



Constitutional dynamics of economic unity: Re-evaluating the framework of trade, commerce, and intercourse in the 21st century

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Abstract

The freedom of trade, commerce, and intercourse guaranteed under Part XIII of the Constitution of India (Articles 301-307) forms the backbone of India's economic unity. Rather than granting an unfettered right, the Constitution adopts a carefully balanced framework that seeks to harmonise the ideal of a single national market with the practical regulatory and fiscal needs of a federal polity. This paper revisits the evolution of these constitutional provisions, tracing their roots from the colonial Government of India Acts, through the transformative economic reforms of 1991, and into the contemporary phase marked by "GST 2.0" (September 2025) and the shift towards trust-based governance under the Jan Vishwas (Amendment of Provisions) Bill, 2025.

Using a doctrinal approach, the study examines how judicial interpretation has evolved over time from the formulation of the "direct and immediate effect" test in *Atiabari Tea Co. v. State of Assam* to the eventual rejection of the compensatory tax doctrine in *Jindal Stainless Ltd. v. State of Haryana*. These decisions reveal a gradual recalibration of constitutional thought, reflecting changing economic realities and policy priorities. The paper also engages with emerging challenges in the digital economy, particularly the role of the Open Network for Digital Commerce (ONDC) and recent legislative efforts to decriminalise commercial offences, both of which are reshaping contemporary understandings of economic freedom under the Constitution.

The paper concludes that although many traditional structural barriers to internal trade have been dismantled, the future of India's economic integration depends on successfully aligning technology-driven regulatory compliance with the constitutional principle of cooperative federalism.

Keywords: Article 301, constitutional law, GST 2.0, economic integration, Jan Vishwas Bill 2025, ONDC, trade and commerce, judicial interpretation

Introduction

The strength of a nation's economic development is closely tied to how freely its commercial networks function. In the Indian context, marked by vast geographical distances, cultural diversity, and uneven regional development the constitutional commitment to free trade is not merely an economic choice but a vital instrument of national integration. The framers of the Indian Constitution were acutely aware that internal trade barriers under colonial rule had fragmented markets and constrained economic growth. In response, they sought to construct a constitutional framework that would promote economic mobility and cohesion across the Union.

This vision finds expression in Part XIII of the Constitution (Articles 301-307), which collectively guarantee the freedom of trade, commerce, and intercourse throughout the territory of India. The importance of these provisions lies in the basic economic reality that no State or region can function in isolation. An integrated national market depends on the unhindered movement of goods, services, and people across State boundaries, free from protectionist or discriminatory impediments. Article 301, which lies at the heart of this scheme, establishes a general guarantee against arbitrary internal restrictions on trade. At the same time, this freedom is not absolute. The Constitution consciously permits reasonable regulatory and fiscal interventions by Parliament and State Legislatures in the public interest, including measures addressing scarcity, public welfare, and economic regulation.

As India moves into a new phase of economic governance, the constitutional landscape of trade and commerce is being

reshaped by significant policy and institutional developments. Recent reforms such as the introduction of GST 2.0 in 2025, which aims to further simplify indirect taxation, and the Jan Vishwas (Amendment of Provisions) Bill, 2025, which seeks to reduce criminal penalties for minor regulatory non-compliance reflect a broader shift toward efficiency-oriented and trust-based economic governance. While these measures do not alter the text of Part XIII, they influence how the constitutional promise of free trade is operationalised in practice.

Simultaneously, the expansion of digital public infrastructure through initiatives like the Open Network for Digital Commerce (ONDC) is transforming the modalities of trade by widening market access and reducing entry barriers, particularly for small enterprises. These developments raise new constitutional questions about how traditional notions of trade and commerce apply in digital spaces. Against this backdrop, this study examines the historical evolution of Part XIII, the judiciary's role in shaping its interpretation, and the emerging challenges posed by technological change and regulatory reform. This paper specifically seeks to answer how digital-era reforms like ONDC do and GST 2.0 challenges or reinforce the traditional 'controlled freedom' model of Article 301.

