

DOCTRINE OF TERRITORIAL NEXIUS: AN ANALYSIS

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Abstract: This article would determine where the territorial nexus is being used and what are the benefits of the use of the doctrine of territorial nexus. Territorial nexus is an essential doctrine when we talk about the concept of federalism. Federalism is a type, where the government's power is divided into national government and other governmental units. Although our Constitution sets up a Federal framework but there is no definition to it. The foundation of a federal Constitution is the division of power between the legislative, executive and judiciary. India is sometimes regarded as Quasi – Federal because there is a federal structure but with a strong bias towards the Union. Article 245 of our Indian Constitution talks about the doctrine of territorial nexus and we would vividly cover up this concept in this assignment.

Introduction: As we know, federalism is the essential feature or the foundation of our country. The objective of federalism is not putting the whole power of the country on one institution or else the whole country will fall out and the institution will dominate the whole country by binding the citizens with rules which may or may not be liked by the citizens. Hence, this feature of distribution of power is added to our constitution which could be described as the word “federalism”. Federalism can be defined as complex government machinery for the governance of a country. It can be said that it pursues to create a balance between the forces of working units that are concentrated within the Union and the States. The federal structure foresees the boundary that is created for the differentiation of the functions between the States and the Union.¹ The basic system of federalism is how the distribution of powers is done between the legislative, executive and judiciary where the distribution done by the constitution itself. But a general question may arise out of this introduction which is: Why are we discussing about federalism, if our topic of discussion is on doctrine of territorial nexus?

¹(Feeley & Rubin, 2008)

Article 245 of our Indian Constitution approaches the concept of territorial nexus by stating how the distribution of legislative power and how the boundaries (territorial) between the Union and the States is done according to law. The provision of article 245 states that the Parliament is having the power to make laws for the whole of the India or any part thereof, also this provision puts a restriction on the legislative powers of the States and the Union on the basis of territory.²

If we are considering the matter of the distribution of power, then the article 246 comes into the scenario which states the division of power through three lists that are:

1. Union List
2. State List
3. Concurrent List

Where the matters that are to be dealt by the Union, States and both are specifically mentioned, and a line is drawn whereby the parliament can easily draw a judgment if there is a conflict

between the two. Hence, from the above two articles we can generate that the distribution of legislative powers is done in two ways:

1. Territorial Manner
2. Subject- Matter Way

And here we will be discussing about the restrictions or the distribution of the legislative power in the territorial sense, whereby there is a limit on the Union and the States to act based on territory.

Distribution of Power Based on The Doctrine of Territorial Nexus: The distribution of power based on the doctrine basically talks about the scenarios where the doctrine can be applied. The circumstances where the doctrine can be applied are stated below:

1. When there is a question of the extra-territorial operation of a state.
2. If there is a question of the territorial marking in terms of the conflict between the subject-matter of the institution and the State that have made the law.

²(Basu, 2015)

Here, the question is arising, if such a conflict comes into picture how it is solved. In such scenario it will be observed that object in the question is not to be located physically inside the territorial boundaries of the State in question but also adequate connection with the state in terms of territories. The tax on a person, property, object, or transaction by the state will be levied if it is within the territorial range and if the state has an adequate connection with state physically. This scenario could be explained from the case of *A.H. Wadia v. Income Tax Commissioner*³ where the question of extra – territorial enactment was arising, to which the honourable judges has stated that “the question of whether the extra- territorial enactment is valid or not can never be raised in the municipal court. Here, the legislation unintentionally may offend the provisions of the international law, and the challenge of the validity of the extra- territorial enactment may not be acknowledged by the foreign courts or the enforcement of this ground may cause difficulties in the system but in this case these difficulties are the main concern of the domestic tribunals”.

Territorial Nexus- The Theory: If we only hold the classical meaning of the territorial nexus just by its name, which talks about the territorial connection of the object to that of the state or the territorial link. According to the theory that is available in our constitution, territorial nexus means that the laws that are made by the parliament will be applicable to the whole of India or any part of the India and these laws will not be considered invalid if there is a ground of extra-territorial operations. This theory is considered as an exception to the concept of the territorial jurisdiction. This statement could be best described from the case of *Wallace v. Income tax Commissioner, Bombay*⁴ where there was a company which was partner in a firm in India and was registered in England. The taxing authorities of India, i.e., the Indian Income Tax Authorities made the company pay the tax on their entire income that the company has made. Here, the court applied the doctrine of the territorial nexus according to which the tax that was levied by the authorities were valid. It is also observed that the major amount of the income was derivate from British India was an adequate ground to apply a territorial nexus.

