.J.N.PANDEY ,48<sup>TH</sup> Edition & M.P.JAIN, 4<sup>th</sup> Edition

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.

1) **Case:** In State of Madhya Pradesh .v. Bhailal Bhai AIR 1964 SC 1006<sup>6</sup>

**Fact:** In this case it was held a state of law imposed sales tax on imported tobacco but locally produced tobacco was not subject to such sales tax.

**Judgment:** The court invalidated the tax as discriminatory.

-Clause (b) of this Article authorize the state to impose such reasonable restrictions on the freedom of trade, commerce and intercourse as may be required in the public interest. But no bill or Amendment for this purpose can be introduced in the legislature of state without the previous sanction of the president.

- A law passed by a state to regulate inter-state trade and commerce must satisfy the following time conditions under Art.304 (b)

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.

### SAVING OF EXISTING LAWS

4) STATE MONOPOLIES: Article 305 provide about saving of existing laws and laws providing for state monopolies.

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<sup>6</sup> AIR 1964SC 1006 FROM  
Constitutional law ,Dr.J.N.PANDEY ,48<sup>TH</sup> Edition & M.P.JAIN, 4<sup>th</sup> Edition

**1) Case: Atiabari Tea Co .v. State of Assam AIR 1951 SC 232<sup>7</sup>**

**Fact:** The petitioner was the manufacturer of tea. He produced the tea and exported it to Calcutta. While doing so, the material was being transported through "Assam" for a small distance. The Assam State Government enacted "**The Assam Taxation ( On Goods Carried by Roads or Inland, waterways) Act of 1954**". According to this new enacted law, the tea of the petitioner, while passing through the Assam, was liable to be taxed. The petitioner challenged the constitutional validity of the Act of 1954 under Article 304-b and the impugned Act restricted and affected free-flow of intercourse of his business.

**Judgment:** The Supreme Court held that the Act of 1954 was bad and it directly and immediately impedes the free-flow of trade, commerce and intercourse.

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<sup>7</sup> AIR 1951 SC 232

**2)Case : Automobile Transport Ltd .v. State of Rajasthan AIR 1962 SC 1906<sup>8</sup>**

**Fact:** The State Government of Rajasthan enacted “ **The Rajasthan Motor Vehicles Taxation Act 1951** imposing a tax on all motor vehicles used and kept within the state of Rajasthan. Such tax was in shape of compensatory tax. The petitioner challenged the Act of 1951 alleging that Act was against the spirit of Article 301

**Judgment :** The supreme court held that Atiabari’s Decision would not apply here. It opined that the State Government was entitled to impose compensatory taxes as regulatory measures, and it would not come within the purview of Article 301. The majority judges opined that the compensatory, taxes would not constitute as “**Restriction**” but would only operate as “**Regulative**” on the movement of trade and commerce.

**3) Case : Indian Cement .v. State Of A.P (1988 (1) SCC 745<sup>9</sup>**

**Fact:** The Andhra Pradesh State Government issued a notification reducing the Sales Tax on the cement produced within the state of Andhra Pradesh. The Notification was issued by the Secretary of the Government, Under Section 8 (5) of the Central Sales Tax Act 1956. This Notification badly affected the cement dealers and producers of other States. The petitioner was one of them. The petitioner challenged the constitutional validity of the notification because the benefit of reduced rate of tax was not available to the manufacturer of cement of other states having their sales officers in the state of A.P

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<sup>8</sup> AIR 1962 SC 1906

<sup>9</sup> (1988(1)SCC 745

**Judgment:** The Supreme Court opined that the Notification of Andhra Pradesh State badly affected the spirit of Article 301. The restrictions must be reasonable and must be backed by law and should work for the free trade, commerce and intercourse. The S.C quashed the notification issued by the State Government.<sup>10</sup>

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<sup>10</sup> (1988)(1) SC 745

**B) FREEDOM OF PROFESSION , OCCUPATION, TRADE OR BUSINESS•<sup>11</sup>**

**{ ARTICLE 19(1) (g) AND 19(6) }**

**Article 19(1)(g)** guarantees that all citizens shall have the right “to practise any profession, or to carry on any occupation, trade or business.” However, the right to carry on a profession, trade or business is not unqualified.

