

CHAPTER XVIII
TRADE, COMMERCE AND INTERCOURSE WITHIN
THE TERRITORY OF INDIA

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CHAPTER XVIII
TRADE, COMMERCE AND INTERCOURSE WITHIN THE TERRITORY OF INDIA

INTRODUCTION

Object of Protecting freedom of trade in a two-tier Polity

18.1.01 Free flow of trade, commerce and intercourse within and across inter-State borders is an important pre-requisite for ensuring economic unity, stability and prosperity of a country having a two-tier polity. Most federal constitutions contain special provisions to protect this freedom. The Indian Constitution also contains provisions guaranteeing freedom of commerce, trade and intercourse throughout the territory of India. However, no freedom can be absolute. Limitations for the common good are inherent in such freedom, lest it should degenerate into a self-defeating licence. That is why, legitimate regulatory measures are not considered to constitute restrictions on this freedom.

2. CONSTITUTIONAL PROVISIONS

Article 19(1)(g) and Article 301

18.2.01 Article 19(1)(g) in Part III guarantees to every Indian citizen a fundamental right to carry on trade and business, subject to such reasonable restrictions as may be imposed in the interests of the general public. Apart from this and the Legislative Entries relating to trade and commerce, the other provisions relating to trade, commerce and intercourse within the territory of India are found in Articles 301 to 307 of Part XIII of the Constitution. Article 301 guarantees that trade, commerce and intercourse shall be free throughout the territory of India. It imposes a general limitation on the exercise of legislative power, whether of the Union or of the States, to secure unobstructed flow of trade, commerce and intercourse from one part of the territory of India to another.

Limitations on Power of Parliament—Article 303 (1) and (2)

18.2.02 This guarantee of freedom is expressly subject to the other provisions of Part XIII (Articles 302 to 305) of the Constitution. Article 302 enables Parliament to impose restrictions, by law, on the freedom of trade, commerce and intercourse between one State and another or within any part of the territory of India as may be required *in public interest*. But, this power to place restrictions cannot be used by Parliament to make any law which discriminates between one State and another or gives preference to one State over another, “by virtue of any Entry in the Seventh Schedule relating to trade and commerce” [Article 303(1)]. Clause (2) of the Article engrafts an exception to the limitation contained in clause (1), in as much as it permits Parliament to make a law giving preference, or making discrimination between one State and another, if it is declared by such law that it is necessary to do so for the purpose of dealing with a situation arising from scarcity of goods in any part of the territory of India.

Article 303(1) imposes limitation on State Legislatures also Article 304 two exceptions in favour of State Legislatures

18.2.03 Limitations imposed by Article 303(1) on the legislative power of Parliament apply to that of the State Legislatures, also. But, the State Legislatures do not have the exceptional power to enact discriminatory laws, which is available to Parliament by virtue of Article 303(2). Article 304 carves out two exceptions in favour of the State Legislatures, to the freedom guaranteed under Article 301:

- (a) A State legislature may by law impose on goods imported from other States or the Union Territories, any tax to which similar goods manufactured or produced in that State are subject, however, not so as to *discriminate* between goods so imported and goods so manufactured or produced. [Clause (a) of Article 304].
- (b) The legislature of a State may by law impose such reasonable restrictions on the freedom of trade, commerce and intercourse with or within that State as may be required in the *public interest* [Clause (b) of Article 304]. But, the exercise of this power is subject to the proviso that no Bill or amendment for the purposes of Article 304(b) shall be introduced or moved in the State Legislature without obtaining the previous sanction of the President.¹

Scope of Articles 301 to 304, whether cover : (A) Intra-State Trade

18.2.04 Section 92 of the Australian Constitution guarantees that trade, commerce and intercourse among the States shall be absolutely free, Possibly influenced by the phraseology of this Australian provision, the Draft Constitution of October, 1947, envisaged that subject to the provisions of any federal law, trade, commerce and intercourse among the units shall be free. But, in the course of discussions, the Constitution-framers replaced the words “among the units” by the phrase “throughout the territory of India”. The use of this phrase in Article 301 puts it beyond doubt that, unlike the Australian Constitution, the freedom guaranteed in Article 301 of our Constitution, is not confined to inter-State trade, commerce and intercourse, but also extends to intra-State trade, commerce and inter-course. Article 302 to 305 which admit of various exceptions to this freedom, also cover trade, commerce and intercourse within a State even if it does not involve movement beyond the State borders.