Substantive Analysis: The Constitutional Architecture of Free Trade

Theoretical Foundations and the Australian Influence

The design of Part XIII of the Indian Constitution was not conceived in isolation. It was shaped by comparative constitutional experiences, most notably Section 92 of the

Australian Constitution, which declares that trade, commerce, and intercourse among the States shall be “absolutely free.” However, the Indian framers were cautious in borrowing this formulation wholesale. The Australian experience had demonstrated that the absolutist language of Section 92 generated prolonged and complex litigation, often paralysing legislative regulation. Learning from this, the Indian Constitution deliberately avoided the term “absolutely” and instead adopted a more flexible formulation.

Accordingly, Article 301 is framed as a general declaration of freedom that is expressly made subject to the other provisions of Part XIII. This structure reflects a conscious constitutional choice. Its objectives were twofold: first, to establish India as a single, integrated economic space; and second, to retain sufficient regulatory authority with the

Union to respond to economic crises and pursue distributive justice. The result is a model of “controlled freedom”, where the movement of goods and economic activity is protected, but the State retains the power to regulate in the public interest, including for reasons of public health, safety, and broader social welfare.

Semantic Delineation: Trade, Commerce, and Intercourse

The scope of Article 301 can only be understood by appreciating the distinct meanings of the three expressions it employs. Judicial interpretation has consistently clarified that these terms are not interchangeable, but together describe different dimensions of economic and social mobility.

Term	Scope and Definition
Trade	A systematic and organised activity involving the buying and selling of goods or services, typically with a profit motive.
Commerce	The transmission or movement of goods, persons, or services across territory by land, air, or water. The presence of a profit motive is not essential.
Intercourse	The widest expression, encompassing both commercial and non-commercial movement, including travel for social, cultural, or personal purposes.

The inclusion of “intercourse” alongside trade and commerce ensures that Article 301 protects the entire stream of movement across State boundaries. In contemporary discourse, this has acquired renewed relevance, as digital platforms and data flows increasingly form the backbone of economic interaction. While courts have not yet expressly ruled on digital movement as “intercourse,” constitutional theory increasingly recognises this as an emerging dimension of economic liberty.

The Doctrine of Res Extra Commercium

A significant limitation on Article 301 is that it protects only lawful trade and commerce. The Supreme Court has evolved the doctrine of *res extra commercium* to exclude activities that are inherently harmful to society from constitutional protection. In *State of Bombay v. R.M.D. Chamarbaugwala* (1957), the Court held that gambling and prize competitions of an aleatory nature do not constitute trade or commerce and therefore fall outside the protection of Article 301.

Over time, this principle has been extended to exclude other socially pernicious activities, such as:

1. Human trafficking and immoral exploitation,
2. Trade in prohibited narcotic substances,
3. Transactions involving organised criminal activity or terrorism, and
4. Exploitative forms of moneylending, particularly where such practices undermine social welfare and conflict with the Directive Principles of State Policy.

By carving out these exceptions, the judiciary has ensured that the constitutional guarantee of free trade operates as a shield for legitimate economic activity, not as a sanctuary for social harm.

Restrictions on Freedom: Articles 302 to 304

The freedom guaranteed under Article 301 is carefully qualified by the regulatory powers conferred under Articles 302 to 304. Article 302 empowers Parliament to impose restrictions on trade, commerce, or intercourse in the public interest, a power frequently exercised in the regulation and distribution of essential commodities. Article 303 prohibits

both Parliament and the States from enacting discriminatory measures that favour one State over another, subject to a narrow exception allowing Parliament to respond to situations of scarcity.

Article 304 occupies a central place in maintaining federal balance. Article 304(a) permits States to impose taxes on imported goods provided such taxation is non-discriminatory. Article 304(b) authorises States to impose reasonable restrictions in the public interest, but only with the prior sanction of the President. This procedural safeguard functions as a constitutional check, preventing States from erecting protectionist barriers that could fragment the national market.

Judicial Evolution: From Atiabari to Jindal Stainless

Judicial interpretation of Part XIII has evolved significantly over time. In *Atiabari Tea Co. Ltd. v. State of Assam* (1961), the Supreme Court propounded the “direct and immediate effect” test, holding that laws which directly impede the movement of goods violate Article 301. Concerned about the implications of this approach for State taxation powers, the Court in *Automobile Transport Ltd. v. State of Rajasthan* (1962) introduced the compensatory tax doctrine, treating certain taxes as facilitatory rather than restrictive.

