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Doctrine of Territorial Nexus in the Contemporary Legal Era

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ABSTRACT

Whenever we talk about federalism the most important factor that comes to our mind is the distribution of power. The principal objective of a federal state entails the division of powers and authority between the national government and the governments of the respective states.

The term territorial defines the locality and the nexus of the connection between states and objects. The doctrine of territorial nexus is addressed under art. 245 of the Constitution of India. Art. 245 (1) states that Parliament may make laws on all or a certain part of the territory of India and the State legislature may make laws of all or a certain part of the State. If there is any extra-territorial operation of the state law, it will be void. Legislation enacted by a state legislature does not apply outside the state unless there is an association between the state and the object. The court has no jurisdiction to question the legislature on the application of the rules regarding the additional use of jurisdiction. The issue of devolution of power in respect to the territory is dealt with in a list under Schedule 7 of the Constitution.

Parliament is empowered to enact laws within the Indian subcontinent as well as external territories with links within India. Under tax laws, the sale or purchase does not have to take place within the realm of the state. For the applicability of the doctrine, the object does not need to be located within the state area but must have a sufficient connection to the state.

Keywords: *Doctrine, Territorial Nexus, Contemporary law, Federalism.*

I. INTRODUCTION

The Constitution of India came into force on 26 January 1950 announcing the birth of a new Republic today worldwide. It is a symbol of the struggle and aspirations of the people of the country who were subjected to the oppression of colonial rule for more than two centuries. It

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took almost three years to complete the task of drafting an independent Indian constitution. The Constitution of India was adopted on November 26, 1949

The Constitution defines a special sacred document of law that provides the framework and main function of organs of state or state and sets out the principle governing the functioning of those organs. The constitution in terms of generally accepted law means the law that governs the formation of key organs of state and their relationship to each other and prescribes the principal function.

India's constitution is quasi-federal by nature. The Constitution has taken over a government structure with elements of unity. It establishes a unified policy, a two-state system that means one central government and a national government for each state. A key element of the provincial constitution is the devolution of power between union and state. The Constitution provides for a different type of unity government to meet the special needs of India. In matters of devolution, the authors follow the pattern of The Government of India Act, 1935. Thus, prominence was also given to the union in parliament over state legislatures or meetings on devolution.

Legislative powers fall under the system of power-sharing between the union and the state legislature as provided for in the list of unions, provinces and the same constitution, the fundamental legal rights cannot violate human rights and other provisions such as the Doctrine of Territorial Nexus governed by Articles 245-254.

Article 245- 'Extent of laws made by parliament and by the legislatures of states-

- A.** Subject to the provisions of this constitution, Parliament may make laws for the whole or any part of the territory of India, and the legislature of a state may make laws for the whole or any part of the state.
- B.** No law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation'³.

In terms of the provisions of this constitution, this statement means that the power enjoyed by parliament to make laws of all or part of the territory of India will be studied in accordance with certain constitutional principles. In other words, this power is incomplete. Other provisions such as devolution, fundamental rights and other constitutional provisions are interpreted by the courts.

Territorial nexus instruction can be requested under the following circumstances-

³ INDIAN CONST. art. 245, cl. 1,2.

- Whether a country has more jobs.
- If there is a national partnership between a matter of law and the legislature

It means that the object of the law does not have to be placed within the borders of the state, but must have adequate communication with the state.

As in the case of a state in which a state may levy a tax on a person, property, object, or activity not only when it is located within its borders, but also when it has adequate and genuine land contact with it.

The court has applied the doctrine of local connection or linking to income tax laws, sales tax law, and the law that imposes taxes on gambling.

II. DIVISION OF POWER

The Constitution of India establishes a federal framework for the Indian government, which declares it as a "Union of States". Part XI of the Indian constitution specifies the division of legal, administrative, and administrative powers between the Central Government and the states of India.

In the case of the Indian Federation, executives are mainly assigned to state agencies.

Unlike other federations in which both provincial and provincial governments establish their own governing bodies with their own constitutional mandates, even union rules are left to be regulated by state authorities to avoid duplication of administrative equipment.

Central and federal governments are tightly shut down throughout the provincial constitution, and no executive authority is removed.

The jurisdictional powers are subdivided into the Union List, the National List, and the Allocation List, respectively, the powers conferred on the Union government, those delegated to the governments of the State, and the powers divided among themselves.