(B) Taxing Laws

18.2.05 Any law which *directly* and *immediately* impedes or restricts the free flow or movement of trade would infringe the guarantee in Article 301. The Supreme Court has held that taxing laws have not been excluded from the application of this principle.

(C) Regulatory Measures and Compensatory Taxes

18.2.06 Measures which impose compensatory taxes, or, are purely regulatory, do not come within the purview of 'restrictions' contemplated in Article 301 because they facilitate flow of trade, rather than hampering it. Such measures, therefore, need not comply with the requirement of the provisions of Article 304(b). Thus, a State law imposing a tax, per vehicle, on the owners of motor vehicles does not directly affect the freedom of trade or commerce even though it indirectly imposes a burden on the movement of passengers and goods within the territory of the taxing State.²

(D) Sales-Tax

18.2.07 Normally, a tax on intra-State sale or inter-State sale of goods does not *directly* impede or restrict the free flow of trade in those goods, and therefore, cannot offend Article 301, whatever be the indirect effect of such tax on the trade.

(E) Trade injurious to Society

18.2.08 It is well settled that in proper cases, such as where the trade is injurious to society, 'reasonable restriction' within the contemplation of Article 302 or 304(b) may include prohibition or suppression of that trade altogether.³

18.2.09 Part XIII contains a further provision (Article 307) enabling Parliament to appoint by law such authority as it considers appropriate for carrying out the purposes of Articles 301, 302, 303 and 304 and confer on that authority such powers and such duties as it thinks necessary. This provision has not been resorted to so far.

3. CRITICISM AND SUGGESTIONS

18.3.01 Two State Governments have criticised the existing constitutional arrangements relating to trade, commerce and intercourse. One of them suggests that Article 302 which empowers Parliament to impose restrictions by law in the public interest, both in respect of inter-State and intra-State trade, should be so amended as to take away the powers of the Union to interfere with intra-State trade. This suggestion has been made “to ensure that the State Governments are treated on par with the Union in so far as trade and commerce is concerned”. It has also suggested that the expression 'reasonable' should be added before the word “restriction” appearing in Article 302 in order to being about parity between the powers of Parliament and the State Legislatures in this matter. The State Government has further suggested deletion of the Proviso to Clause (b) of Article 304. The other State Government has also proposed that trade and commerce *within* a State should be in the exclusive jurisdiction of the State, with an exception in regard to inputs of War and Defence industries. This State Government has further suggested that the Proviso to Article 304(b) may be omitted as it imposes an unjustifiable restriction on the legislative autonomy of the States. It has observed that Article 304(b) itself provides that such a restriction should be reasonable and required in public interest. If the State legislature enacts a law which does not satisfy these two requirements, it will be open to the courts to set it aside as unconstitutional.