This doctrine was ultimately rejected in *Jindal Stainless Ltd. v. State of Haryana* (2016), where a nine-judge Bench clarified that the concept of compensatory tax lacked a sound juristic foundation. The Court affirmed that the freedom under Article 301 does not imply immunity from taxation. The contemporary position is that non-discriminatory taxes imposed in accordance with Article 304(a) do not violate the constitutional guarantee of free trade.

**The Contemporary Landscape of 2025-2026
The Year 2025 as a Turning Point in Trade and Commerce**

The year 2025 has witnessed some of the most consequential developments in India’s trade and commerce framework since the economic liberalization of 1991. These developments can be analytically grouped into three

interrelated pillars: Fiscal Rationalization (GST 2.0), Legal Decriminalization (Jan Vishwas Bill), and Digital Democratization (ONDC). Together, they reflect a shift from merely preventing trade barriers to actively facilitating economic movement across the country.

Pillar I: The GST 2.0 Revolution

New Rate Slab	Representative Goods and Impact	Contextual Significance
0% (Exempt)	Life-saving drugs, basic food items, pencils, health insurance premiums	Intended to reduce cost-of-living pressures and improve access to essential goods
5% (Merit)	Soaps, butter, ghee, agricultural machinery	Designed to stimulate rural demand and lower agricultural input costs
18% (Standard)	Consumer durables, cement, commercial vehicles, hospitality services	Consolidation of “aspirational” goods to encourage consumption and manufacturing
40% (Sin/Luxury)	Tobacco products, large SUVs, sugary beverages, private aircraft	Revenue generation and discouragement of socially undesirable consumption

One of the major structural gains of this rationalization has been the correction of inverted duty structures, particularly in sectors such as textiles and fertilizers. According to official projections, these reforms are expected to contribute positively to long-term GDP growth by easing compliance and improving supply-chain efficiency.

Pillar II: Trust-Based Governance and Jan Vishwas 2025

Act Amended	Earlier Regime	Revised Approach (2025)
Tea Act, 1953	Criminal liability for export and sale violations	Warning for first offence; monetary penalties for repeat violations
Central Silk Board Act, 1948	Imprisonment for procedural non-compliance	Civil penalties with graded escalation
Motor Vehicles Act, 1988	Criminal fines for minor documentation errors	Civil penalties with periodic indexation
Drugs and Cosmetics Act, 1940	Imprisonment for technical breaches	Monetary penalties without custodial punishment

This reform strengthens the functional freedom of trade under Article 301 by reducing the climate of regulatory fear that often deters entrepreneurship. By shifting from punitive enforcement to compliance-oriented regulation, the State addresses non-physical barriers that operate as invisible constraints on economic liberty.

Pillar III: Digital Democratization through ONDC

The Open Network for Digital Commerce (ONDC) represents a critical expansion of Digital Public Infrastructure in India. Unlike platform-centric e-commerce models, ONDC operates as an open and interoperable network, enabling sellers and buyers to interact across multiple applications.

- **Interoperability:** Disaggregation of logistics, payments, and discovery services allows small traders to compete alongside large platforms.
- **Scale:** By late 2025, the network had facilitated hundreds of millions of transactions.
- **Inclusivity:** Significant participation from small retailers, women-led enterprises, and rural sellers through targeted onboarding initiatives.

ONDC extends the constitutional promise of free trade beyond physical markets into digital spaces, reshaping how economic mobility is understood in the modern economy.

Synthesis of Constitutional and Contemporary Trends

The Philosophical Shift: From Restriction to Facilitation

A holistic analysis of the 2025 reforms reveals a clear philosophical shift in India’s approach to economic

In September 2025, India transitioned toward a redesigned indirect tax framework commonly referred to as GST 2.0, aimed at simplifying the earlier multi-tier tax structure and reducing compliance-related disputes. The reform sought to address long-standing concerns surrounding classification disputes, rate arbitrage, and litigation arising from the earlier four-slab regime.