● It can be restricted and regulated by authority of law. Thus the state can under clause (6) of Article 19 make any law-

a) Imposing reasonable restriction on this right ‘ in the interest of public’

b) Prescribing professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business,

c) Enabling the state to carry on any trade or business to the exclusion of citizens wholly or partially.

**1) Case: P.A. Inamdar v. State of Maharashtra AIR 2005 SC 3226**<sup>12</sup>

**Fact:** It has been held that the right to establish an educational institution, for charity or for profit, being an occupation is guaranteed under the constitution to all citizens under Article 19 (1) (g) and to minorities under Article 30. ‘Education ‘ even though is an occupation but it cannot be equated with trade or business. In short, education is national wealth essential for the nation’s progress and prosperity. Notwithstanding the fact that the right of minority to establish and administer an educational institution would be protected by Article 19 (1) (g) yet the Founding Fathers of the constitution felt the need of enacting Article 30. The reason is obvious. Article 30 is intended to

<sup>11</sup> **FREEDOM OF PROFESSION, OCCUPATION, TRADE OR BUSINESS UNDER ART. 19(1)(g) FROM**  
Constitutional law, Dr. J.N. PANDEY, 48<sup>TH</sup> Edition & M.P. JAIN, 4<sup>TH</sup> Edition

<sup>12</sup> **AIR 2005 SC 3226**

instil confidence in minorities against any encroachment by the executive or legislature. Article 19 (1)(g) is subject to reasonable restriction under clause (6) of Article 19. Article 30 has been therefore enacted to give them additional protection. However, merely because Article 30 (1) has been enacted, minority educational institutions do not become immune from the operation of regulatory measures because the right to administer does not include the right to mal-administer. The real purpose sought to be achieved by Article 30 is to give minorities some additional protection.

●**The right to carry on a business includes a right to close it at anytime the owner likes. So, the State cannot compel a citizen to carry on business against his will. But as no right is absolute, the right to close down a business is also not an absolute right. It can be restricted, regulated or controlled by law in the interest of public.**

**2) Case: In Excel Wear v. Union of India AIR 1979 SC 25.<sup>13</sup>**

**Fact:** The petitioner “Excel Wear” was a registered firm. It had a factory at Bombay where it **manufactured garments for exports**. Due to serious labour trouble the factory was running into a recurring loss. The petitioners finding it almost impossible to carry on business of the factory served a notice on Government for prior approval for its closure. **The Government refused approval in the public interest.** The Government refused approval under sections 25-0, 25-R, of the Industrial Disputes Act ,1947. Section 25-0 of the Industrial Dispute Act requires an employer to take permission from the Government for closure of his industrial undertaking. The employer is required to give a three months notice to the Government. The Government could refuse the permission to close down the business if it is satisfied that the reason given by the employer “was

not adequate and sufficient “or that “such closure is prejudicial to the public interest “. Section 25-R provides punishment for violation of section 25-0 were unconstitutional and invalid for violation of Article 19(1) (g) of the constitution. The Court said that nobody has got right to carry on the business if he cannot pay even minimum wages to the labourers. He must than close down his business. The refusal not to close down business, even if he cannot pay, is not reasonable restriction in the public interest within the meaning of Article (6) of the constitution.

**3) Case: In Sukumar Mukherjee v. State of W.B (1993)3 SCC 724.<sup>14</sup>**

**Fact:** The appellants challenged the validity of West Bengal State Health Service Act,1990 on the ground that it imposes unreasonable restriction on their right to carry on any occupation, trade or business under Article 19(1)(g) of the constitution . Section 9 of the Act prohibited private practice by teacher, doctors of West Bengal Medical Education service and not by the Doctors of W.B .Health Service. When these services were separated the doctors were given an option to join either WBMES or WBHS. It was held that the restriction imposed by section 9 is reasonable and in the interest of the general public

**Judgment:** The restriction is not on the freedom to practice the medical profession. This applies to those doctors who voluntarily join the Government service. Those who joins the Government service are bound by the terms and conditions of service and will have no right to private practice.