Omission of 'Reasonable' from Article 302, effect of

18.3.02 We will first take up the demand for insertion of the word 'reasonable' as a pre-fix to the expression 'restriction' in Article 302. The suggestion postulates that the omission to qualify the expression 'restriction' by the word 'reasonable' in Article 302 not only amounts to denial of parity of powers to Parliament and the State Legislatures in regard to trade and commerce, but also enables Parliament to negate the freedom guaranteed under Article 301 and the fundamental right guaranteed under Article 19(1)(g) by imposing unreasonable restrictions thereon. This proposition is not based on an empirical analysis of any laws affecting freedom of trade, passed by Parliament under Article 302. No instance of any such law made under Article 302, which tends to nullify Article 301, or which under colour of 'public interest', makes unreasonable incursion into the exclusive State field has been brought to our notice. In *Atiabari Case, ibid*, there is an obiter by one of the learned Judges⁴ that “where Parliament exercises its power under Article 302 and passes a law imposing restrictions on the freedom of trade in public interest, whether or not the given law is in the public interest, may not be Justiciable”. As against this, another learned Judge⁵ in *Automobile Transport Case, ibid*, observed that “it is impossible that the freedom granted in Article 301 was to be mocked at by making unreasonable restrictions permissible at the hands of Parliament. Normally, Parliament is the best judge of the 'public interest'.....But if a question arises whether Part liqment under has colour of Article 302 encroached upon Article 301, the matter may in exceptionable circumstances be justiciable”. The word 'required' in Article 302 limits the restrictions to the necessities of the situation so that the Article may not be liberally construed as a free Charter.

18.3.03 Again, in a later case⁶, it was observed by the Supreme Court: “although Article 302 does not speak of reasonable restrictions yet it is evident that the restrictions contemplated by it must bear a reasonable nexus with the need to serve public interest”. In several recent decisions⁷ where the constitutional validity of a law imposing restrictions under Article 302 was challenged, the Supreme Court did apply the test of reasonableness to uphold the validity of those 'restictions'.

18.3.04 Dr. D. D. Basu is of the view “that, on principle, the omission of the word reasonable” in Article 302 should not be regarded as conclusive, for, it is difficult to imagine that public interest would be served by a law which would impose arbitrary or unreasonable restrictions upon the public themselves.⁸ We agree with the learned author that notwithstanding the fact that the word 'reasonable' is not used in Article 302, a law imposing restrictions under Article 302, would be open to judicial review on the ground that it has no reasonable nexus with the public interest alleged.

18.3.05 Be that as it may, the point is merely of academic significance. From a practical stand-point, the non-qualification of the 'restriction' by 'reasonable' in the text of Article 302 has lost much of its importance, for almost in every case wherein the Constitutional validity of such law is questioned on the ground of Article 301, the challenge is buttressed by additional grounds of Articles 14 and 19 (1)(g) and the question of reasonableness of the restriction always arises under these additional grounds. The proposal for insertion of the word 'reasonable' before the word 'restriction' in the Article 302 is thus merely of theoretical significance and we cannot support it.

Whether inclusion of Inter-State Trade in Article 302 justifiable

18.3.06 This takes us to the broader question whether the inclusion of trade, commerce and intercourse *within* a State (in addition to inter-State trade) in Article 302 and the requirement of previous sanction of the President in the Proviso to Article 304(b) is against the basic principles of federalism and amounts to “unjustifiable restriction on the legislative autonomy of the States”.

Historical Background of the Provisions in Part XIII

18.3.07 In order to appreciate all aspects of the question in the right perspective it is necessary to have a look into the background of the provisions in Part XIII. It is well-known that before Independence, in 1947, nearly one-third of the territory of India consisted of numerous 'Native States' governed by Indian Princes. Many of these States claimed varying degrees of sovereign rights subject to limitations imposed by the paramount power. These States in exercise of their power imposed taxes and erected tariff barriers impeding the flow of trade, commerce and intercourse between themselves and the rest of India. In this

matter, British India was governed by the provisions of Section 297 of the Government of India Act, 1935. Between 1947 and 1950, the process of the merger and integration of the erstwhile Princely States with the rest of the country was accomplished. With this knowledge of the trade barriers and tariff walls which had been erected by the erstwhile Princely States, the imperative need for ensuring free flow of trade, commerce and intercourse throughout the territory of Indian became deeply impressed on the mind of the Constitution makers.

