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# **FREEDOM OF TRADE AND OCCUPATION UNDER ARTICLE 19(1)(G): IMPACT OF THE RECENT ECONOMIC REFORMS AND REGULATIONS**

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## **INTRODUCTION**

The right to freedom is one of the most important Fundamental Right given by Indian Constitution. If there is a freedom, only then democracy can grow. People have some freedom to do anything provided that there must be social control. State should impose reasonable restrictions on freedom so our government can function properly. The state thus acts as a source of limitations on freedom rights of people. Our constitution makers nicely mentioned freedoms along with restrictions. Freedom of rights & restrictions go in hand by hand. That's why, Article 19 in our constitution has a great importance.

Article 19(1)(g)<sup>1</sup> of the Indian Constitution guarantees all citizens living within its borders the freedom to engage in any profession, trade, or business. However, Art. 19(6)<sup>2</sup> lists the kinds of restrictions the state may impose on the aforementioned freedom in order to protect India's sovereignty and integrity, security, friendly relations with other countries, public order, decency, or morality.<sup>3</sup> These limitations are designed to make sure that no one's freedom is violated at the expense of another person's rights or freedoms.

My objective for this research project is to investigate different aspects of economic liberties under the law. In order to comprehend the freedom of trade and occupation as guaranteed by the Constitution, the study will first concentrate on dissecting the legal foundation and judicial interpretation of Article 19(1)(g). Secondly on Analysis between Article 301 and Article 19(1)(g) and lastly it will assess how recent economic reforms have affected this fundamental

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<sup>1</sup> "India Const. art. 19, cl. 1(g)."

<sup>2</sup> "India Const. art. 19, cl.6."

<sup>3</sup> "Aishwarya Sandeep, Freedom to practice any profession or occupation, trade or business, AISHWARYA SANDEEP BLOG (Aug. 2, 2024, 9:29 PM), <https://aishwaryasandeep.in/freedom-to-practice-any-profession-or-occupation-trade-or-business/>"

right, specifically looking at how they have affected the freedom of employment and commerce.

### JUDICIAL INTERPRETATION OF ARTICLE 19(1)(g)

“Article 19(1)(g)<sup>4</sup> guarantees to all citizens the right to practise any profession, or to carry on any occupation, trade or business. Clause (6) provides that nothing in sub-clause (g) shall affect the operation of any existing law insofar as it imposes or prevent the State from making any law imposing in the interest of the general public, reasonable restrictions on the exercise of such right. Nothing in clause (g) shall affect the operation of any existing law relating to professional or technical qualification for practising any profession or carrying on any business or occupation and law relating to State monopoly.”

In the landmark case of “*Sodan Singh vs N.D.M.C and others*”<sup>5</sup> Kuldeep Singh, J has defined the four expressions, i.e., profession, occupation, trade and business and held that -

“‘Profession’ means an occupation carried on by a person by virtue of his personal and specialised qualifications, training or skill. The word ‘occupation’ has a wide meaning such as any regular work, profession, job, principal activity, employment, business or a calling in which an individual is engaged. ‘Trade’ in its wider sense includes any bargain or sale, any occupation or business carried on for subsistence or profit, it is an act of buying and selling of goods and services. It may include any business carried on with a view to profit whether manual or mercantile. ‘Business’ is very wide term and would include anything which occupies the time. Attention and labour of a man for the purpose of profit. It may include in its form trade, profession, industrial and commercial operations, purchase and sale of goods and would include anything which is an occupation as distinguished from pleasure”<sup>6</sup>

The privilege of conducting business as per article 19 (1) (g) extends solely to Indian nationals. For the purposes of this clause, the term 'citizens' encompasses:<sup>7</sup>

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<sup>4</sup> “India Const. art. 19, cl. 1(g).”

<sup>5</sup> “*Sodan Singh vs N.D.M.C and others* (AIR 1989 SCC 155)”

<sup>6</sup> “V.N Shukla, Constitution of India 172-173 (Eastern Book Company 12th Ed. 2013)”

<sup>7</sup> “Aishwarya Sandeep, Freedom to practice any profession or occupation, trade or business, AISHWARYA SANDEEP BLOG (Aug. 2, 2024, 9:29 PM), <https://aishwaryasandeep.in/freedom-to-practice-any-profession-or-occupation-trade-or-business/>”

- A company registered under the Companies Act
- A religious group
- A deity or any legal entity

It has been consistently recognized by the courts that the fundamental rights bestowed upon Indian citizens under article 19 (1) (g) apply in the face of any state or governmental entity. If any individual violates another's individual's right to trade, occupation and profession then he can pursue it through civil or tort law rather than under the Constitution of India.