**4) In Khoday Distilleries Lt v. State of Karnataka, AIR (1995)1 SCC 574<sup>15</sup>**

**Fact:** The Supreme Court has set rest the controversy arising out of conflicting decisions of the Supreme Court on the matter whether a citizen has fundamental right to trade or business in liquor.

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<sup>14</sup> (1993)3 SCC 724

<sup>15</sup> AIR (1995) 1 SCC 574

The Supreme Court has summarised the law relating to right to carry on trade or business in potable liquor.

The court has held that rights under Article 19 (1) are not absolute but qualified and state is authorised under clauses (2) to (6) of Article 19 to impose **reasonable restrictions on this right in the public interest**. A citizen has no fundamental right to trade or business in activities which are immoral and criminal and in Article or goods which are obnoxious and injurious to health, health, safety and welfare of general public. The state has power to prohibit the manufacture, sale, possession, distribution and consumption both because it dangerous articles of consumption and also because the Directive Principle contained in Article 47, except when it is used for medical purposes. The state can create monopoly in such business either in itself or in any agency created for this purpose. The restrictions on the right to trade in liquor can be imposed not only by a law enacted by the legislature but it can be imposed by any subordinate legislation. It can be regulated and restricted even by executive order provided it is issued by the Governor of the State

The **Word “business”** is more comprehensive than the **word “trade”** since it will include manufacture which the word ‘trade’ may not ordinarily include. The argument that the law in the present case only provide for taking over of ‘trade’ and not ‘business’ hence petitioners cannot be prevented from carrying on business is not tenable as business includes ‘trade’ also.

● **Hawkers Right to trade on pavement of roads.** In a judgment of far reaching importance in:

1) Case: **Sodan Sing v. New Delhi Municipal Committee** **AIR 1989 SC 1988**<sup>16</sup>

**Fact:** A five judge bench of the supreme court has held that hawkers have a fundamental right to carry on trade on pavement of roads, but subject to **reasonable restrictions under Article 19(6) of the constitution.**

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<sup>16</sup> AIR 1989 SC 1988

● **State Lotteries not trade or business, but gambling.**

1) **Case: In M/s. B. R. Enterprises v. State of U.P. AIR 1999 SC 1867** <sup>17</sup>

**Fact:** The petitioners had challenged the validity of Lotteries (Regulation) Act, 1998, and the order passed by the state of U.P. in exercise of power vested under section 5 of the Act banning sale of lottery tickets of other states in the state of Uttar Pradesh as violative of Art. (1) (g) and Art. 301, 302, and 303 of the constitution. The Supreme Court, however, has held that lottery contains an element of chance and therefore cannot be trade or commerce but is gambling. Sale of lottery tickets organised by the state cannot be construed to be trade and commerce within the meaning of Arts. 301, to 303 or trade or business under Art. 19 (1) (g) of the constitution, the constitution makers could never have conceived to give protection to gambling either under Art. 19 (1) (g) or as trade under Art. 301 of the constitution. The difference between gambling and trade is that a gambling inherently contains a chance with no skill, while trade contains skill with no chance what makes lottery a pernicious is its gambling nature even in the state run lotteries the elements of chance remains with no skill. Accordingly, the court held that the ban imposed by the state of Uttar Pradesh on the sale of lotteries is constitutional and not violative of Art. 19(1) (g) of the constitution.

2) **Case: In Chakresh Kumar Jain v. State of U.P. AIR 2001 SC 2856.** <sup>18</sup>

**Fact:** The petitioners sought to quash the bye-laws framed by Nagar Palika Parishad, Badaun under which the owners of Nursing Homes private Clinics, Pathology centres and Maternity Homes were required to obtain licence fee and pay fee for the same and notices issued for realisation of fee. The Supreme Court held that condition of obtaining licence and pay fee by medical

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<sup>17</sup> AIR 1999 SC 1867

<sup>18</sup> AIR 2001 SC 2856 FROM

Constitutional law, Dr. J. N. PANDEY, 48<sup>TH</sup> Edition & M. P. JAIN, 4<sup>TH</sup> Edition

practitioner fee or Nursing Homes etc. Does not amount to any impediment in the right of medical practitioner to practice and therefore the bye-law is valid and constitutional.

