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The concept idea on the Theory of Territorial Nexus of the Indian Constitution

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Abstract

Being a federal constitution, the Indian Constitution makes two fold of distribution of legislative powers i.e. between the Centre and the States in which under this legislative relations the powers between the two Government is dealt under the territorial jurisdiction of each Government and also under the subject matter which has been given under the 7th Schedule of the Indian Constitution i.e. under the

subject matter given under the three list of the 7th schedule; The Union List, The State List and the Concurrent list. In which under the Union list the Centre or the Parliament shall have an exclusive power to make laws, under the State list the power shall be vested to the State or the Legislature and the under Concurrent list the power to make laws shall be vested to both the Centre and the States.

Keywords: The Indian Constitution, Article 245, Article 246, Legislative Relations, Centre and States Relations, Territory Nexus

1. Introduction

The Indian Constitution is federal in structure and the legislative, executive and the financial powers are basically divided between the Centre and the States. The Centre and the States derive their power independently from the Constitution. Each have their own power in sphere of political authority and neither is subordinate to each other. However, there is no division of Judicial power as the Constitution has established an integrated judicial system to enforce both the Central laws as well as the State laws. Part IX of the Indian constitution under Article 245-255 deals with the Legislative Relations between the Centre and the States. Apart from this Article there are some other Articles which deal with the same matter. As we know that the Indian Constitution is a Federal Constitution in nature and the powers of the Legislature has been divided between the Centre and the States with effect to the territory and the subject matter of legislation. The Constitution of India also provides for the Parliamentary legislation in the State field under some extraordinary matters as well as the Centre's control over State legislation in certain cases.

2. Materials and methods

This short research Article on the title "The concept idea on the theory of territorial nexus of the Indian Constitution" was generally a basic and simple idea about the distribution of the legislative powers between the Centre and the States in which the materials provided in this Article by the researcher is simply an original document from the understanding view and from the knowledge of the researcher. It is a simple language in which any person who is interested to know or who wants to get some idea about the theory of the territorial nexus can easily understand.

The methodology in this research is generally an original understanding of the researcher in which the main objectives of the researcher on this Article is to share or to give a summary idea which might help any students, researcher, Lawyers or any legal researcher about the basic idea on this topic. This research article is based on self-understanding and also in some part it is doctrinal research in which the researcher has taken a primary source which include some relevant case laws.

The territorial extent of Central and State Legislatures

Article 245 of the Indian Constitution deals with the Territorial Jurisdiction in which in clause (1) it provides and states that, the Parliament can make laws for the whole or any part of the territory of India and the Legislature or the states shall make laws for the whole part or region of the State. The Constitution also states that the Parliament shall have extra territorial operation in which in clause (2) that the laws made by the Parliament shall not be deemed to be invalid on the grounds that it has extra territorial operation i.e., it takes effect outside the territory of India or those persons or those properties situated outside India. And this extra territorial power is only possessed by the Parliament and not by the States.

For determining the law or to know whether the law made by the Parliament on extra territorial operation is right or wrong, the Constitution provides the test of Territorial Nexus.

A.H. Wadia v. Income Tax Commissioner Bombay¹ In this case, it was stated that the sovereign legislature question of extra-territoriality of any enactment can never be raised in the municipal court on the ground for challenging its validity.

A State Legislature on the other hand, may make laws only for the State Concerned. A State Legislature has no legislature competence to make laws having extra territorial operation. A State laws can affect persons, properties or things within the State and not outside the State. A State law is not immune from Challenge in a Court on the ground of extra territorial operation. A State law having operation outside the State is not valid.

The Doctrine of Territorial Nexus

This doctrine is applied to find out whether the particular State law has extra-territorial operation. If there is a territorial nexus between the subject matter of the act and the State making law then the statute in question is not regarded as having extra-territorial question.

Thus, 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 or the subject matter and real territorial connection with it.

State of Bombay v. RMD. Chamarbaugwala² In this case, the respondent who is the organizer of a prize competition was outside the State of Bombay. The paper through which the prize competition was conducted was printed and published outside the State of Bombay but it had a wide circulation within the State of Bombay. Most of the activities which the gambler was expected to undertake took place within the State. A tax levied by the State of Bombay on lotteries and prize competition was extended to the newspaper published outside the State, in a lump sum having regard to the circulation of distribution of newspaper in the State.

Wallace v. Indian Tax Company, Bombay³ The facts of the case are that, there was a company which was registered in England. Now this Company was a partner of an Indian firm. Here, the Indian Tax Authority wanted to tax the entire income of the Company. It was said that since the major income of this Company comes from India, that is why the Indian Tax Authority has the power to tax that income of that Company. So, the territorial nexus test says that if the Parliament wishes to made an extra territorial law and the subject matter which such laws is to govern must have a reasonable connection between both i.e., the tax or the territorial nexus and the subject matter.