The reasonable restrictions imposed by the state on Article 19(1)(g) are specified in Article 19(6). This section has 3 major points :

- The state is authorized to enact laws limiting the rights under Article 19(g) for the public interest.
- The state can also legislate concerning professional or technical qualifications essential for engaging in a profession, trade, or business,
- And regarding the establishment of state monopolies. The state should not even for public welfare impose any unreasonable or arbitrary restrictions.<sup>8</sup>

Article 19(6)(ii) was introduced the first time through the First Constitutional Amendment in 1951 which granted the state the authority to legislate for the complete or partial exclusion of citizens from any economic activity as seen fit by the state. Any such action was inherently limited.

The Supreme Court in the landmark case of "*Akdasi Padhan v. State of Orissa*"<sup>9</sup> held that the "state is viewed as the guardian of its citizens and it is bound by an unspoken rule to act for the public good. A test was established in this case which held that there should be a direct connection between the law and establishment of monopoly and the law aiding the operation should be incidental, subsidiary or contribute to its function .

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<sup>8</sup>" India Const. art. 19, cl.6."

<sup>9</sup> "*Akdasi Padhan v. State of Orissa* (AIR 1963 SC 1047)"

When deciding the reasonableness of restrictions under Article 19(6), the state must keep in mind the nature of the economic activity and the impact it will have on the public welfare.<sup>10</sup> Determining the reasonable restriction requires an objective where the focus is on public good than the individuals who are being restricted.”

## DOCTRINE OF RES EXTRA COMMERCIUM

In the case of “*Khoday Distilleries v. State of Karnataka*”<sup>11</sup>, “the court held that the state authorities are permitted to regulate individuals’ private rights in the interest of public welfare and also made it explicitly clear that individuals or corporations do not have any inherent fundamental right to conduct business in intoxicating beverage. This case permitted the state to impose complete bans on such trade which could have a harmful effect on the public welfare.”

In this case of “*State of Tamil Nadu v. K. Balu*”<sup>12</sup> “the Supreme Court held that a complete ban on sale and consumption of liquor along national and state highways is a valid regulatory measure to ensure road safety and protect the lives of citizens. The Court recognized that while Article 19(1)(g) protects the right to carry on a trade or business, such rights can be reasonably restricted in the larger public interest.”

The Supreme Court has classified certain businesses, such as those involved with intoxicating liquors, as harmful to public policy, hence excluding them from the ambit of Article 19(1)(g) protections. For industries like betting, gambling, and exploitative practices like money-lending, the court has removed constitutional protections on the basis that these activities do not align with public welfare, thus falling outside the protection of Article 19(1)(g).<sup>13</sup>

Moreover, state interventions in regulating the production, supply, and distribution of key commodities during times of emergency or scarcity have been declared non-infringing on Article 19(1)(g), as these actions are seen as necessary for the public good and are supported by statutes such as the Essential Commodities Act, 1955.

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<sup>10</sup> “M.P Jain, Indian Constitutional Law of India, 1132-1134 (Lexis Nexis Butterworths 6th Ed. 2010)”

<sup>11</sup> “*Khoday Distilleries v. State of Karnataka* 1995 SCC (1) 574”

<sup>12</sup> “*State of Tamil Nadu v. K. Balu* ( AIR ONLINE 2018 SC 420)”

<sup>13</sup> “Soham Chakraborty and Shamayita Pal., Freedom of Trade, Business and Profession: In-Depth Analysis, Lex Sight (Aug. 1, 2024, 6:45 PM), [https://lexinsight.wordpress.com/2019/10/30/freedom-of-trade-business-and-profession-in-depth-analysis/#\\_ftn4](https://lexinsight.wordpress.com/2019/10/30/freedom-of-trade-business-and-profession-in-depth-analysis/#_ftn4)”

## JUDICIAL INTERPRETATIONS THROUGH CASE LAWS

In “*Excel Wear vs. Union of India*<sup>14</sup>” – “The Court emphasized that while there may be greater emphasis on nationalisation, private ownership of industries is recognised. Private enterprise forms a large portion of Indian economic structure. Socialism cannot go to the extent of ignoring the interest of all such persons. It also held that nobody has got a right to carry on the business if he cannot pay even minimum wages to the laborers. He must then shut down his business. Right to business include right to shut down the business.”