3) In Uni Krishnan v. State of A.P (1993) 1 SCC 645 <sup>19</sup>

**Fact:** It has been held that the right to establish an educational institution and imparting education is not a commercial activity. Such activity can neither be a trade or business nor can it be a profession within the meaning of Article 19 (1) (g). Trade or business normally connotes an activity carried on with a profit motive. Education has never been commerce in this country.

C) • RESTRICTION IMPOSED ON FUNDAMENTAL RIGHTS IS REASONABLE  
RISTRATION WITH IN ARTICLE 19 1 (g):<sup>20</sup>

1) Case: In State of Gujarat v. Mirzapur Moti Qureshi Kasab jamat  
AIR 2006 SC 212 <sup>21</sup>

**Fact:** The petitioners ,who were butchers, had challenged the constitutional validity of the ‘Bombay Animal Preservation Gujarat Amendment Act , Act 1994’ as applicable to the state of Gujarat as as violative of their fundamental right to carry on the business of slaughtering of cows and calves, under Article 19 (1) (g) of the constitution. Under the above legislation the states of Gujarat had imposed a total ban on slaughter of cows and calves and other milch and draught cattle’s. The Supreme Court held that the prohibition of slaughter of cows and her progeny does not amount to total with regard to slaughter of in particular class of cattle. They are left free to

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<sup>19</sup> (1993)1 SCC 645

Restriction imposed on fundamental rights is reasonable restriction with in Art 19 1 (g) from books Constitutional law ,Dr.J.N.PANDEY ,48<sup>TH</sup> Edition & M.P.JAIN, 4<sup>th</sup> Edition

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<sup>21</sup> AIR 2006 SC 212

slaughter cattle other than those specified in the Act. They can slaughter animals other cow progeny and carry on their activity. It was held that ban on slaughter of cow progeny is not a prohibition by any restriction. The ban on slaughter of cow progeny , as imposed by the Act is, therefore ,in the interest of general public and is reasonable restriction within the meaning of Article 19 (1) (g) of the constitution. Cow and her progeny are the backbone of Indian agriculture and economy.

#### **D)   GROUNDS OF RESTRICTIONS UNDER ART 19 1 (g)**<sup>22</sup>

-Under clause (6) of Article 19 the state is authorised to impose **reasonable restrictions** on the right to carry on a trade , profession or business. The condition is that restrictions must be-

- 1) Reasonable, and
- 2) in the interest of general public.

The right to carry on business, being a fundamental right, its exercise is subject only to the restriction imposed by law in the interest of the general public under Article 19 (6)

#### **●:INSTANCES OF REASONABLE RESTRICTION**<sup>23</sup> :

- 1) There is no right to carry on business at a particular place . The state may impose reasonable restriction in the interest of general public. Thus a competent authority may reasonably fix a place for a bus stand, a cinema house, or a liquor shop.
- 2) The Minimum wages Act empowers the Government to fix minimum wages to be given to the labourers in a particular industry.

<sup>22</sup> Grounds of restrictions under Art. 19 1 (g)

<sup>23</sup> Instances of reasonable restriction from book

Constitutional law ,Dr.J.N.PANDEY ,48<sup>TH</sup> Edition & M.P.JAIN, 4<sup>th</sup> Edition

a) Bijoy Cotton Mills Ltd v. State of Ajmer AIR 1955 SC 33<sup>24</sup>

**Fact:** The Act was challenged as being in violation of Article 19(1)(g) . The Court held the restrictions imposed by the Act to be reasonable as being imposed in the interest of general public. The court observed: In an under- developed country which faces the problem of unemployment on a very large scale, it is not unlikely that labour may offer to work even on starvation wages. The policy of the Act is to prevent the employment of such sweated labour in the interest of general public.