The division of power is defined by the constitution and the power of beating is divided into three categories:

(A) Union List

The list of unions has 100 items (formerly 97) in which parliament has special legislative powers including defense, armed forces, arms and ammunition, atomic power, foreign affairs, war and peace, nationalism, railways, trains, shipping and navigation, airlines, telecommunications, telecommunications, telecommunications, wireless and telecommunications, finance, foreign trade, international trade, banking, insurance, industrial

control, mining and oil development, mineral and oil services, elections, government accounting, constitutional and order Supreme Court, High Courts, and Public Service Unions Commission, Income Tax, Customs and Export Services, Property Taxes, Organizational Tax, VAT on Property, Property Tax and Other Taxes last tax.

(B) State List

The Country List contains 61 items (66 previous items). The similarities are interesting but not essential to the things on the list: law enforcement and order, police, health, transportation, land policies, electricity to the government, property management, etc. The state legislature has the special power to make laws on these subjects. In some cases, parliament may make laws on matters mentioned in the State, but in doing so the Rajya Sabha (National Assembly) must pass a two-thirds majority decision that helps to legislate for the good of the country. Although the provinces have special powers to legislate in respect of matters listed in the country

(C) Concurrent List

The Related List contains 52 items (formerly 47). The similarities are interesting but not relevant to the list. The list will include: marriage and divorce, the transfer of agricultural assets, education, contracts, bankruptcy, trustees and trustees, social process, court contempt, food, drug, and drug abuse, economic and social planning, trade unions, labor welfare, welfare, electricity, newspapers, books and NS printers.

III. THEORY OF TERRITORIAL NEXUS

The Indian constitution provides for a doubling of the rule of law. A. About the field B. About the topic. With regard to the field Article 245 (1)⁴ provides that in accordance with the provisions of this constitution, parliament may enact legislation in whole or in part of the territory of India. According to Article 2 of Article 245, a law enacted by parliament shall not be deemed invalid because it has additional territory, which means that it comes into operation outside the territory of India.

The state legislature may make laws of all or part of the out-of-state function which means it operates outside the state. However, there is one exception to this general rule. State law for more local use will be legal if there is adequate communication between the object and the state.

In *Wallace v. Income tax Commissioner*⁵, Bombay, a company registered in England was a

⁴ *Id*

⁵ *Wallace Brothers and Co. Ltd. v. The Commissioner of Income Tax*, AIR 1948 SC 482

partner in an Indian company. The Indian tax authorities wanted to charge all the money the company made. The Council on Technology has implemented the concept of a national database and held tax rates as permissible. It is said that the acquisition of British India for the greater part of the annual revenue provided the company in that year with sufficient local connections to justify its management as a domestic Indian in all tax purposes for its annual salaries on any income you may receive. If there is sufficient cooperation between the taxpayer and the state that wants to tax him, the tax law will be enforced. But the fraud and credit required to be imposed must be accompanied by that connection. Whether there is enough communication is a matter of fact and will be decided by the courts in each case accordingly.

IV. TERRITORIAL NEXUS AND THE STATE LEGISLATURE

The State Legislature may make laws for all or part of the State. Now, this leaves you open to consider whether a particular law is within the competence of the State Legislature. There are a number of cases where the laws that the government is authorized to make must be made for that State.⁶ Therefore, the doctrine of the Territorial Nexus has also been applied to States. There are two conditions in this regard. Connection (nexus) must be real and not fake. The credit required to be deposited must be accompanied by that connection. More Local Performance

It is well established that Parliament is empowered to make laws regarding the factors or causes that occur, arising or existing, or perhaps are expected to do so, within the territory of India and in relation to non-environmental factors or causes that have an impact or nexus with India.

What is an acceptable Nexus and a self-answering question? In his book “Introduction to the Law of Double Taxation Convention”⁶ Professor Michael Lang states that “in international legal practice, there are no significant barriers to international tax administration. In creating a domestic personal tax law, a national legislature can even tax situations where, for example, there is only a “real link”. Only then will the person or the activity have no contact with the tax situation where the tax is not taxable ”

By giving Parliament the power to legislate for India, and as a result of the above-mentioned factors or causes, the structures of our Constitution intended to limit restrictions on how, and how, organs of State, including Parliament, could recognize external factors or causes, and exercise State powers (which is the power of the whole group) on those factors or causes.

⁶ MICHAEL LANG, INTRODUCTION TO THE LAW OF DOUBLE TAXATION CONVENTIONS, (Linde Lehrbuch 2013).

