

Doctrine of Territorial Nexus

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ABSTRACT: *Federalism is a very complicated mechanism, since the distribution of powers between the union and the centre is the very reason for which a federal state is created. The constitution separates their power such that they can have their independence over the executive and legislative authority. Let us get down to the fundamentals of the Territorial Doctrine before going to the legality of the Doctrine. Territorial, the basic definition of territorial indicates that a territory, locality or zone is involved. Nexus, on the other hand, implies a relation or association between objects, people, or events. The Territorial Nexus is enunciated in Article 245 of the Indian Constitution and is commonly viewed in separate Supreme Court proceedings. We will address the history of the doctrine, its influential traits, seminal decisions, and critical critique of the doctrine in this paper.*

KEYWORDS: *Constitution of India; Doctrine of Territorial Nexus.*

INTRODUCTION

With the Government of India Act, 1935, the idea of extra Territorial application of law emerged in India. The British Parliament established this Act with the intention of giving the colonies of British India a significant measure of autonomy. The Act of 1935, for the time being vested in His Majesty the Sovereign, Emperor of India, extended to the territories of India. The idea was later debated in the Constitution of India after independence[1].

In the Indian Constitution, the federalism element creates a Dual Polity between the Center and the Province. The central theory of the union is that, not by any legislation enacted by the Centre, but by the Constitution itself, the legislative, executive and financial power is split between the Centre and the province. There are two ways in which legislative powers are divided, which are given by the constitution[1].

Under Article 245(2) of the Indian constitution, if any Legislation is made by the parliament on the extra Territorial activities, no questions can be asked about its legitimacy. The legitimacy of the law should also not be doubted. In this scenario, a court is obliged to uphold the laws established with respect to extra-territorial practices. It is not necessary to invalidate this law[2].

In the case of A.H. Wadia vs Commissioner of Income-Tax, the territorial case was enunciated. It was held that an issue of extraterritoriality of enactment can never be posed against a supreme statutory body on the basis of challenging its legitimacy. Legislation may breach the laws of international law, may not be recognised by foreign courts, or may have logistical problems applying them, but these are policy concerns that do not affect the domestic courts[2].

One such exception is the Territorial Nexus, which requires the state to establish rules for extraterritorial activities if it indicates that a Nexus occurs between the object and the state. Although the nexus between the object and the state must be present in order to bring about the legislation enacted by the states for extra-territorial purposes[3].

It is well known that the Parliament is empowered, within the jurisdiction of India and also with regard to extra-Territorial aspects or causes that have an effect or a Nexus with India, to enact laws relating to aspects or causes that occur, emerge or exist, or can be required to do so. Bombay, a business registered in England, was a partner in a corporation in India in *Wallace v. Income-tax Commissioner*. The Indian Income-Tax Authorities sought to tax the company's whole income. The Privy Council introduced the Geographical Nexus Doctrine and kept the levy tax correct[3].

The Geographical Nexus Doctrine has been extended to the States as well. The courts have consistently claimed in separate cases relating to taxation laws that the selling or transaction does not need to take place within the geographical boundaries of the Jurisdiction. It means that the item to which the legislation refers must not be geographically situated within the state's territorial borders, but must have an appropriate territorial relation with the state[4].

A state may levy a tax on an individual, land, item or transaction not only if it is within its territorial borders, but also if it has an appropriate and real territorial relationship with it. If there is a relation is a matter of fact which can be decided accordingly by the courts of each case. The Territorial Nexus Theory controls India's taxation of non-residents[4].

After the sales tax was levied in the Provinces under the powers granted by the Government of India Act 1935, on the basis of the principle of the Territorial Nexus, it became the fashion for several Provinces to levy sales tax not entirely concluded within the jurisdiction of the Provinces[5].

Thus, in the case of a sale where the goods are situated in one province, where the owner is located in another province, where the customer is located in the third province, the deal is signed in the fourth province, the premium is charged in the fifth province and the goods are shipped in the sixth province[5].

In order to avoid this evil from numerous taxations, when the Constitution was adopted, it was established that only the State where the goods were distributed for consumption should be permitted to charge a sales tax. This has been done by point (a) of Article 286(1) and its description thereunder[5].

DISCUSSION

The word federalism suggests the separation of authority between the middle and the territory. It is a very complicated system, since the distribution of powers between the union and the center is the very reason for which a federal state is created. The constitution separates their power such that they can have their independence over the executive and legislative authority. Since our constitution has a territorial form, it defines concurrent union-state politics. The sovereign powers which are to be used in a manner regulated by the Constitution are bestowed upon them. Our constitution is that the land's supreme law provides the underlying sense of federalism, which is the separation of powers[6].

A nexus between the entity and the state must be seen in order to give effect to the laws made by a state for extraterritorial purposes. The state assembly has the competence within its local

authority to make laws. One such exception is the territorial nexus, which requires the state to establish rules for extraterritorial activities as it proves that there is a connection between the entity and the state[6].