3) The Punjab Trade Employees Act. 1949, provided that shops and establishments shall remain closed for a day in a week.

**Case:** In Monohar Lal v. State of Punjab, AIR1961 SC 418.<sup>25</sup>

**Fact:** The Supreme Court held the restriction to be reasonable because the purpose of the Act was to improve the health and efficiency of the workers who form an essential part of the community and in whose welfare the community was vitally interested. The contention of the petitioner that the Act did not apply to him because he did not employ any other person and was conducting the business himself was also rejected by the court and held law is valid as imposing reasonable restrictions in the interest of general public.

4) Imposing of Licence fee as a requirement for the grant of licence to a citizen who wants to carry on a trade or business or profession does not amount to an **unreasonable restriction** .But the condition for granting licence must be reasonable and must not give arbitrary power to the

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<sup>24</sup> AIR 1955 SC 33

<sup>25</sup> AIR 1961 SC 418

licensing authority. Thus a fee for obtaining a licence or a permit is not unreasonable. It is neither a tax nor unreasonable condition for the grant of licence.

5) Creation of monopoly rights in a few persons is not unreasonable. Thus in

**Case law: Cooverji v. Excise Commissioner, AIR1954 SC 220** <sup>26</sup>

Fact: Law which created a monopoly to sell liquor in favour of a few persons was held valid. The court said that sale of intoxicating liquors cannot be claimed as a right by every citizen. Elimination and exclusion is inherent in such business as that of liquor.

6) The Word 'restriction' includes 'Prohibition' also. In

**Case: Narendra Kumar v. Union of India AIR 1960 SC 430** <sup>27</sup>

Fact: The Non- Ferrous Metal Order, 1958, which completely excluded the dealers in a trade of imported copper, was held valid as imposing reasonable restriction in the interest of general public. The court said that prohibition was only a kind of restriction provided it satisfied the test of reasonableness.

7) In **Khatki Ahmad v Ludi Municipality AIR 1979 SC 418** <sup>28</sup>

Fact: The petitioner was refused a licence for opening meat shop by the Municipality under a bye-law which gave power to the municipality to grant or refuse licences. The licence was refused on the ground that there were already three licensed meat shops including one who was the father of the petitioner, and it was quite conceivable that the fourth to the petitioner would be unnecessary in such a small municipality. No person has right to choose a particular spot for opening his shop. The local authorities are the best judge whether a licence is to be given to a person to open a meat shop at particular place. The ground on which the municipal body had

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<sup>26</sup> AIR 1954 SC 220

<sup>27</sup> AIR 1960 SC 430

<sup>28</sup> AIR 1979 SC 418

refused licence was not irrelevant and could not be described-law permitting the municipality as the licensing authority to refuse licence on the above grounds were therefore valid.

8) In Luxmi Khandsari v. State of Uttar Pradesh, AIR 1981 SC 873<sup>29</sup>

Fact: A Notification issued under the Sugar Cane (Control) Order stopping crushers from producing khandsari so that production of white sugar could be increased and thereby making the sugar available to consumer at a reasonable price was held to be imposing restriction in the interest of public on the right of persons using crushers and therefore valid.

9) In Municipal Corporation, Ahmadabad v .Jan Mohd. Usmanbhai,  
(1986) 2 SCC 20<sup>30</sup>

Fact: Constitutionality of the standing orders issued by municipal commissioner under section 466(1) (d) (b) of Bombay provincial Municipal Corporation Act, 1949, directing closure of municipal slaughter houses on seven days in a year viz, birthday, nirwan day and samvatsari and Mahavir Jayanti was challenged by the petitioner as imposing unreasonable restriction on his right to carry on his trade as a beef dealer. It was held that the standing order imposed reasonable restriction in the public interest on his right to carry on trade or business of animal meat dealers and hence valid.

