

AN ANALYSIS OF STATUTORY FRAMEWORK OF TERRITORIALITY LIMITS UNDER INDIA LEGISLATION

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Introduction

The outer limits of territorial jurisdiction of India under the various substantive laws and procedural laws enacted by the Government of India, like Indian constitution there are different provision part 1 The Union and Its Territory article 1 clause (1)(2)(3) and Article 12 defines the states Article 142 deals with enforceability of supreme court's orders. Article 131 to 142 deals supreme court's jurisdiction, article 225 to 230 deals the high court's jurisdiction article 370 Special provision relating to state of J&K.

The maritime zones Act 1976 section 3 defines the limits of the territorial waters while section 5 defines the limits of the contiguous zones. Indian Penal Code 1860, section 1 to 4. Civil procedure code 1908 section 1(3), section 29, 43, 44A, 45, 78, 84, 86, related to territorial limits. The criminal procedures code 1973 chapter 5, 10, 11, CPC section 7 of Cr.P.C. deals with the territorial division with states section 49, chapter 5A section 105A, 105B, 105C, 105D, 105E to 105J, Section 285, section 166A and 189 etc. The merchant shipping Act 1958, section 2 deals the applicability of this Act other relevant provision regarding to territorial limits section 40, 86, 116, 155, 207, 210, 211, 235, 305, 306, 321, 323, 328, 350, 356. Income Tax Act 1961 section 1 and section 2(25). The Custom Act 1962 section 2(27) section 2(28) and section 5 of the territorial water continental zones contiguous zones and others zones Act. Indian Admiralty provision the Admiralty courts act 1861 the colonial Admiralty courts Act 1890 and 1891.

Maritime zones Act 1976. An Act to provide for certain matters relating to the territorial waters, continental shelf, exclusive economic zone and other maritime zones of India. Section 1(1) This Act may be called the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976. (2) Sections 5 and 7 shall come into force on such date or on such different dates as the Central Government may, by notification in the official Gazette, appoint; and the remaining provisions of this Act shall come into force at once. Section 2 In this Act, "Limit", in relation to the territorial waters, the continental shelf, the exclusive economic zone or any other maritime zone of India, means the limit of such waters, shelf or zone with reference to the mainland of India as well as the individual or composite group or groups of islands constituting part of the territory of India. Section

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3(1) the sovereignty of India extends and has always extended to the territorial waters of India (hereinafter referred to as the territorial waters) and to the seabed and subsoil underlying, and the air space over, such waters Territory of India. Act to provide for certain matters relating to the territorial waters, continental shelf, shelf, exclusive economic zone and other maritime zones.

International Provision Related to the Zones

In the Eleventh Session, on 30th April, 1982, conference adopted the draft Convention on the Law of Sea by the overwhelming majority of 159 States. The Convention on the Law of Sea known as United Nations Convention on the Law of Sea, 1982 has 320 Articles. They are divided into seventeen parts and nine annexure. It lays down rules for all parts and virtually all users of seas and oceans. The relevant clauses thereof are as under: Section 3(2) defines the limit of territorial waters as the line every point of which is at a distance of twelve nautical miles from the nearest point of the appropriate base line. Section 3(3) authorises the Central Government to alter the limits of territorial waters.

Section 6 of the Maritime Zones Act, 1976 defines the Continental Shelf of India and Section 7 defines the Exclusive Economic Zone of India, Section 6(5) authorises the Central Government to declare any area on the continental shelf as "designated area." Similarly Section 7(6) authorises the Central Government to declare any area in the Exclusive Economic Zone as "designated area." The Central Government has further, by notifications to be issued under Section 6(6) of the Maritime Zones Act, 1976 to extend any enactment for the time being in force in India to the continental shelf of any designated area on the continental shelf. Similarly pursuant to Section 7(7) of the Maritime Zones Act, 1976 Central Government has to extend any enactment for the time being in force in India to the exclusive economic zone or any part thereof

Territorial Provision under Civil Procedure Code 1908

Section 1(3) of CPC lays down the wide ambit of its operation. It extends to the whole of India except:

- a. the State of Jammu and Kashmir
- b. The State of Nagaland and tribal areas.

