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Introduction

Legislative authority under a federal Constitution hinges upon the delineation of powers between the Central government and the States. India's Constitution, tailored to its unique circumstances, orchestrates a distinctive form of federalism. The blueprint for power distribution echoes the Government of India Act, 1935, with a tilt towards empowering the Union Parliament vis-à-vis State Legislatures or Assemblies.

This allocation of legislative powers operates within a framework delineated by the Union and State Legislatures, enshrined in three distinct lists within the Constitution. These powers must conform to fundamental rights and other constitutional provisions (Articles 245-254).

The Union List (List I), comprising 97 items, pertains to matters of national significance necessitating uniform laws across the nation. Sole legislative jurisdiction over these domains, such as Defence, Foreign Affairs, Banking, and Union Taxes, rests with the Union Parliament.

Conversely, the State List (List II) encompasses 66 items of local or State interest. Matters like Public Order and Police, Health, Agriculture, and Forests fall within the exclusive legislative domain of the State Legislatures.

A third category, the Concurrent List (List III), consisting of 47 items, grants both the Union Parliament and State Legislatures concurrent legislative authority. This unique feature, absent in many federal constitutions, offers flexibility. Less critical matters afford States initiative, while significant issues warrant parliamentary intervention. Moreover, States possess the latitude to enact supplementary laws to complement those enacted by the Union Parliament. Subjects covered include general laws, social welfare, civil and criminal procedure, marriage, contract, and education planning.

Despite this tripartite division of legislative powers, the Union Parliament enjoys preeminence over State Legislatures.

Territorial Legislative Jurisdiction

Article 245 delineates the scope and territorial reach of legislative authority. It stipulates, "Subject to the Constitutional provisions, Parliament may make laws for the whole or any part of the territory of India, and a State Legislature for the territory of that State." Notably, legislation enacted by Parliament isn't rendered invalid due to its extraterritorial effect, meaning it can apply beyond India's borders.

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Theory of Territorial Nexus

The principle of territorial nexus has long been ingrained in Indian law, predating the inception of the Indian Constitution in 1950. The Government of India Act, 1935, acknowledged that Union and State laws apply within the territories of India and the respective States, albeit subject to the exception of the territorial nexus doctrine. Post-constitution, Article 245 incorporated this doctrine into the legislative power distribution framework.

Article 245(1) empowers State legislatures to enact laws for their respective territories. However, extraterritorial legislation by State legislatures is permissible only when there's a substantial connection or nexus between the State and the subject matter of the law, even if the object isn't physically located within the State's boundaries **(A.H. Wadia v CIT AIR 1947 FC 18).**

For instance, in **Wallace Bros v. CIT, Bombay (AIR 1948 PC 118)**, a company registered in England, being a partner in an Indian firm, was subjected to Indian income tax due to the significant portion of its income originating from British India.

Similarly, in **State of Bombay v R.M.D.C. (AIR 1957 SC 699)**, Bombay State imposed a tax on lotteries and prize competitions, extending it to a newspaper published in Bangalore but widely circulated in Bombay. The court upheld the tax, as activities related to the competition predominantly occurred in Bombay.

The key criterion is establishing a "sufficient nexus" between the individual or entity subject to taxation and the taxing State. This nexus must be genuine, not merely nominal, based on valid law, and the liability imposed must directly relate to this connection. Determining the sufficiency of this connection is a factual inquiry left to the courts in each instance.

TATA IRON AND STEEL CO. v STATE OF BIHAR (AIR 1958 SC 452)

The nexus theory, as observed by the court, serves as a guiding principle rather than an imposition of tax. It delineates circumstances wherein a legislature's tax imposition might be enforced in specific instances.

In this case, the appellant company had its registered office in Bombay, its factory and works in Bihar, and its main sales office in West Bengal. The Bihar Sales Tax Act, 1947, levied a sales tax on the company's goods in Bihar.

According to the Act, the liability to pay tax was imposed on sales occurring within Bihar. Under Section 2(g) of the Act, a 'sale' encompasses the transfer of property in goods, including goods either present in Bihar at the time of sale agreement or produced/manufactured within Bihar.



The company argued that although goods were manufactured in Bihar, they were sold, delivered, and consumed outside the state. In none of these transactions did the property in goods transfer to purchasers within Bihar.

The court noted that the nexus theory isn't applicable to Sales Tax legislation since it concerns taxes on completed sales transactions. The Bihar State legislature couldn't extend the definition of 'sale' to impose tax on transactions falling short of a complete sale.

The court emphasised the crucial role of goods in a sales transaction, where the property in goods passes as a result of the sale. Whether goods were present in the taxing state at the time of sale agreement or produced/manufactured there, it established a sufficient nexus between the state and the sale.

The producer or manufacturer receives the sales price for goods either present in Bihar at the time of sale agreement or produced/manufactured within Bihar.

The court clarified that the nexus theory doesn't levy tax but identifies conditions under which a legislature's tax may be applied in specific cases. Tax liability only arises upon the conclusion of a sale, involving the transfer of title.

The Act didn't broaden the definition of 'sale' but utilised factual circumstances to locate the sale's situs in Bihar. Consequently, the court upheld the tax levy.

STATE OF BIHAR v SMT. CHARUSILA DAS (AIR 1959 SC 1010)

In this landmark case, the court affirmed that a State legislature possesses the authority to legislate concerning charitable and religious trusts within its territory, irrespective of whether any portion of the trust property, regardless of size, is situated in another state.

With the trust located in Bihar, the state holds legislative power over it, including its trustees, agents, and servants, who are required to be in Bihar for trust administration. Thus, the Bihar Hindu Religious Trusts Act could impact trust properties situated outside Bihar but operated by the trust located within Bihar's territory.

The court emphasised that the beneficiaries' right under a trust primarily revolves around ensuring proper trust administration, enforceable typically at the trust's location or the trustees' residence.

The Act's objective, as stated in its preamble, aims at enhancing the administration of Hindu religious trusts in Bihar and safeguarding associated properties by exercising control over trustees personally.

Consequently, the Act's operation is not extraterritorial, given the substantial territorial connections, such as temples housing deities, hospitals, and charitable dispensaries established in Bihar for the benefit of the Hindu populace in Bihar.

The court referenced previous judgments applying the doctrine of territorial connection to various legislation types, underscoring the requirement for a genuine, non-illusory connection between the legislation and the territory, as well as the relevance of the liability imposed to that connection.

Extra-territorial Operation of Parliamentary Law

Prof. Wheare defines "extra-territorial legislation" as legislation that courts within a jurisdiction deem significant regarding facts and events occurring outside that jurisdiction.

Article 245(2) stipulates that no law enacted by Parliament would be deemed invalid due to its extra-territorial operation, meaning it takes effect beyond the territory of India. Essentially, Parliamentary laws extend to individuals and their assets worldwide, even if they contravene international law or are not recognized by foreign courts.

For instance, if an Indian citizen marries a French woman while still married to his first wife, he can be prosecuted for bigamy in India.

In the case of **A.H. Wadia v I.T. Commr., Bombay (AIR 1949 FC 18)**, the Supreme Court ruled that the question of extraterritoriality of any enactment by a sovereign Legislature cannot be contested in domestic courts as a basis for challenging its validity.

While such legislation may conflict with international law or face recognition issues in foreign courts, these are matters of policy that fall within the purview of domestic tribunals.

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