**Constitutional Law: Doctrine of Territorial Nexus**

Before going to the legality of the Doctrine, let us get down to the basics of the Territorial Doctrine. Territorial, the simple meaning of Territorial means relating to a particular territory, locality, or region. On the other hand, Nexus means a connection or link between things, persons, or events. Article 245 of the Indian Constitution enunciates Territorial Nexus and it is widely interpreted in various cases in the Supreme Court. In this article, we would discuss the Evolution of the Doctrine, its Salient features, Landmark Judgments, and constructive criticism on the Doctrine.

Evolution & The Meaning Of The Doctrine

The concept of extra Territorial operation of Law evolved in India with the Government of India Act, 1935. This Act was made by the British Parliament with an aim to grant a large measure of autonomy to the provinces of British India. The Act of 1935 applied to the territories in India for the time being vested in His Majesty the King, Emperor of India. Later after independence, the concept is discussed in the Constitution of India.  
  
The federalism feature in the Indian Constitution establishes a Dual Polity between the Centre and the State. The basic principle of federation is that the legislative, executive, and financial authority is divided between the Centre and state not by any Law passed by the Centre but by Constitution itself. The legislative powers are distributed in two ways which are provisioned by the constitution.  
  
Distribution of legislative powers in respect of the territory  
With respect to the subject matters of the list under 7th schedule  
The Territorial Nexus is derived from Article 245 of the Indian Constitution. Article 245 (1) states that:

1. Parliament may make laws for the whole or any part of the territory of India and
2. The legislature of a State may make Laws for the whole or any part of the State.

Under Article 245(2) of the Indian constitution, if any Law is made by the parliament regarding the extraTerritorial operations, no questions can be raised on its validity. Thus the validity of legislation can't be questioned. In this case, a court is bound to enforce the Laws made with regards to extra-Territorial operations. This legislation cannot be invalidated.  
  
The Territorial case was enunciated in the case of A.H. Wadia vs Commissioner Of Income-Tax[2] it was held that a question of extraterritoriality of enactment can never be raised against a supreme legislative authority on the grounds of questioning 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.  
  
Territorial Nexus is one such exception that allows the state to make Laws for extraterritorial operations if it shows that there exists a Nexus between the object and the state. But to bring effect to the Laws introduced by the states for extra Territorial purpose, the Nexus between the object and the state must be there.

Salient Features Of The Doctrine

* It is well-established that the Parliament is empowered to make Laws concerning aspects or causes that occur, arise or exist, or maybe expected to do so, within the territory of India and also with respect to extra-Territorial aspects or causes that have an impact or Nexus with India.  
    
  In **Wallace v. Income-tax Commissioner**[3], Bombay a company that 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 tax valid.  
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* The Doctrine of Territorial Nexus has been applied to the States as well. In various cases relating to taxation statutes, the courts have time and again stated that the sale or purchase doesn't need to take place within the Territorial Limits of the State.  
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* 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.  
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* 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. Whether there is sufficient connection is a question of fact and will be determined by courts in each accordingly.  
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* The Doctrine of Territorial Nexus governs the taxation of non-residents in India.

**Landmark Judgments**

1. State of Bombay vs RMDC[4]

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 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.  
  
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 there existed a sufficient Territorial Nexus to enable the Bombay Legislature to tax the respondent as all the activities which the competitor is ordinarily expected to undertake took place mostly within Bombay.  
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1. Tata Iron And Steel Company vs. Bihar State[5]

Tata Iron And Steel Company vs. Bihar State- The state of Bihar passed a Sales Tax Act for levy of sales tax.  
  
Tax Act for levy of sales tax whether the sale was concluded within the state or outside if the goods were produced, found and manufactured in the state. 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:

* 1. the connection must be real and not illusory
  2. the liability sought to be imposed must be pertinent to that connection.  
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1. The State Of Bihar & Others vs Sm. Charusila Das[6]

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 question was whether the Act applies to trust properties that are situated outside the state of Bihar. Can the legislature of Bihar make a Law concerning such a trust situated in Bihar and other properties appertaining to such trust which is situated outside Bihar?  
  
