

Doctrine of territorial nexus

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Article 245) Extent of laws made by parliament and by the legislatures of states.

1. 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.
2. According to clause 2 of Article 245, a law made by Parliament shall not be deemed to be invalid on the ground that it has extra-territorial operation.

In A.H. Wadia v. Income tax Commissioner, Bombay, 1947

The Supreme Court Held: In the case of a sovereign Legislature question of extra-territoriality of enactment can never be raised in the municipal court as a ground for challenging its validity. The legislation may offend the rules of international law, may not be recognized by foreign courts, or there may be practical difficulties in enforcing them but these are questions of policy with which the domestic tribunals are not concerned.

In GVK Industries Limited v. Income Tax Officer, 2011

Issue- A question arose whether the Parliament was empowered to enact laws in respect of extra-territorial aspects or causes that have no nexus with India, and furthermore, if such laws are bereft (Without) of any benefit to India?

Decision- The clue of the answer to this question also lies in the word **for** used in article 245(1). The Court derived the responsibility of the Parliament with the help of the word **for** used in article 245(1) and stated that Parliament of India is to act as the Parliament of India and of no other territory, nation or people. The Court also derived two related limitations in this regard, the first being that the Parliament may only exercise its powers for the benefit of India in regard to the necessity. The laws enacted by Parliament may enhance the welfare of people in other territories too but the benefit to or of India remain the central and primary purpose.

The second limitation that the law made by Parliament with regard to extra-territorial aspects or causes that do not have any, or maybe expected to not have nexus with India, transgress the first condition. The Sudershan Reddy J. for Constitutional bench negated the answer of question logically and held that the Parliament's powers to enact legislation, pursuant to clause (1) of Article 245 may not extend to those extra-territorial aspects or causes that have no impact on or nexus with India

Territorial Nexus and the State Legislature

Doctrine of territorial nexus says that laws made by a state legislature are not applicable outside the state, except when there is a sufficient nexus between the state and the object.

The Doctrine of Territorial nexus can be invoked under the following circumstances-

- Whether a particular state has extra-territorial operation.
- If there is a territorial nexus between the subject- matter of the Act and the state making the law.

It signifies that the object to which the law applies need not be physically located within the territorial boundaries of the state, but must have a sufficient territorial connection with the state.

A state may levy a tax on a person, property, object or transaction not only when it is situated within its territorial limits, but also when it has a sufficient and real territorial connection with it.

Leading case laws

State of Bombay vs RMDC, AIR 1957, SC

Facts- The Respondent was not residing in Bombay but he conducted Competitions with prize money through a newspaper printed and published from Bangalore having a wide circulation in Bombay. All the essential activities like filling up of the forms, entry fees etc for the competition took place in Bombay. The state govt. sought to levy tax the respondent for carrying on business in the state.

Issue- The question for decision before the Supreme Court was if the respondent, the organizer of the competition, who was outside the state of Bombay, could be validly taxed under the Act.

Decision- It was held that as all the activities which the competitor is ordinarily expected to undertake took place most, if not in entirety, within Bombay. These circumstances constituted a sufficient territorial nexus which the entitled state of Bombay to impose a tax on the respondent.

Tata Iron And Steel Company vs. Bihar State

The state of Bihar passed a Sales Tax Act for levy of sales tax

Issue- whether the sale was concluded within the state or outside if the goods were produced, found and manufactured in the state .

Decision- The court held there was sufficient territorial nexus and upheld the Act as valid. Whether there is sufficient nexus between the law and the object sought to be taxed will depend upon the facts and circumstances of a particular case.

It was pointed out that sufficiency of the territorial connection involved consideration of two elements- a) the connection must be real and not illusory b) the liability sought to be imposed must be pertinent to that connection.

State of Bihar vs Charusila Dasi

Facts- Bihar legislature enacted the Bihar Hindu Religious Trusts Act, 1950, for the protection and preservation of properties appertaining to the Hindu religious trusts. The Act applied to all trusts any part of which was situated in the state of Bihar. The Respondent created a trust deed of her properties of several houses and land in Bihar and Calcutta. The trust being situated in Bihar.

Issue- The main question for decision was whether the Act apply to trust properties which are situated outside the state of Bihar. Can the legislature of Bihar make a law with respect to such a trust situated in Bihar and other properties appertaining to such trust which is situated outside Bihar?

Decision- Applying the doctrine of territorial nexus, the Supreme court held that the Act could affect the trust property situated outside Bihar, but appertaining to a trust situated in Bihar where the trustees functioned. The Act aims to provide for the better administration of Hindu religious trusts in the state of Bihar. The trust is situated in Bihar the state has legislative power over it and also over its trustees or their servants and agents who must be in Bihar to administer the trust.

What is necessary is that the connection between the trust and the property appertaining thereto is real and not illusory and that the religious institution and the property appertaining thereto form one integrated whole as one cannot be dissociated from the other.