“*T.M.A. Pai Foundation v. State of Karnataka*<sup>15</sup>”- “The court held that the establishment and running of an educational institution where a large number of persons are employed as teachers and administrative staff and an activity is carried on which results in the imparting of knowledge to students, must necessarily be regarded as an occupation even if these is not for the purpose of profit generation.”

“*State of Gujarat v. Mirzapur Moti Kureshi Kassab*”<sup>16</sup>– “In this case the petitioner had challenged the restriction imposed on the slaughtering of cow as against the freedom provided under Article 19(1) (g). The court, in this case held that such restriction must also satisfy the test that a lesser alternative would be inadequate, and it must be in the interest of the general public.”

“*Kailash Nath v. State of U.P.*”<sup>17</sup> “In this case it was held that the fundamental right of citizens to practice any profession or carry on trade or business is not wholly free from the taxing power of the state. No citizen has the right to carry on his trade without paying taxes lawfully levied by the government.”

“*Sodan Singh v NDMC*”<sup>18</sup> The Court held that the right to carry on a trade or business mentioned in Article 19(1)(g) of the Constitution, on street pavements if properly regulated, cannot be denied on the ground that the streets are meant exclusively for passing or re-passing and for no other use. Allowing the right to trade without appropriate control is likely to lead to

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<sup>14</sup> “Excel Wear vs. Union of India(AIR 1979 SC 25)”

<sup>15</sup> “T.M.A. Pai Foundation v. State of Karnataka(AIR 1994 SC 2372)”

<sup>16</sup> “State of Gujarat v. Mirzapur Moti Kureshi Kassab(AIR 1998 GUJARAT 220)”

<sup>17</sup> “Kailash Nath v. State of U.P.( AIR 1957 SC 790)”

<sup>18</sup> “Sodan Singh v NDMC (AIR 1989 SCC 155)”

unhealthy competition and quarrels between traders and traveling public and sometimes amongst the traders themselves resulting in chaos.”

**“Indian Hotel and Restaurant Association v. State of Maharashtra<sup>19</sup>:** Dance performances in bars and restaurants are protected under Article 19(1)(a) as a form of expression, though the state can impose reasonable restrictions to prevent obscenity and maintain public order.”

**“State of Bombay v. R.M.D. Chamarbaugwalla<sup>20</sup>:** The court ruled that illegal or immoral activities, even if profitable, are not protected under Article 19(1)(g) as a form of trade or business.”

### **RELATION OF ARTICLE 301 TO ARTICLE 19(1)(g)**

To effectively understand the constitutional provisions concerning the freedom of trade, profession, and business in India, it's crucial to explore the connection between Article 19(1)(g) and Article 301.

**"301. Freedom of trade, commerce, and intercourse<sup>21</sup>-** *Subject to the other provisions of this Part, trade , commerce, and intercourse throughout the territory of India shall be free.*”

The clarity of Article 301 can be understood through core terms it employs: 'Trade' is understood as the act of buying or selling goods, whereas 'commerce' is a broader term encompassing all modes of transport including land, air, or water. 'Intercourse' refers to the physical movement of goods from one location to another.

Consequently, Article 302 empowers the Parliament to enforce restrictions in the public's interest, ensuring these do not overtly hinder the freedoms provided under Article 19(1)(g), a fundamental right exclusively available to Indian citizens. Article 301, in contrast, is positioned as a supplementary provision to Article 19(1)(g) and is distinctive in its wider applicability which includes non-citizens and corporations, thereby broadening its scope beyond the limitations set for citizens under Article 19(1)(g).<sup>22</sup>

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<sup>19</sup> “Indian Hotel and Restaurant Association v. State of Maharashtra (AIR 2019 SC 24)”

<sup>20</sup>“ State of Bombay v. R.M.D. Chamarbaugwalla (AIR 1957 SC 699)”

<sup>21</sup>“ India Const. art. 301.”