It was held that the act passed by the state of Bihar could have the effect over the property situated outside the Territorial limits of Bihar keeping in mind that the trust must be situated with the limits of the state and there exist the sufficient Nexus.  
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1. Shrikant Bhalchandra Karulkar v. the State of Gujarat[7]

In this case, it was dealt with the legislative competence to make Laws having extra Territorial operation in view of the provisions of Article(s) 245 and 246 of the Constitution of India.  
  
It was held by the court that so long as the Law made by State legislature applies to the persons residing within its territory and to all things and acts within its territory, it cannot be considered as extra-Territorial.  
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**Critical Analysis Of The Doctrine**  
After sales tax was introduced in the Provinces under the powers conferred by the Government of India Act 1935, it became the fashion for many Provinces to levy on the basis of the Territorial Nexus theory, tax on sale not wholly concluded within the territory of the Provinces.  
  
Thus in the case of a sale where the goods are in one Province, the owner in another, the buyer in a third Province, the contract is concluded in a fourth Province, the price is paid in the fifth Province and the goods are delivered in a sixth Province all the Provinces could levy a sales tax.  
  
When the Constitution was enacted, to prevent this evil of multiple taxations it was provided that only the State in which the goods were delivered for consumption should be allowed to levy a sales tax. This was achieved by article 286(1) (a) and its explanation thereunder.  
  
**Here some of the cons of applying the Doctrine of Territorial Nexus in the cases in India:**

* In the GVK case[8], the Court observed that if the power to enact Laws for any territory, including a foreign territory, were to be read into clause (2) of Article 245, the phrase 'for the whole or any part of the territory of India' in clause (1) of Article 245 would become a mere surplusage. In jurisprudence, surplusage is a useless statement completely irrelevant to the cause.
* A state legislature is not competent enough to make Laws for the extraterritorial operations. It is the job of the parliament and there will definitely be a conflict of interest between the State and the parliament.
* The scope of the Territorial Nexus Doctrine is so wide that it only requires proving a Nexus between the object and the state. So there are high chances to get succumbed by ulterior motives.
* The legislation may offend the rules of international Law, may not be recognized by foreign courts or there may be practical difficulties in enforcing.
* The Doctrine of Territorial Nexus allows the effect of Law outside the Territorial limits of the nation for extra Territorial purposes if there exists a sufficient connection between the object and the state. So it is basically confiding with International Law which is decided by a competent/incompetent State.

**Conclusion**  
In this rapidly changing world and globalized era, every written constitution should have efficacy to deal with the matter of extra-Territorial operation of Law related to matters of trade, commerce & services that occur outside of the country. Article 51 of the Constitution of India contains important positive policy statements for the promotion of international peace and security, fostering respect for international Law and treaty obligation. Thus the balance between article 51 and 245 of the Constitution of India is needed in the making of Laws related to the extra-Territorial operation  
  
Federalism is a very complex mechanism though it is the very purpose for which a federal state is formed includes the distribution of powers between the union and the Centre. Their power is partitioned by the constitution so that they should their independence over the executive and legislative authority.  
  
Thus, The Doctrine of Territorial Nexus does not debar a State Law from having an extra-Territorial jurisdiction. It simply lays down that if a State wants to extend its Laws beyond its boundary then it will have to satisfy the Court that there is a sufficient Nexus between the subject matter concerned and the state making the Law.  
  
Though the legislative power of a State is Territorially limited to that State or part thereof, when it comes to the question of taxing powers, a State gets competence based on the Doctrine of Territorial Nexus to tax events that have not taken place fully within its Territorial limits. It is enough even if the Territorial connection is partial if it is real and not illusory and the taxing liability is relevant to that connection.