State Legislature and Territorial Nexus: The State Legislature may make laws for the whole or a part of the state. Now, in this scenario a question arises for scrutinization is: Can

³(1949) 51 BOMLR 287

⁴(1943) 45 BOMLR 929

the State Legislature is competent enough to enact a particular law. Now, this leaves it open to scrutiny whether a particular law is really within the competence of the State Legislature enacting it. Plenty of cases can be found where it is stated that the laws that state has power to make must be for the purpose of welfare of the state. Hence, the doctrine of territorial nexus can be applied to the States as well as to the India as a whole. There are two established conditions when there is discussion on the applicability of the doctrine, that is:

1. The link or the nexus should be real and not imaginary.
2. The imposition of the liability must be relevant to that link or connection.

If these two conditions are evidently satisfied, then there won't be any questions of sufficiency of connection or nexus in front of the court. We will also find that there is an assumption of the constitutionality whereby the Legislature is assumed for not exceeding its constitutional powers and a foundation with that base of powers is constructed to be used on the laws that are to be enacted by the Legislature.

Extra – Territorial Operations: The acceptable nexus to a state is a pretty subjective matter which can be best described by: Professor Michael Lang in his book, Introduction to the Law of Double Taxation Conventions" says that "in International law practice, there are no significant limits on the tax sovereignty of states. In designing the domestic personal tax law, the national legislator can even tax situations when, for example, only a "genuine link" exists. It is only when neither the person nor the transaction has any connection with the taxing state that tax cannot be levied".

As we know, the parliament is conferred with powers by the constitution to make laws that is within the territorial jurisdiction and in the situation of extra-territorial operation when there is a connection or legitimate link with that of India. The laws that are made regarding this extra – territorial operations come under the shade of the Parliament's power. These laws regarding this matter cannot be challenged on the ground to prove its validity. If the Parliament ever enacts any law or provision which does not provide any link with that of India, then it will be considered as ultra vires. As, here the parliament exceeded from the powers that were conferred upon it by the Constitution of India and if enacted it will be considered as the laws that are enacted for a foreign land. Hence, it can be concluded that if the parliament passes any law that upon the first glance seems to be extra – territorial but in reality it does not have

any connection with India, the such enacted will be considered as unconstitutional and the power so executed by the parliament is ultra-vires.

The Constitution of India states that the legislative powers that are put upon the parliament are to establish a territorial jurisdiction or if it may seem necessary it may upon its discretion apply for the extra-territorial operations and exercise the doctrine and the doctrine will only applied after the satisfaction of the necessary conditions of the connection that is to be established with India. It has also be stated in the Public Trust Doctrine that even if the Parliament makes or executes law for the extra – territorial operations it should only be based on the purpose of the welfare and the security of the State and India.

ROLE OF DOCTRINE OF TERRITORIAL NEXUS IN THE INDIA LEGISLATION:As, it has already been discussed earlier that article 245 confers upon certain powers on the parliament and the state legislature to make laws or enact it by keeping in view the territorial connection of the object and the state, if there is no connection between the object and the state apparently or physically, then this doctrine won't be applicable in this scenario. The powers that are given to the parliament or the state legislature is not absolute for extra – territorial operations and if there is any law that is made outside the geographical limits then that would be invalid generally and would be in conflict with the doctrine of public trust.

CONCLUSION: This assignment talks about the connection of the doctrine of territorial nexus with that of Federalism via the connection of Article 245 that is the distribution of powers by territorial way. As we know, The Court has recognized the fact that the framers of the Indian Constitution intended to provide a federal structure with a strong Centre, which would prevent the nation from disintegration. Chief Justice P.B. Gajendragadkar, emphasized upon the federal nature of the Constitution and the Judiciary as the sole interpreter of the Constitution which could not be changed by the process of ordinary legislation. The finer federal facet has often been misinterpreted by the central operators. The general knowledge that we gained and observed from this assignment is that whatever power is conferred upon the Parliament or the State Legislature, it should always keep in mind, the decisions of the extra – territorial operations should have connection with state or India apparently or physically and should be based on the Doctrine of Public Welfare which literally stated that



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the laws that is made in relation to the extra- territorial purposes should be based on the welfare and security of the State and of the India.