The Doctrine of Public Trust requires that all laws of Parliament relating to external factors or causes be made in order to protect India's social and security interests, and Article 51, Directive Principle of State Policy, although not enforceable by a court of law, Parliament may enact laws regarding external factors or causes, where those factors or causes have no contact with India.

V. DISTRIBUTION OF LEGISLATIVE POWERS

The crux of the provincial Constitution is the separation of powers and functions between the Union and the States. Usually, some powers are given to the Center, some powers are assigned to the States and some areas are rarely used for both.

The basic test used to determine which subjects should be assigned to one department or another is that the most important national activities should go to the Institute and those with a local interest should go to the States. This test is very common, but requires finesse; the ad hoc formula does not lead to any uniform approach to the distribution of power and functions between two governments.

India's constitution aims to create three functional spheres; a special area in which the Agency must operate; a special place for the State to operate, and a general or parallel area in which the Center and the State may operate simultaneously, depending on the size of the institution.

Section 246 (1)⁷ gives Parliament special powers in the legislature with regard to matters of "Union List". Therefore, in relation to this list, the United States does not have the right to enact any legislation on the issues raised in this list.

Section 246 (2)⁸ gives the same legal power to both the Institutions and the State in respect of any of the matters mentioned in the "Concurrent List". In this area, therefore, both levels of government can operate simultaneously.

Article 246 (3)⁹ gives special powers to State Legislatures to legislate for their States in respect of matters listed in the "National List". In this area, therefore, the institution cannot legislate and the matter falls under the jurisdiction of the State only.

Article 257 of the Indian Constitution deals with the control of the Union over countries. It has four sections.

⁷ INDIAN CONST. art. 246 cl. 1.

⁸ INDIAN CONST. art. 246 cl. 2.

⁹ INDIAN CONST. art. 246 cl. 3.

1. 'The State must exercise its administrative powers in such a manner that it does not interfere with the powers of the Union.
2. The Union has the power to direct the State to establish and maintain the means of communication that may be required for military or national significance.
 - a. This clause has a provision which states that this clause does not restrict or prevent the Union from incorporating the matter under the Union List and may at any time, declare a highway or waterway as a national highway or national highway respectively.
3. The Union may take steps to protect and maintain the railways within the State.
 - a. This clause states that while performing the functions referred to in subsections 2 and 3 if the national government incurs additional costs, it may recover from the government of the institution'¹⁰.

There are certain things that could not only be assigned to a Center or States, although States may legislate against them, but it was necessary for the Agency to have the legal authority to protect uniformity in key legal principles across the country to direct and promote the State's effort, to extend or oblige to cross the borders of a single State.

The Concurrent List has made it easier to eliminate all legal differences that are fundamental to public and organizational health. Codes of Civil Procedure and Criminal Procedure, Evidence Act, and Transfer of Property Act, provide some examples.

The concurrent List contains 47 subjects. New entries 11-A, 17-A, 17-B, 20-A, and 33-A have been added by way of constitutional amendments. Both the Centre and the States can make rules on the topics mentioned in the concurrent list. But if there is a conflict between Central and State law on the same topics, the Central law will apply.

The above three lists are complete and detailed and it is unthinkable that almost all the subjects that can be identified today, have been given to governments in these lists. But the current era is growing with the growth of technology and development.

In the age of atoms and hydrogen, no one can imagine today's progress and emergencies of the government. To address this difficulty, the Constitution has set aside a formula, topics not mentioned in any of those lists only for the adjudication by the Centre. Section 248 states in

¹⁰ INDIAN CONST. art. 257 cl. 1-4.

this context, "Parliament has the special power to make any law in respect of any matter not listed in the Relevant List or State List"¹¹.

VI. PARLIAMENT'S POWER TO LEGISLATE ON STATE SUBJECTS

Although at regular intervals, the allocation of powers must be strictly maintained and the State or the Institution shall not be able to enter the sphere allocated to another by the Constitution, but in exceptional circumstances, the above allocation process may be suspended. These unique situations are:

1. The power of Parliament to make laws that benefit the state

According to Article 249, if Rajya Sabha passes a two-thirds majority decision that is necessary or expedient for the benefit of the country to have Parliament pass laws on any matter referred to in the Government, it shall be lawful for Parliament to enact laws in whole or in part of India.

2. At the time of declaring an emergency

According to Article 250, while the Declaration of Emergencies applies, Parliament shall have the power to legislate in all or part of India's territories in respect of matters listed by the State. Such legislation will expire after six months after the end of the declaration of emergency.

