

DECEMBER 2020. ISSUE 02
09-DEC-2020

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DOCTRINE OF TERRITORIAL NEXUS



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EVOLUTION

The territorial operation of law is evolved in India in the Government of India Act, 1935 which was made by the British Parliament. Pre-Independence, it is dealt in the Government of India Act, 1935 which is applied to the territories in India. After independence, it is dealt with in the constitution of India.

MEANING

The term territorial means the locality and nexus is the connection. The territorial nexus is dealt with under Art. 245 of the Constitution of India. Art. 245(1) states that Parliament may make laws for the whole or any part of the territory of India. The legislature of the State may make laws for the whole or any part of the State. The State Laws shall be void if there is extra-territorial operation. The laws made by the state legislature are not applicable outside the state except there is nexus between the state and the object. Art.245(2) deals with extra-territorial operations. The court cannot question the legislature on the validity of laws with regard to extra-Territorial operation. The subject-matter of distribution of legislative powers in respect to territory is dealt within the list under the 7th Schedule of the Constitution.

FEATURES

- The Parliament is empowered to make laws within the territory of India and also extra-territorial aspects having nexus within the territory of India.
- This doctrine is also applicable to the States. In taxing statutes, the sale or purchase is not necessary to be taken place within the territory of the state.
- For the applicability of territorial nexus, the object need not be physically located within the territory of the state but must have sufficient territorial nexus with the state.
- The tax can be levied by the state on a property, person or object not only within its territorial limits but also having sufficient territorial connection with it.
- The doctrine governs the taxation of non-residents in India.



CONDITIONS

1. The nexus must be legitimate.
2. The liability should be related to the territorial connection.

TO INVOKE THE DOCTRINE OF TERRITORIAL NEXUS

1. Whether there is the existence of extra-territorial operation in a particular state?
2. Whether there is a territorial nexus between the subject-matter of the Act and the state laws?

CASE LAWS

Case 1

Wallace V. Income Tax Commissioner, AIR 1948 PC 118.

A company which was registered in England was a partner in a firm in India. The Indian Income-Tax Authorities sought to tax the entire income made by the company. The Privy Council applied the doctrine of territorial nexus and held the levy of tax valid. It said that the derivation from British India of major part of its income for a year gave to a company for that year sufficient territorial connection to justify its being treated as at home in India for all purposes of tax on its income for that year from whatever source income may be derived.

Case 2

A.H Wadia V. Income-Tax Commissioner, AIR 1949 FC 18.

The Hon'ble Supreme Court held that in the case of a sovereign legislature question of extra-territoriality of any 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 recognised by foreign courts, or there may be practical difficulties in enforcing them but these are questions of policy with which the domestic tribunals are concerned.

Case 3

Tata Iron and Steel Co. Ltd V. State of Bihar, AIR 1958 SC 452.

Held - The sufficient territorial nexus and upheld the act as valid. Whether there is sufficient nexus between the law and object sought to be taxed will depend upon the facts and circumstance of a particular case.

Case 4

Tata Iron And Steel Co., Limited, Bombay v. S.R Sarkar And Others, 1961 AIR SC 65.

Under the Government of India Act, 1935, power to make laws in respect of "taxes on sale of goods and advertisements" was conferred by Section 100(1) read with Entry 48 of List II in Schedule VII upon the Provincial Legislatures. This power was exercised by all the Provinces and by picking out one or more ingredients constituting a sale, as determinative of the place where the sale took place, they brought within the taxing laws transactions substantially outside the territorial limits of their authority. Statutes so enacted led to multiple taxation of the same transaction by several Provinces, each Province seeking to rely upon some ingredient of the sale within its jurisdiction as establishing a territorial nexus.

Case 5

Shrikant Bhalchandra Karulkar And Ors v. State Of Gujarat And Another, 1994 SCC 5 459.

Held - This Court — over a period of three decades — has evolved a principle called "doctrine of territorial nexus" to find out whether the provisions of a particular State law have extraterritorial operation. The doctrine is well-established and there is no dispute as to its principles.



If there is a territorial nexus between the persons/property subject-matter of the Act and the State seeking to comply with the provisions of the Act then the Statute cannot be considered as having extraterritorial operation. Sufficiency of the territorial connection involves consideration of two elements, the connection must be real and not illusory and the liability sought to be imposed under the Act must be relevant to that connection. The Act has to satisfy the principles of territorial nexus which are essentially discernible from the factual application of the provisions of the Act.

Case 6

Gvk Industries Limited And Another v. Income Tax Officer And Another, 2011 SCC 4.

Held - A particularly narrow reading or understanding of the words used could lead to a strict territorial nexus requirement wherein Parliament may only make laws with respect to objects or provocations or alternately, in terms of the words we have used "aspects and causes" that occur, arise or exist or may be expected to occur, arise or exist, solely within the territory of India, notwithstanding the fact that many extra-territorial objects or provocations may have an impact or nexus with India.

Case 7

Jindal Stainless Limited And Another v. State Of Haryana And Others, 2017 SCC 12 1.

Held - Article 245 of the Constitution provides for the extent of laws made by Parliament and the legislatures of the states. Clause 1 of Article 245 enables Parliament subject to the provisions of this Constitution to make laws for the whole or any part of the territory of India and for the legislature of a state to make laws for the whole or any part of the state. Implicit in Article 245, which defines the territorial extent of laws enacted by Parliament and the state legislatures, is the power to enact laws. Defining the extent of the law making power with reference to territorial coverage presupposes the existence of a power to frame legislation in the first place. Hence Article 245 is the fountainhead of legislative power.



Case 8

State (Nct Of Delhi) v. Brijesh Singh Alias Arun Kumar And Another, 2017 SCC 10 779.

Held - In the present case, it is sufficient to examine whether there is a territorial nexus between the charge-sheets filed in competent courts within the State of Uttar Pradesh and the State of NCT of Delhi where the respondents are being prosecuted. The prosecution of the respondents under McoCa cannot be said to be invalid on the ground of extra-territoriality in case the nexus is sufficiently established.

DISCLAIMER

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