Primary Object and Aim of Part XIII—Atiabari Case

18.3.08 The Supreme Court has, after a brief survey of this political and Constitutional background in *Atiabari Case, ibid.*—nearly brought out the main objects and reasons which weighed with the Constitution-makers in formulating the scheme and content of the Articles in Part XIII, as follows:

“In drafting “the” relevant Articles of Part XIII the makers of the Constitution were fully conscious that economic unity was absolutely essential for the stability and progress of the federal polity which had been adopted by the Constitution for the governance of the country. Political freedom had been won, and political unity which had been accomplished by the Constitution, had to be sustained and strengthened by the bond of economic unity. It was realised that in course of time different political parties believing in different economic theories or ideologies may come in power in the several constituent units of the Union and that may conceivably give rise to local and regional pulls and pressures in economic matters. Local or regional fears or apprehensions raised by local or regional problems may persuade the State legislature to adopt remedial measures intended solely for the protection of regional interests without due regard to their effect on the economy of the nation as a whole. The object of Part XIII was to avoid such a possibility. Free movement and exchange of goods throughout the territory of India is essential for the economy of the nation and for sustaining and improving living standards of the country. The provision contained in Article 301 guaranteeing the freedom of trade, commerce and intercourse is not a declaration of a mere platitude, or the expression of a pious hope of a declaratory character; it is not also a mere statement of a directive principle of State policy; it embodies and enshrines a principle of paramount importance that the economic unity of the country will provide the main sustaining force for the stability and progress of the political and cultural unity of the country. In appreciating the significance of these general considerations we may profitably refer to the observations made by, Cardozo J. in *Charles H. Baldwin v. G.A. F. Seeling* (1934) 294 US 511 at p. 523: 79 Law Ed 1032 at p. 1033 while he was dealing with the commerce clause contained in Article 1, 5, 8, cl. 3 of the American Constitution. “This part of the Constitution”, observed Cardozo J., “was framed under the dominion of a political philosophy less parochial in range. It was framed upon the theory that the peoples of the several states must sink or swim together and that in the long run prosperity and salvation are in union and not division”.⁹

18.3.09 Further elucidating the objectives and importance of these provisions for the economic integrity of the Nation, the Supreme Court in *Automobile Transport Case, ibid.*, observed:

“There were differences of language, religion, etc. some of the Provinces were economically more developed than the others. Even inside the same province there were under-developed, developed, and highly developed areas from the point of view of industries, communications, etc. The problem of economic integration with which the Constitution-makers were faced was a problem with many facets. Two questions, however, stood out: one question was how to achieve a federal, economic and fiscal integration, so that economic policies affecting the interests of India as a whole could be carried out without putting an ever-increasing strain on the unity of India, particularly in the context of a developing economy. The second question was how to foster the development of areas which were under-developed without creating too many preferential or discriminative barriers”.¹⁰

18.3.10 The provisions contained in Part XIII have to be considered together, in order to gather the true extent of the freedom and the limitations on it. At first sight it would appear that there is a mix up of exceptions upon exception in these provisions. The pertinent observations of the Supreme Court in this connection are: “In evolving an integrated policy on this subject our constitution-makers seem to have kept in mind three main considerations which may be broadly stated thus: first, in the larger interests of India there must be free flow of trade, commerce and intercourse, both inter-State and intra-State; second, the regional interests must not be ignored altogether; and third, there must be a power of intervention by the Union in any case of crisis to deal with particular problems that may arise in any part of India”.¹¹

18.3.11 In the same case, analysing the words “shall be free” Subha Rao J. posed three questions. Firstly, 'what is free', secondly, 'free from what', and thirdly, 'where is it free'. Dealing with the question 'Where is it free' the learned Judge observed that the Expression 'throughout the territory of India' demarcates the extensive field of operation of the said freedom. The use of the words 'territory of India', instead of 'among the several States, found in the American Constitution or 'among the States' found in the Australian Constitution, removes all inter-State or intera-States barriers and brings out the idea that for the purpose of the freedom declared, the whole country is one unit. Trade cannot be free throughout India if barriers can be erected in any part of India, be it inter-State or intra-State. Thus, Article 301 guarantees freedom of trade, commerce and intercourse throughout the territory of India.