Restrictions or Exceptions of Parliament from making laws

The power of the Parliament in making laws is not absolute and the Constitution of India places certain restriction on territorial jurisdiction to the Parliament and thus the Parliament does not enjoy absolute power under Article 245 and there are three exceptions to it:

1. The first exception is Article 240 which says that the four Union Territories i.e., Dadar and Nagar Haveli, Daman and Diu, Andaman and Nicobar Island and Lakshadweep Island shall be vested to the power of the President and it shall be the absolute power of the President to make laws for these four Union Territories in order to regulate peace, progress and Goal Governance. The extent of power of the President to make regulations is so much that for these four territories the Parliament cannot amend, modify and repealed.
2. The second exception is the 5th Schedule in which the Scheduled Tribes that is the tribal areas are covered. This exception says that the Governor of these respective States shall have the power that at any point of time can declare that these tribal areas that the law of Parliament shall not apply.
3. And, the third exception is that the 6th Schedule which deals with the States of Assam, Mizoram, Meghalaya and Tripura and for these States the Governor of these States shall have the power at any point of time say that the specific laws of Parliament will not be applied in this area and they cannot amend or modify.

The distribution of the Legislative powers

After the territorial legislation, the second aspect is the subject matter legislation which refers to who has power with regard to which subject matter to make laws. So, in the subject matter, the Centre and the State have been categorised by the 7th Scheduled under the three list i.e.

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

Article 246 of the Indian Constitution deals with the subject matter made by the Parliament and by the legislature of States. In which Article 246(1) deals with the Union List, Article 246(2) deals with the Concurrent List and Article 246(3) deals with the State List.

Union List: Union List includes all those things which are of national importance like defence, atomic energy etc. The Parliament has exclusive powers in making laws in regard to any of the subject matter given under the Union List. The list at present has 100 subjects. Some of the subject matter given under the Union List are;

1. Defence
2. Preventive Detention
3. Foreign Affairs
4. Transportation and Communication
5. Property of the Union
6. Financial powers
7. Economic powers
8. Cultural and Educational functions
9. Union Services (UPSC)
10. Elections, Parliament Affairs, etc.
11. Judicial powers

¹ A.H. Wahdia v. Income tax Commissioner Bombay (1949) 51 BOMLR 287

² State of Bombay v. RMD. Chamarbaugwala (1957) AIR 699 1957 SCR 874

³ Wallace v. Indian Tax Company (1948) 50 BOMLR 482

State List: Similarly, those items or those subject matter under the Union list are covered in State list, which are of local importance or regional importance e.g., Police, Agriculture, Prisons etc. So, there are total of 61 items in which the State has exclusive powers to make laws related to these items. Basically, the State legislature has all the powers to make laws in regard to the subject matter given under the State List. Some of the items covered under the State list are;

1. Law and Order Justice
2. Health, Local Govt. Relief of the disabled etc.
3. Libraries
4. Communications
5. Land and Agriculture
6. State Property
7. Elections and Legislative privileges
8. State Public Services
9. Finance and Taxation etc.

Concurrent List: Both the Parliament and the State Legislature shall make laws in regard to any of the subject or the item given under the Concurrent List. It contains such 52 items in relations to which both the Centre and the States can make laws. Some of the items covered under the Concurrent list are;

1. Basic laws
2. Public welfare
3. Forest
4. Labour
5. Education etc.

In short, the Parliament has more power to make laws as compared to the State Legislature. In which if in any matter which is not included in any list from the 7th Schedule then such matter shall be vested to the Parliament under the Residuary powers under Article 248 of the Constitution. And these Residuary powers to make laws shall also include the power to levy residuary taxes.

3. Conclusion

It can be concluded that being a federal constitution, the Constitution of India has provided for a clear division of powers to make laws into two-fold of Government i.e., between the Centre and the State. The power was divided in order to balance the power in the executive and legislative branches. From the above scheme it is also clear that Parliament has more power to make laws as compared to the State legislature even though the powers have been given with the subject matter. In which if there is any items which is not mentioned in any list of the 7th scheduled and such item is necessary to look by then such power to make laws on such other items shall be vested to the Parliament as a Residuary power. And also, if there is a conflict or an argument between the Union and the state in regard to any subject matter to make laws then the Constitution said that such power to make law shall be given to the Centre over the State. But if the State received an assent from the President, then in such case, the power shall be vested to the State over the Union.

Thus, the constitution in dividing the legislative powers had bring diversity along with uniformity in which the matters of the national importance which require uniformity to legislate are vested to the power of the Union. The matters related to the local government and to the regional importance which brings diversity are vested to the State legislature and the

other which is of both national and local importance is vested to both the Union and the State in the Concurrent list.

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