(‘Tribal areas’ here means the territories which, immediately before the 21st day of January, 1972 were included in the tribal areas of Assam as referred to in paragraph 20 of the Sixth Schedule to the constitution. section 2 (7B) "India", except in sections 1, 29, 43, 44, 44A, 78, 79, 82, 83 and 87A, means the territory of India including the state of Jammu and Kashmir.

Section 13 When foreign judgment not conclusive— A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title except— (a) where it has not been pronounced by a Court of competent jurisdiction; (b) where it has not been given on the merits of the case; (c) where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognise the law of India in cases in which such law is applicable; (d) Where the proceedings in which the judgment was obtained are opposed to natural justice; (e) where it has been obtained by fraud; (f) where it sustains a claim founded on a breach of any law in force in India.

Section 14 Presumption as to foreign judgments. — The Court shall presume upon the production of any document purporting to be a certified copy of a foreign judgment that such judgment was pronounced by a Court of competent jurisdiction, unless the contrary appears on the record; but such presumption may be displaced by proving want of jurisdiction.

Place of suing

Section 15 Court in which suits to be instituted— every suit shall be instituted in the Court of the lowest grade competent to try it. 16. Suits to be instituted where subject-matter situate— Subject to the pecuniary or other limitations prescribed by any law, suits— (a) for the recovery of immovable property with or without rent or profits, Section 29 Service of foreign summonses— Summons and other processes issued by— (a) any Civil or Revenue Court established in any part of India to which the provisions of this Code do not extent, or (b) any Civil or Revenue Court established or continued by the authority of the Central Government outside India, or (c) any other Civil or Revenue Court outside India to which the Central Government has, by notification in the Official Gazette, declared the provisions of this section to apply, may be sent to the Courts in the territories to which this Code extends, and served as if they were summonses issued by such Courts.

Provision Uner Indian Penal Code 1860

Section 02: Punishment Of Offences Committed Within India-

‘Every person shall be liable to punishment under this Code and not otherwise for every act or omission contrary to the provisions thereof, of which, he shall be guilty within India. Section 3 Punishment of offences committed beyond but which by law may be tried within India. - Any person liable by any Indian law to be tried for an

offence committed beyond India shall be dealt with according to the provisions of this Code for any act committed beyond India in the same manner as if such act had been committed within India.

The section provides for extra- territorial operation of Indian legislation relating to criminal law , but only if the terms of the section are satisfied. A very important ingredient of the Section is contained in the words.” Any person liable by any Indian law....”

The Section operates only where an Indian Law specifically provides that an act committed outside Indian may be dealt with under that law in India.

“*Indian Law*”: As to the expression “Indian Law “, see *Madhavrao v. State of M.P*⁴¹., The Code Itself, in Section 4, provides for extra territorial operation of the penal provisions of the Code. For extra territorial application of other, i.e. special laws, the “extent” clause (usually contained in the first Section of the special laws) should be consulted. The Child Marriages Restraint Act, 1929 does not contain any provision for its extra territorial application and , therefore, does not apply to marriage outside India⁴².

At the same time, if the “Indian Law” clearly provides for its own extra territorial application then it is immaterial that the act or omission was not punishment in the foreign country.⁴³

Section 3, IPC applies only to a person liable by any Indian Law to be tried for an offence committed beyond India. If the Indian Law does not have extraterritorial operation then Section 3 does not apply.

At the same time if there is in force such law, it is not necessary that the act must be punishable where it was committed⁴⁴.

4. Extension of Code to extra territorial offences.-(Admiralty Jurisdiction) the provisions if this Code apply also to any offence committed by-

- (1) Any citizen of India in any place without and beyond India;

⁴¹ AIR 1916 SC 198

⁴² *Sheikh Haidar v. Sued Issa* , ILR 1939 Nag 241.

⁴³ *Pheroze v. State*,(1964) 2 Cr LJ 533 (Bom)

⁴⁴ *Pheroze v. Syed Issa* , ILR 1939 Neg 241.

(2) Any person on any ship or aircraft registered in India wherever it may be.

Explanation.- In this Section the word “offence” includes every act committed outside India which, if committed in India, would be punishable under this Code.