18.3.12 The freedom guaranteed in Article 301 has been made expressly subject to the other provisions of Part XIII. As noticed above in Para 18.2.02, these provisions contain a two-fold principle. Firstly, Parliament may impose such restrictions as may be required in public interest, on the freedom of trade, commerce or intercourse between one State or another or within any part of the territory of India. Secondly, the power to impose reasonable restrictions by States is made subject to obtaining the sanction of the President before a Bill in this regard can be introduced or moved. Thus Parliament may itself impose restrictions and the Union may also prevent a State from placing restrictions if they are against national interest.

18.3.13 The need for empowering Parliament to place restrictions on trade and commerce even within a State is obvious. Ours is a vast country with varying economic potentiality and considerable deferences in regard to existing levels of development. The Union's responsibility in respect of certain matters may, therefore, entail regulating Trade and Commerce even within a State for achieving national objectives. For example, there is the need to protect the interests of the weaker sections of our community like the tribale people, etc. Indiscriminate exploitation of natural resources in one State, for example, denudation of forests, may have far-reaching implications for other States which may be effected by Floods, silting up of reservoirs, etc. Such situations may require imposition of restrictions on trade even within the State. The importance of Parliamentary control over intra-State trade is also significant where centres of production of certain commodities are situated entirely within a State but the centres of consumption are located outside the State.

18.3.14 We have observed in the Chapter on “Legislative Relations” that intra-State trading activities often have a close and substantial relation to inter-State trade and commerce. State laws though purporting to regulate intra-State trade, may have implications for Inter-State trade and commerce. These may impose discriminatory taxes or unreasonable restrictions, impeding the freedom of Intera-State trade and commerce. If clause (b) of Article 304 is deleted, the commercial and economic unity of the country may be broken up by State laws setting up barriers to free flow of trade an inter-course through parochial or discriminatory use of their powers. The suggestion of the State Government is not workable even from a functional standpoint.

18.3.15 From a broad conceptual angle, the suggestion for excluding intra-State trade and commerce from the purview of Article 302 and for deletion of the Proviso to Article 304(b) does not stand close scrutiny. It is not in consonance with the prevailing concept of federalism. It presumably draws inspiration from the antiquated and obsolete theory of federalism, according to which two levels of government were supposed to function in water-tight compartments in isolation from each other. Such a “dual” federalism is nowhere a functional reality in the modern world. Even in the so-called classical federation of the United States of America federalism is now a dynamic process of government, a system of shared responsibilities and cooperative action between the three tiers of government. The Constitution-framers were conscious of this reality. Indeed, the very scheme of Articles 301 to 304 which imposes limitations on the legislative powers of the Union and of the States, both with respect to inter-State and intra-State commerce and intercourse, is expected to be worked in cooperation by the Union and the States. The mere fact that Article 303(2) gives an exclusive power to Parliament to make a discriminatory law for dealing with a situation of scarcity of goods, or that the Proviso to Article 304(b) gives a supervisory power to the President (*i.e.* Union Council of Ministers) over a State legislation seeking to impose restrictions on inter-State or intra-State trade, is not a good enough argument to hold that these are anti-federal features making unjustifiable encroachment on the autonomy of the States. No doubt, these features give due weightage to the Union. But the scheme of the Articles in Part XIII considered as a whole, is well-balanced. It reconciles

the imperative of economic unity of the Nation with interests of State autonomy by carving out in clauses (a) and (b) of Article 304, two exceptions in favour of State legislatures to the freedom guaranteed under Article 301.

For the foregoing reasons, including those which we have set out in the Chapter on “Legislative Relations,” we cannot support these suggestions of the State Governments.