3. Parliament's legislative authority

In terms of Article 252¹², if the legislature of two or more provinces adopts a resolution calling for the enactment of a law passed by Parliament on any matter on the National List, it is lawful for Parliament to make laws governing that matter. Any other State may adopt such a law by way of a resolution.

4. The power of Parliament to legislate the implementation of international treaties and agreements

Article 253 empowers Parliament to enact any law in all or any part of India's territory to apply international treaties and agreements¹³. In other words, the normal allocation of powers will not stand in the way of Parliament enacting legislation that applies to any international treaty even if that law is related to any of the articles on the Government's list.

5. In the event of a failure of the constitutional machinery of the State

Under Article 356 Parliament is empowered to make laws regarding all matters contained in

¹¹ INDIAN CONST. art. 248.

¹² INDIAN CONST. art. 252.

¹³ INDIAN CONST. art. 253.

the Word of the State when Parliament declares that the State government may not be conducted in accordance with the Constitution¹⁴.

These provisions enable the institution to legislate in special circumstances on the State matters without having to amend the Constitution and thus introduce a certain amount of flexibility in the system of devolution of power.

VII. CASE STUDY ON EXAMINATION OF POWERS BETWEEN THE CENTRE AND STATE IN A PANDEMIC

It was important to study the decrees of the central government and to compare them in orders that go through different regions and understand differences of opinion and their actions and authorities in making such decisions.

On March 24, 2020, the federal government announced the nation-wide lockdown. The Department of Home Affairs has implemented Section 6 (2) (i) of the Disaster Management Act, 2005, and issued an order on March 24, 2020, directing ministries or departments of the Government of India, national and union governments, and authorities in order to use the steps listed in sequence. There has been some controversy regarding the power of the central government to pass such an order under DMA, 2005, and that the institution has violated the authority of national governments.

Since then, the Disaster Management Act has not been implemented and thus only the state can order a lockdown. This meant that the Union's 75 regional lists were members' only advice. Naturally, this led to confusion. Many journalists took the Union's advice as an order. This means when the actual orders were issued, there was a mismatch of orders.

Article 245 of the Constitution of India states that Parliament or the government can make laws for any part of India, and the state government can make laws for any part of the state¹⁵. It lays the foundation for the division of power between the institution and the state, and, Article 246 provides for the 'Distribution of Legal Articles between central and local governments'¹⁶. It does so on form three columns, listed in Schedule Seven of the Constitution, namely

- Union list that allow the Parliament to pass laws
- Consolidated List, which provides for state and Central govt can make laws on,
- State list a list of things that only the state government can make laws

¹⁴ INDIAN CONST. art. 356.

¹⁵ INDIAN CONST. art. 245.

¹⁶ INDIAN CONST. art. 246.

Constitutionally, the national government is empowered to deal with related matters of social order and public health. However, entry to the same 29 lists enables central governments to legislate on issues related to the ban on an infectious or contagious disease that spreads from one condition to another.

Constitutional makers provide Article 254, which states an example of an inconsistency between the institution and the state, where the institution of parliament is able to make laws, then the law made by the institution will work and the law made by the state shall be deemed to be non-existent.

The ‘Doctrine of Repugnancy’, well defined by the Supreme Court of India on the side of *M. Karunanidhi v. Union of India*, facing an event “where The provisions of the Central Act and the Act of the State on the Compatible List are not entirely consistent and are irrevocable, the Constitution will apply and the State Act will apply you have become vain because of obscurity”¹⁷.

Haryana issued a notice on March 11th, 2020 under the powers vested in its state under sections 2,3, and 4 of the Epilepsy Act, 1987 which stated several guidelines under those guidelines, independent labs were not authorized for collection samples or Covid-19 performance tests. However, under the advice issued by the Indian Council of Medical Research Department of Health Research, dated March 17, 2020, with which it repaired Rs 4,500 testing and validating Covid-19 with independent laboratories and issuing a list of labs in the various provinces that were authorized to conduct the experiments.

Given the highly contagious nature of the disease and the large population of Indians, it seems logical that the central government should address the concerns under Entry 29 in a united way, in contrast with secular governments that use counterfeit methods they are attached to each other.

(A) State of Bombay vs RMDC¹⁸

The defendant did not live in Bombay but held Competitions for prize money using a printed newspaper published from Bangalore which was widely distributed in Bombay. All important activities such as filling out forms, entry fees, etc of the competition took place in Bombay.

The state govt. seeks to tax the respondent for conducting business in the state.