Parliament is granted the right to make laws that have a legal relation with India within its territorial territory and also for extra-territorial purposes. Legislation or legislation on this subject comes beyond the control of the parliament as it has the authority to do so. The fairness of these rules can't be doubted. If the parliament passes any legislation that does not create any link with India, it would turn out to be ultra vires and will be known as the laws created for a foreign country[7].

It can be inferred that it cannot be found to be null or illegal if any legislation enacted by the parliament has a real link with India. If such legislation passed by parliament establishes no ultra vires will be a link with India[7].

As mentioned earlier in this article, Article 245 of the Indian Constitution points out the degree to which legislative powers are vested on parliament and the state legislature in order to pass legislation in relation to the territory. Parliament has the right to establish legislation for which it is accountable. Parliament's authority applies to the whole or some part of India. They may also be passed for extraterritorial activities by the parliament provided there is proper relation of the legislation with India. Such regulations should not be challenged or considered invalidated. Both rules, however, shall conform with the requirements of the constitution of India[8].

In parliament, the powers conferred are not absolute. The laws developed by the parliament for extraterritorial practices are supposed to function beyond the geographical borders of India. The state legislature has no authority to create rules for extraterritorial practices. This prohibition by the state legislature, though, is subject to one exception and it is the geographical nexus. If it is known that the entity is adequately connected, the laws passed by the state legislature would have an effect beyond the state's geographical borders[8].

It can be concluded that the constitutional powers between the centre and the state have been split into two parts. Federalism is a very complicated mechanism, since the distribution of powers between the union and the centre is the very reason for which a federal state is created. The constitution separates their power such that they can have their independence over the executive and legislative authority[9].

Since our constitution has a territorial form, it defines concurrent union-state politics. Parliament has the right to make laws for any or more of India, as well as the authority to make laws for additional territorial operations. However, a state legislature is not adequately qualified to make laws for extraterritorial operations[10].

However, where there is a sufficient relation between the object and the territory, there is one exception that requires the state legislature to make legislation for extra territorial purposes. This indicates that the object is positioned outside the state's territorial borders and has a territorial relation with the state. The spectrum of the territorial nexus is broad and can be used

outside of India's territorial borders. The principle of territorial relation permits the influence of law beyond the territorial borders of a country[10].

CONCLUSION & IMPLICATION

Every written constitution should have effectiveness in this rapidly evolving environment and globalized age to deal with the issue of the extra-territorial operation of law relating to trade & services issues that exist outside the country. Article 51 of the Indian Constitution includes essential constructive policy statements for the promotion of international peace and security, the promotion of conformity with international law and the duty to cooperate with treaties. Therefore, in the making of laws relating to extra-territorial activities, a compromise is required between Article 51 and 245 of the Constitution of India.

Therefore, the Geographic Nexus Concept would not preclude a state statute of having extra-territorial jurisdiction. It merely specifies that if a State seeks to expand its rules beyond its borders, it must convince the Court that there is a proper nexus between the subject-matter involved and the law-making State.

While the statutory authority of a State is territorially limited to that State or part thereof, a State obtains jurisdiction on the grounds of the Territorial Nexus Doctrine over tax activities which have not taken place wholly within its territorial limits when it comes to the matter of taxing powers. Even if the territorial relation is partial, it is appropriate if it is actual and not illusory, and if the tax obligation is applicable to that relationship.

REFERENCES

- [1] E. A. Swyngedouw, "Territorial organization and the space/technology nexus," *Trans. - Inst. Br. Geogr.*, 1992, doi: 10.2307/622708.
- [2] L. Wacquant, T. Slater, and V. B. Pereira, "Territorial stigmatization in action," *Environ. Plan. A*, 2014, doi: 10.1068/a4606ge.
- [3] F. de Castro, B. Hogenboom, and M. Baud, *Environmental governance in Latin America*. 2016.
- [4] E. McCann and K. Ward, "Relationality/territoriality: Toward a conceptualization of cities in the world," *Geoforum*, 2010, doi: 10.1016/j.geoforum.2009.06.006.
- [5] P. Dicken and A. Malmberg, "Firms in territories: A relational perspective," in *Economy: Critical Essays in Human Geography*, 2017.
- [6] N. Dochartaigh, "Territorial Conflicts," in *International Encyclopedia of the Social & Behavioral Sciences: Second Edition*, 2015.
- [7] P. J. Taylor, "World cities and territorial states under conditions of contemporary globalization," 2000, doi: 10.1016/S0962-6298(99)00060-8.
- [8] V. Kolossov and J. Scott, "Selected conceptual issues in border studies," *BELGEO*, 2013, doi: 10.4000/belgeo.10532.
- [9] J. N. Beirão and A. Koltsova, "The Effects of Territorial Depth on the Liveliness of Streets," *Nexus Netw. J.*, 2015, doi: 10.1007/s00004-014-0233-5.
- [10] L. Wacquant, "Marginality, ethnicity and penalty in the neo-liberal city: an analytic cartography," *Ethn. Racial Stud.*, 2014, doi: 10.1080/01419870.2014.931991.