4. NEED FOR AN AUTHORITY UNDER ARTICLE 307

18.4.01 Several State Governments are in favour of setting up an authority contemplated in Article 307. Some of them consider that such an 'authority' may be useful in the context of enforcement of laws relating to essential commodities and settling questions of taxation, cesses, duties, octroi rates, etc. One of them has also referred to the need for continuous appraisal of the various fiscal laws as well as executive decisions and measures which the Union and the States took from time to time and which impinge on unfettered trade, commerce and intercourse within the country. The Chambers of Commerce interviewed by us have also emphasised the need for setting up of an authority contemplated by Article 307, specially for recommending measures to rationalise or modify restrictions imposed by the different States.

18.4.02 Two States have suggested that the Inter-State Council proposed by them under Article 263, can perform the functions of the 'authority' contemplated in Article 307, and, therefore, there is no need for setting up a separate authority for this purpose.

18.4.03 The Government of India does not consider it necessary to set up such an authority. The Department of Civil Supplies has expressed its view as follows:

“Since the situations keep on changing from time to time in the country, the Ministries at the Centre should be able to respond to such situations more promptly and appropriately because they have the readily available advice with them of experts, legal opinion, information from various parts of the country and views of the producing and consuming States, etc. The establishment of an authority under Article 307, would only cause delays, conflicts and controversies among the various States/regions. Moreover, the authority if established, can only be a data collecting, deliberative and advisory body but not a decision making authority which still shall have to rest with the Central Government. The Department, therefore, does not consider the necessity of setting up of an authority under Article 307 of the Constitution to settle issues among the various States.”

18.4.04 The whole field of freedom of trade, commerce and intercourse bristles with complex questions not only in regard to Constitutional aspects but also in respect of the working arrangements on account of impact of legislation of the Union on the powers of the States and the effect of legislation of both the Union and the States on free conduct of trade, commerce and intercourse. Trade, Commerce and intercourse cover a multitude of activities. Actions of the Union and State Governments have wide-ranging impact on them. Legislative and executive actions in the field of licencing, tariffs, taxation, marketing regulations, price controls, procurement of essential goods, channelisation of trade, and controls over supply and distribution, all have a direct and immediate bearing on trade and commerce. Innumerable laws and executive orders occupy the field today. This has led to an immensely complex structure. Many issues of conflict of interests arise everyday. It is not inconceivable that measures instituted at a given point of time to meet specific situations continue to hold the field notwithstanding the fact that either the need for them has disappeared, making them redundant, or changed circumstances call for drastic modifications.

18.4.05 We are, therefore, of the view that it would be advantageous to constitute an authority under Article 307. It should be an expert body. Being removed from the pressures of day to day administration it would be able to formulate objective views, taking into account the long term perspective, in regard to various intricate problems relating to trade, commerce and intercourse. Being an expert constitutional body it would also inspire confidence among the various States and other interests. Such an expert body would be eminently suited to strike a proper balance between freedom of trade and the need for restrictions in order to foster development with social justice.

18.4.06 The next point for consideration is whether this function can be discharged by the Inter-Government Council (IGC) and National Economic and Development Council constituted under Article 263. The Inter-Governmental Council or the National Economic and Development Council recommended

by us is the highest level political body for considering various issues of national importance in the economic sphere. The need in the present context is, however, not for consideration at the highest political level but for expert examination of various complex issues in an objective manner to enable the political executive to take appropriate decisions. We are unable to agree to the suggestion that the duties and functions of the authority contemplated in Article 307, may be entrusted to the Inter-Governmental Council or National Economic and Development Council.

18.4.07 Considering the intricate nature and the need for objective examination of the wide-ranging issues connected with the freedom of trade, commerce and intercourse, we recommend that an expert authority should be constituted under Article 307. Among other things, such an authority may be enabled to:

- (a) survey and bring out periodically a report on the restrictions imposed on intra-State and inter-State trade and commerce by different governments and their agencies;
- (b) recommend measures to rationalise or modify the restrictions imposed to facilitate free trade and commerce;
- (c) examine complaints from the public and the trade in this regard; and
- (d) suggest reforms in the matter of imposition, levying and sharing of taxes for purposes of Part XIII of the Constitution.