The question of the decision before the Supreme Court was whether the defendant, the

¹⁷ *M. Karunanidhi v. Union of India*, AIR 1979 SC 898.

¹⁸ *State of Bombay v. RMDC*, AIR 1957 SC 699.

organizer of the competition, who was outside the province of Bombay, could be legally taxed under the Act.

It was argued that there was sufficient territorial nexus that enabled the Bombay Legislature to tax the defendant as all the activities expected to compete were held primarily in Bombay.

(B) Tata Iron And Steel Company vs. Bihar State¹⁹

The Tax Act for levying sales tax determines whether the sale is completed within the state or outside if the goods are produced, acquired, and made in the state.

The court that held there was sufficient territorial nexus for this and kept this Act in force. Whether there is sufficient cooperation between the law and what is required to be taxed will depend on the facts and circumstances of the case. It was pointed out that the adequacy of territorial nexus involves the consideration of two things:

- a. the connection must be real and not illusory
- b. the liability sought to be imposed must be pertinent to that connection²⁰

(C) State of Bihar vs Charusila Dasi²¹

The Bihar legislature enacted the Bihar Hindu Religious Trust Act, 1950, to protect and preserve buildings related to the Hindu Religious Trusts. The Act applied to all trusts or any part of it located in the Bihar area, and the Respondent had established a title deed to her houses and the land of Bihar and Calcutta.

The main question of the decision was whether the Act applies to trustworthy buildings outside of Bihar province. The court had to decide whether the trust made in such a case was a private or a public trust. Can the Bihar legislature make a law in respect of such a trust situated in Bihar and other properties related to that trust which are found outside of Bihar?

Applying the doctrine of territorial nexus, the Supreme Court held that the Act could affect trust property outside of Bihar, but only to the extent of their relation to the trust in Bihar where the trustees were functioning. The Act aims to provide for better management of Hindu trustees in the state of Bihar. The trust being located in Bihar the State has the power to legislate over it and over its trustees or employees and their agents who must be in Bihar to administer the trust.

¹⁹ The Tata Iron & Steel Co., Ltd v. The State of Bihar, AIR 1958 SC 452.

²⁰ *Id*

²¹ The State of Bihar & others v. Sm. Charusila Dasi, AIR 1959 SC 1002.

VIII. CONCLUSION

“If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; in the next place oblige it to control itself.”

— *James Madison, Federalist Papers Nos. 10 and 51*

The Indian Parliament is an institution of democracy which has constitutional sanctity. The Constitution of India under section 245 (2) empowers the Indian Parliament to legislate for foreign affairs or causes of direct or indirect, tangible or intangible impact or consequence or effect of Indian territory, any part of India or the welfare or safety interests of Indian citizens. Therefore, extraterritorial law enforcement should have a nexus with or impact on India. Legislation enacted by Parliament relating to additional local activities is subject to legal review but may never be considered invalid on the grounds of the extra territorial nature that it holds.

As with other democracies, Parliament of India has the primary functions of the legislature, overseeing the administration, the transfer of budgets, the submission of public complaints, and the discussion of various topics such as development programs, national policies, and international relations. The division of power between the Union and the states, according to the Constitution, emphasizes the general size of Parliament in the legal profession in many ways. With the exception of various topics, even on regular occasions, Parliament, under certain circumstances, may take legislative power in relation to a matter that is limited to the United States.

The state legislature may make laws of the whole or a part of its foreign policy, which means that it operates outside the state. However, there is one exception to this general rule. State law for more local use will be legal if there is adequate communication between the centre and the state. The power to make the law more effective in the area is given to Parliament only and not to the state legislatures. Therefore the law of the State Legislature, if it does more work in its areas, may be successfully challenged in court, unless additional local work can be supported due to the local complex. It means that although the object to which the law applies cannot exist within the borders of the State, the law of the State will apply if there is any connection or communication between the state and the centre. The territorial nexus is not included within Indian borders but can be used overseas. Widespread law in India came into effect at that time.

The Territorial nexus is a doctrine that allows the application of national and state laws outside its borders.

The unparalleled progress in the fields of science and technology which has affected communication, trade, commerce and given rise to cyber offences has created new kinds of socio-economic and political challenges. This paper establishes how the changing nature of our society and the number of enactments related to extra- territorial operations owing to the growing sense of interdependence and cross-border activities among nations give rise to a very dynamic legal landscape which requires concrete and fundamental parliamentary backing to ensure clear cut roles and jurisdictions to avoid confusion and mismatch of order to ensure uniformity in decision making.