<sup>22</sup>“ Soham Chakraborty and Shamayita Pal., *Freedom of Trade, Business and Profession: In-Depth Analysis*, Lex Sight (Aug. 1, 2024, 6:45 PM), [https://lexinsight.wordpress.com/2019/10/30/freedom-of-trade-business-and-profession-in-depth-analysis/#\\_ftn4](https://lexinsight.wordpress.com/2019/10/30/freedom-of-trade-business-and-profession-in-depth-analysis/#_ftn4)”

The notable distinctions between Article 19(1)(g) and Article 301 include:

1. Article 19(1)(g) provides a fundamental right, directly enforceable by the Supreme Court, unlike Article 301, a constitutional right;
2. Emergency conditions suspend Article 19(1)(g) but leave Article 301 intact, allowing courts to assess commerce restrictions under Article 301;
3. Article 301's scope of trade and commerce freedom is broader than the individual trade freedom under Article 19(1)(g), with the former accessible by non-citizens and corporations as well;
4. While restrictions under Article 19(1)(g) must be reasonable, those under Article 301 are assessed differently, with the state laws under scrutiny according to Article 301's stipulations;
5. Article 301's invocation is specific to instances hindering an entity's ability to transport goods across or within states, contrasting with Article 19(1)(g) which applies to broader business operations regardless of goods movement.

## **IMPACT OF RECENT ECONOMIC REFORMS ON ARTICLE 19(1)(g)**

### **GST AND ARTICLE 19(1)(g)**

The aim of the new GST regime, which went into effect at the beginning of 2017 . It combined several federal and state taxes into one cohesive tax system.<sup>23</sup>Its objective was to bring the nation's markets together in order to promote economic growth and ease corporate transactions.

**Actions Taken to Stop Profiteering** - In an effort to stop companies from making undue profits, Section 171 of the CGST Act, 2017, as well as other pertinent laws, were created to guarantee that consumers would benefit from lower tax rates.<sup>24</sup> Many claimed that this article was violative of their fundamental right under Article 19(1)(g) as it restricted their ability to

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<sup>23</sup> “Himangini Mishra & Arunima Phadke, *Evaluating the constitutionality of a deficient transition: the antiprofitteering law in India*, Vol. 10, NLIU LAW REVIEW, 221, 225-228 [2019]”

<sup>24</sup> “Aditya Aryan, *Critical Analysis on the Fundamental Rights Availed by the Corporation/Companies*, Vol. 3, IJLMH, 769, 780-782 [2020]”

determine the prices . The Courts have emphasized that they must be administered carefully to prevent arbitrary rulings and guarantee compliance with the law.

**Tax Compliance Burdens** - Businesses must comply with a strict regime which is enforced by the GST system, which includes timely return files and thorough record-keeping. In the small and medium-sized organizations (SMEs), these policies have significantly raised the operational burden on firms. Even if such tight compliance requirements are justified as reasonable constraints under Article 19(6), they may nonetheless hinder the freedom to do business.

## **THE LIBERALISATION, PRIVATISATION, AND GLOBALISATION REFORMS (LPG) AND ARTICLE 19(1)(G)**

### **Liberalization**

In order to increase the engagement of private companies in the economy, liberalization entails lowering government regulations and prohibitions. As a result, entry barriers have been lowered in many industries, expanding the range of trades and jobs available to locals. The Supreme Court holds that restrictions under Article 19(1)(g) must be reasonable and advantageous to the general public.<sup>25</sup> For example, by reducing entry barriers in the motor transport industry, liberalization enhanced people's ability to engage in trade and occupation. This led to a more open system for private operators to receive permits under the Motor Vehicles Act of 1988.

### **Privatization**

Transferring ownership of businesses from the public to the private sectors with the goal of increasing efficiency and competitiveness among the nation is known as privatization. The LPG reforms led to the privatization of a number of sectors, including telecommunications and insurance.<sup>26</sup> The courts have allowed these modifications as long as they are in line with the reasonable constraints outlined in Article 19(6). The Privatized public sector companies

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<sup>25</sup>“Mrs. Priyam Sharma, *Legal Implications of Liberalisation and Globalisation of Insurance Sector*, Vol. 5, IJFMR, 1, 2-7 [2023]”

<sup>26</sup> “Aditya Aryan, *Critical Analysis on the Fundamental Rights Available by the Corporation/Companies*, Vol. 3, IJLMH, 769, 780-782 [2020]”



provide citizens with more choices in a more diverse market, but the state still has the final right to regulate them to guarantee that Article 19(6) is followed.