18.4.08 The ambit of Article 307 is wide enough to bring all matters relevant to freedom and regulation of trade, commerce and intercourse within the purview of such an authority 'for carrying out the purposes of Article 301, 302, 303 and 304'. It is entirely left to the judgement of Parliament to clothe the 'authority' under Article 307 with such powers and duties as may be considered necessary. Such an 'authority' may have both an advisory and executive role with decision-making powers. We are of the view that to begin with, such a statutory authority may be assigned an advisory role only. In course of time, in the light of experience gained, such additional powers, as may be found necessary, can be conferred on it to make it an effective body for promoting and maintaining the commercial and economic unity of India.

5. RECOMMENDATIONS

18.5.01 Free flow of trade, commerce and intercourse within and across inter-State borders is an important pre-requisite for ensuing economic unity, stability and prosperity of a country having a two-tier polity. Limitations for the common good are inherent in such freedom, least it should de-generate into a self-defeating licence.

(Para 18.1.01)

18.5.02 Notwithstanding the fact that the word 'reasonable' is not used in Article 302, a low imposing restrictions under Article 302 would be open to judicial review on the ground that it has no reasonable nexus with the public interest alleged. The proposal for insertion of the word 'reasonable' before the word 'restriction' in Article 302 is thus merely of theoretical significance and cannot be supported.

(Paras 18.3.03, 18.3.04 and 18.3.05)

18.5.03 Intra-State trading activities often have a close and substantial relation to inter-State trade and commerce. State laws though purporting to regulate intra-State trade may have implications for inter-State trade and commerce. These may impose discriminatory taxes or unreasonable restrictions impeding the freedom of inter-State trade and commerce. If clause (b) of Article 304 is deleted, the commercial and economic unity of the country may be broken up by State laws setting up barriers to free flow of trade and intercourse through parochial or discriminatory use of their powers.

(Para 18.3.13)

18.5.04 The scheme of the Articles in Part XIII, considered as a whole, is well-balanced. It reconciles the imperative of economic unity of the Nation with interests of State autonomy by carving out in clauses (a) and (b) of Article 304, two exceptions in favour of State legislatures to the freedom guaranteed under Article 301.

(Para 18.3.14)

18.5.05 The whole field of freedom of trade, commerce and intercourse bristles with complex questions not only in regard to constitutional aspects but also in respect of the working of the arrangements on account of impact of legislation of the Union on the powers of the States and the effect of legislation of both the Union and the States on free conduct of trade, commerce and intercourse. Considering the intricate nature and the need for objective examination of the wide-ranging issue connected with the freedom of trade, commerce and intercourse, it is recommended, that an expert authority should be constituted under Article 307. Among other things, such an authority may be enabled to:

- (a) survey and bring out periodically a report on the restrictions imposed on intra-State and inter-State trade and commerce by different governments and their agencies;
- (b) recommend measures to rationalise or modify the restrictions imposed to facilitate free trade and commerce;
- (c) examine complaints from the public and the trade in this regard; and
- (d) suggest reforms in the matter of imposition, levying and sharing of taxes for purposes of Part XIII of the Constitution.

The ambit of Article 307 is wide enough to bring all matters relevant to freedom and regulation of trade, commerce and intercourse within the purview of such an authority 'for carrying out the purposes of Articles 301, 302, 303 and 304'. It is entirely left to the judgement of parliament to clothe the 'authority' under Article 307 with such powers and duties as may be considered necessary. Such an 'authority' may have both an advisory and executive, role with decision-making powers. To begin with such an authority may be assigned an advisory role. In course of time in the light of experience gained, such additional powers as may be found necessary, can be conferred on it.

(Paras 18.4.04, 18.4.07 and 18.4.08)