The Jan Vishwas (Amendment of Provisions) Bill, 2025 marks a fundamental recalibration of the regulatory relationship between the State and economic actors. By amending several provisions across multiple Central enactments, the Bill replaces criminal sanctions for minor and technical violations with civil penalties, warnings, and graded monetary fines.

freedom. Historically, Part XIII functioned defensively—restraining States from erecting fiscal or territorial barriers. The contemporary approach, however, is facilitative. The State now recognizes that complex taxation, criminalized compliance, and fragmented digital markets constitute the modern equivalents of internal trade barriers. By simplifying tax structures and decriminalizing procedural lapses, the State advances the underlying spirit of Article 301 more effectively than through judicial invalidation alone.

The Rise of Digital Trade and the Moratorium Debate

The exponential growth of digital trade has placed renewed interpretative pressure on the concept of “intercourse” under Article 301. India’s long-standing opposition to the WTO Moratorium on Customs Duties on Electronic Transmissions reflects concerns over revenue erosion and policy space.

Recent budgetary discussions proposing the creation of a dedicated tariff category for digital goods signal an emerging attempt to distinguish between digital services and digitally transmitted goods. While duty rates may initially remain nil, such measures lay the groundwork for future regulatory differentiation, indicating a gradual constitutional re-imagining of economic movement in the digital era.

Judicial Trends: The “Transfer-on-Incorporation” Doctrine

Judicial interpretation continues to stabilize this evolving landscape. Recent rulings reaffirming the transfer-on-incorporation principle in works contracts underscore the

judiciary's commitment to preserving State taxation powers under Article 304(a). By clarifying when property in goods transfers during composite contracts, courts ensure fiscal authority keeps pace with commercial complexity.

The E-Way Bill and the "Trusted Dealer" Framework

Although physical check-posts were dismantled in 2017, digital compliance mechanisms such as the e-way bill have continued to generate friction. Policy discussions reflected in the Economic Survey 2026 suggest a reorientation of this system from enforcement toward facilitation. The proposed Trusted Dealer framework, relying on compliance history, electronic seals, and real-time tracking, seeks to minimize interruptions in goods movement. This represents a technologically enabled realization of the freedom of movement guaranteed under Article 301.

Conclusion and Recommendations

The constitutional framework governing trade and commerce in India has evolved from a primarily defensive mechanism designed to restrain State-level protectionism into a proactive, technology-enabled system that actively promotes national economic integration. While the foundational architecture of Articles 301-307 continues to provide a stable constitutional anchor, its practical operation has been significantly strengthened by the fiscal and regulatory reforms undertaken during 2025-2026. The rationalisation of the indirect tax regime under "GST 2.0" has moved the country closer to the ideal of "One Nation, One Tax" by simplifying rate structures, reducing classification disputes, and correcting inverted duty anomalies that had long constrained manufacturing and supply chains. In parallel, the Jan Vishwas (Amendment of Provisions) Bill, 2025 has fostered a trust-based regulatory culture by recognising that economic freedom under Article 301 cannot be meaningfully realised when minor procedural lapses carry the threat of criminal sanction.

At the same time, India's future trade landscape presents novel challenges that extend beyond traditional physical markets. The rapid expansion of digital commerce, exemplified by platforms such as the Open Network for Digital Commerce (ONDC), and the growing cross-border movement of intangible digital goods necessitate a rethinking of regulatory frameworks to ensure fairness, interoperability, and inclusion. As the country advances toward its aspiration of becoming a ten-trillion-dollar economy, sustained attention must be directed toward harmonising digital standards by safeguarding open interoperability systems as digital public goods, preserving cooperative federalism through continuous engagement within institutions such as the GST Council, and shifting decisively toward risk-based enforcement models that minimise logistical friction through initiatives like the Trusted Dealer framework. By aligning long-standing constitutional principles with contemporary technological and governance innovations, India is ensuring that the freedom of trade, commerce, and intercourse remains not merely a textual guarantee, but a lived economic reality for its 1.4 billion citizens.

To implement the Trusted Dealer framework mentioned in the Economic Survey 2026, the Ministry of Finance, in coordination with the GST Council, should lead the legislative drafting of a "Verified Mover" status. This institutional action would replace routine e-way bill

inspections with automated, risk-based clearances for compliant entities.

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