## Globalisation

Integration of the Indian economy with the international economy is known as "globalization," Foreign corporations' entry into different Indian industries has made them more competitive and efficient. The Supreme Court held in rulings like *Delhi Science Forum v. Union of India*<sup>27</sup> that government policies which allow foreign and private participation in telecommunications are under the jurisdiction of economic policy decisions and are not subject to judicial review unless they are in violation with any particular constitutional provisions. As a result, the Court maintained these regulations. In the insurance industry, domestic and foreign enterprises now coexist as a result of the LPG changes. Article 19(1)(g) protects citizens, but does not protect non-citizens; as a result, each category is subject to distinct regulations.<sup>28</sup>

## THE MAKE IN INDIA INITIATIVE AND ARTICLE 19(1)(G)

**Creation of Jobs** - Millions of jobs in a variety of industries have been created under the "Made in India" initiative, which makes Article 19(1)(g) possible. People can now choose and follow their career goals more freely because to the expansion of work possibilities and available choices.

**Encouragement of Entrepreneurship** - Through the attraction of both foreign and domestic investments, the program promotes an atmosphere that is favorable to entrepreneurship. By encouraging people to launch and run their own businesses and so improving the freedom to engage in any trade or vocation, this immediately complies with Article 19(1)(g)<sup>29</sup>.

**A Higher GDP Growth Rate** - The GDP of the country is greatly boosted by the growth of the manufacturing sector under Made in India. Firms with more strength can thrive on a more stable basis, bolstering the economic liberty envisioned in Article 19(1)(g).

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<sup>27</sup> "Himangini Mishra & Arunima Phadke, *Evaluating the constitutionality of a deficient transition: the antiprofitteering law in India*, Vol. 10, NLIU LAW REVIEW, 221, 225-228 [2019]"

<sup>28</sup> "Manoj Mate, *Globalization, Rights, and Judicial Review in the Supreme Court of India*, 25 Wash. Int'l L.J. 643 (2016)."

<sup>29</sup> "Byjus, Make In India - Initiatives, Aims, Advantages & Challenges [UPSC Notes GS-III], (Aug. 4, 2024, 8:56 PM), <https://byjus.com/free-ias-prep/make-in-india/>"

**Minimizing Dependency on Imports** - Increasing homegrown output improves self-sufficiency and lessens reliance on imports. This independence fosters a more favorable business environment and permits people to freely pursue a variety of crafts and careers.

**Enhancement of Workforce** - Initiatives for skill development that give the Indian workers information and skills particular to their industry are given priority by the Made in India campaign. People can improve their abilities more successfully and competitively under the right guaranteed by Article 19(1)(g).

**Streamlining the Regulatory Framework** - According to Article 19(1)(g), simplified regulation guarantees that people can carry out their trades and activities without needless barriers. Made in India simplifies rules and regulations even for the laymen which facilitates effective establishment and operation of businesses.

**Global Competitiveness** - Indian manufacturing through improved product quality and cutting-edge technologies are competing internationally nowadays . This competitiveness creates more markets and business prospects, which facilitates the exercise of the right under Article 19(1)(g).

## **CONCLUSION**

Article 19(1)(g) aims to encompass all aspects of any economic activity broadly, and its limitations seek to ensure a "level playing field." This clause also promotes economic equality and supports the true essence of democracy. There are three significant areas of ambiguity within Article 19(1)(g) that both the State and judiciary must clarify:

- The interpretation of "in the interest of the general public"
- Implementing effective restrictions rather than merely setting normative standards.
- Simplifying complex regulatory processes.

Addressing these issues will enhance the effectiveness of Article 19(1)(g) and fulfill the vision

of the Constitution's framers regarding this matter.<sup>30</sup>

In addition, legal structures must to be established to suit evolving economic conditions, consistently striving for a balance between economic reforms an preserving essential liberties. The implementation of various policies aim to improve India's economic structure by augmenting openness and competitiveness. We need to support ongoing communication between the corporate sector, civil society, and policymakers. In order to create an in which environment where constitutional rights and economic reforms can cohabit peacefully.

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<sup>30</sup> “Soham Chakraborty and Shamayita Pal., Freedom of Trade, Business and Profession: In-Depth Analysis, Lex Sight (Aug. 1, 2024, 6:45 PM), [https://lexinsight.wordpress.com/2019/10/30/freedom-of-trade-business-and-profession-in-depth-analysis/#\\_ftn4](https://lexinsight.wordpress.com/2019/10/30/freedom-of-trade-business-and-profession-in-depth-analysis/#_ftn4)”