10) In All Delhi Cycle Rickshaw Operators Union v. Municipal Corporation of Delhi.  
(1987)1 SCC371<sup>31</sup>

Fact: It was held that the bye-law 3 of the Cycle Rickshaw Bye-laws, 1960 framed under the Delhi Municipal Corporation Act, 1957 which restricted the issue of licences only to the owners of

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<sup>29</sup> AIR 1981 SC 873

<sup>30</sup> (1986)2 SCC 20

<sup>31</sup> (1987)1scc 371

the rickshaws who ply themselves but excluded persons owning more than one cycle rickshaw and who hire them to rickshaw pullers was constitutionally valid as it imposed reasonable restriction in the interest of general public and was therefore not violative of Article 19(1) (g) . The object of the bye-law to prevent exploitation of the rickshaw pullers by the owners of cycle rickshaws. A licensing authority may impose any condition while issuing a licensing which is in the interest of the general public.

**11) In Minerva Talkes , Bangalore v State OF Karnataka, AIR 1988 SC 526<sup>32</sup>**

Fact: A Rule of the state Government prescribing that no licensee would be allowed to exhibit more than four shows in a day was held to be valid as imposing reasonable restriction on the right to carry on business in the interest of general public. The Government has power to regulate hours during which films may be exhibited, seating arrangement in cinema house, and other matters pertaining to public safety, health, sanitation etc. It was found that on account of exhibiting of five shows in a day it was not possible for the licensee to keep the theatre hygienically clean and thus was not conducive to the health of cinegoers.

**E)• INSTANCES OF UNREASONABLE RESTRICTIONS: <sup>33</sup>**

**1) Case: Dwarka Prasad v State of U.P AIR 1954 SC 224<sup>34</sup>**

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<sup>32</sup> AIR 1988 SC 526

<sup>33</sup> INSTANCES OF UNREASONABLE RESTRICTIONS FROM BOOK  
Constitutional law ,Dr.J.N.PANDEY ,48<sup>TH</sup> Edition & M.P.JAIN, 4<sup>th</sup> Edition

<sup>34</sup> AIR 1954 SC 224

**Fact:** The U.P .Coal Control Order, 1953, required a person to take a licence for stocking, selling or storing for sale of coal. Under the order the the licensing authority (The District Magistrate) may “grant, refuse to grant, or refuses to renew a licence and may suspend, cancel, revoke or modify any licence on any terms there of”. The court held the order invalid on the ground that it gave unrestricted discretionary power to the licensing authority who would grant, refuse or cancel licences in any way he liked.” There was nothing in the order which could check him in arbitrarily exercising his power. Any uncontrolled, arbitrary administrative discretion to restrict a citizen’s right in respect of trade, business, and industry cannot be permitted as it would be imposing an unreasonable restriction outside the scope of clause (6) of Article 19.

2) In **Oudh sugar Mills Ltd v. Union of India** **AIR 1970 SC 1070**<sup>35</sup>

Fact: The Government issued a Sugar CONTROL Order under the Essential Commodities Act, 1955, releasing sugar for sale in open market and allowed the sugar company for disposal of sugar within 26 days. Due to non-availability of railway wagons sugar could not be disposed of within 26 days. The company applied for the extension of time which was refused by the Government. The question for consideration in the present case was whether the Central Government was justified in refusing extension of time to the appellants to clear sugar released in the open market. The supreme court held that the period of 26 days could not be considered as reasonable in view of the fact that the sugar would have to be sent out of state in which it was produced and transported through railway. The restriction imposed on the appellants was, therefore , unreasonable . The Court said that the right to trade is a guaranteed freedom which can be restricted only by law and not by exclusive order. Accordingly, it was held that it is not only the law restriction the freedom which should be reasonable, but the orders made on the basis of that law should also be reasonable.

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<sup>35</sup> AIR 1970 SC 1070

3) In R.H Hedge v. Market Committee sirs AIR 1971 SC 1017<sup>36</sup>

**Fact:** The Government issued a notification in 1965 under section 4-A of the Bombay Agricultural produce Market Act , 1939, declaring certain area a principle market yard in suppression of its earlier notification issued in 1954. The petitioner challenged the validity of the order on the ground that it imposed unreasonable restriction on his fundamental right to carry on business. The Supreme Court held the order was violative of petitioner's fundamental right to carry on business of dealers who have to shift their business from the old notified principal market – yard within a short period of 10 days.

4) **Taxation not restriction.** : The Fundamental right of citizen to practise any profession or carry on any trade or business is not wholly free from the taxing power of the State. No citizen has right to carry on his trade without paying taxes lawfully levied by the Government.

**Case: In** Kailash Nath v. State of U.P AIR 1957 SC 790<sup>37</sup>

**Fact:** It was held that a tax law 'otherwise valid' creates no unreasonable restriction,

5) **Professional and Technical Qualifications-** The State can by law prescribe professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business. For example, it can prescribe that one who wants to set up in medical practice should have studied a course in medicine and surgery and should have passed MBBS examination or one who wishes to be a lawyer must have passed LL.B examination from any established university. Following are some of the existing Indian Acts which regulate profession requiring qualification, discipline, etc

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<sup>36</sup> AIR 1971 SC 1017

<sup>37</sup> AIR 1957 SC 790

1) The Advocate 2) The Bar Councils Act, 3) The Legal Practitioner Act 4) Indian Medical Degrees Act, 5) Indian Medical Councils Act, 6) The Pharmacy Act 7) The Provincial Money Lenders Act.

**6) State Trading and Nationalisation.** - Clause (6) (ii) enables the state to nationalise any trade or business and carry it on itself to the exclusion of all citizens wholly or partially. This clause was added by the constitution (1<sup>st</sup> Amendment) Act, 1951. This amendment had become necessary as a result of the decision in the case of **Motilal v Uttar Pradesh Government. AIR 1951 ALL 257**<sup>38</sup>

**Fact:** In that case, the Government of Uttar Pradesh had refused to issue permits to private owners of road transport vehicles in order to enable the state to take over particular services. The Motor Vehicle Act required private owners of road transport vehicles to obtain permits from the regional authority. But it exempted the state-owned buses from the necessity of taking permit. The Allahabad High court held that if the state carried on a commercial undertaking it could not claim any special treatment and refusal of permit by the state was held to be in violation of equal protection guaranteed by Article 14. The creation of a state monopoly could neither be justified under the power of regulation of traffic nor under the cover of putting restrictions under clause (6) of Article 19 **except in the interest of the general public.**

**F) •DISTINCTION BETWEEN ARTICLE 19 (1) (g) & ARTICLE 301 OF THE CONSTITUTION OF INDIA.<sup>39</sup>**

**ARTICLE 19 (1) (g)**

**1) It comes under part III of the constitution of India & it is to be noted that Article 19 (1) (g) also guarantees to citizens the right to practise any profession or carry On any trade , business.**

**2) It provides reasonable restriction to Art 19(1)(g) under clause (6)**

**3) Article 19 (1)(g) confers a Fundamental right on citizen to carry on trade , business etc.**

**4) The right under Art 19 (1) (g) can only be claimed by citizens**

**ARTICLE 301**

**Art 301 of the constitution of India declares that trade, commerce and intercourse throughout the territory of India shall be free.**

**It also guarantees reasonable restrictions from art 302&307**

**Art 301 confers only a statutory right.**

**The right under Article 301 can be claimed by any one.**

<sup>39</sup> DISTINCTION BETWEEN ART 19 1(1)(g) &301 FROM BOOK Constitutional law ,Dr.J.N.PANDEY ,48<sup>TH</sup> Edition & M.P.JAIN, 4<sup>th</sup> Edition

## **CONCLUSION<sup>40</sup>**

**Constitution of India has guaranteed Art 19 (1)(g) to its citizens the right to practise any profession or carry on any trade , business & Article 301 declares that trade ,commerce and intercourse throughout the territory of India shall be free.**

**Constitution of India has provided to its citizen protective provisions interms of Article 19 (1)(g) with reasonable restriction under clause (6) &Article 301with reasonable restriction under Article 302 to 307 for the welfare of its citizen .**

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<sup>40</sup> Conclusion BY SELF

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