Illustration A, who is a citizen of India, commits a murder in Uganda. He can be tried and convicted of murder in any place in India at which he may be found.

I, (name is and office of the Magistrate) hereby charge you (name of the accused) as following:-

If in the place without of beyond India:-

Section 4, IPC defines the extra territorial application of the Code. Procedure for securing surrender is governed by the Extradition Act, 1962.- Jugal Kishore More (1969)

3 SCR 320. Section 4 does not apply where the offender is not a citizen of India.- Central Bank of India Ltd. V. Ram Narain,(1955)1 SCR 697.

Section 4 provides for the extra territorial operation of the Penal Code. Such operation is conditioned by the nationality of the offender- clause (1), or by the place of commission – clause (2). Under clause (1), the place of commission is immaterial provided the offender is an Indian citizen. Citizenship is governed by the Citizenship Act, 1955.

Under clause (2) what is required is that the ship or aircraft must be registered in India. Registration of ships is governed by the Merchant Shipping Act, 1958.

Registration of aircraft is governed by the Indian Aircraft Act, 1934.

Illegal arrest: Even if a person is arrested outside India illegally for trial in India, the trial is not vitiated by the illegality of the arrest.-Vinayak D. Saarkar,1920 ILR 35 Bom 225(arrest alleged to be in violation of rules of Public International Law). The most fundamental principle of extra- territorial jurisdiction is nationality.

A much more controversial form of extraterritorial jurisdiction is the so called effects principle. Extraterritorial though it may be in practice, in theory the effects principle is grounded on the principle of territorial jurisdiction. The premise is that a state has jurisdiction over extraterritorial conduct when the conduct has an effect within its territory.

The effects principle received its most notable enunciation in the Lotus case, where the permanent Court of International Justice was asked to decide whether Turkey had violated “the principles of international law” by asserting criminal jurisdiction over a French officer who had been navigating a private French vessel, when it collided with, and sank, a Turkish ship on the high seas.

Lotus case⁴⁵: The issue was one of extra territoriality because the Frenchman had at all times during the collision been on French territory, i.e. aboard the French ship, although damage had been inflicted upon Turkish territory, i.e. on the Turkish ship. The Lotus court adopted a strictly positivist view of international law, seeing it as a law entirely generated by the positive acts of states and emanating “from their own free will as expressed in conventions or by usages generally accepted expressing principles of law”. The permanent Court searched for “a rule of international law limiting the freedom of States to extend the criminal jurisdiction of their courts to a situation uniting the circumstances of the present case” and, finding none, ruled that Turkey had not acted improperly either in seizing the French Officer or in trying him for violation Turkey law while outside Turkish territory.

Lotus case besides nationality and effects, there has been suggested and accepted from time to time a variety of other foundations for a state’s exercise of extraterritorial jurisdiction. Three points should be mentioned here: the protective principle, the universality principle, and the passive personality principle. The protective principle provides that a state has jurisdiction to prescribe law with respect to “certain conduct outside its territory by persons not its nationals which is directed against the security of the state or a limited class of other state interests”. Restatement (revised) *Supra* note 8,402 (3).

5. Certain laws not to be affected by this Act.- Nothing in this Act shall affect the provisions of any Act for punishing mutiny and desertion of officers, soldiers, sailors or airman in the service of the Government of India or the provisions of any special or local law. Scope: Section 5 marks it clear that the Indian Penal Code is not exhaustive of the entire criminal law of the country.- this verdict given by court in case Motilal Shah, 1930 ILR 55 Bom 89.

But Section 26 of General Clauses Act, 1897 and article 20 of the Constitution prohibit double punishment for the same offence.

Section 5 saves the operation of two categories of laws, namely:-

- (i) Enactments relating to armed forces, and
- (ii) Special and local laws.

⁴⁵ 1927 PCIJ, Ser. A, No. 10208

Armed forces: As to the category (i) mentioned above see the Army Act, 1950, the Air Force Act, 1950 and the Navy Act, 1957.

Special and local laws: As to the category (ii) mentioned above see the expressions “Special law and Local law : as defined in sections 41-42 of the Indian Penal Code.

Constitution of India

The provision of the territorial is given under the constitution are following-

Article 1 Name and territory of the Union.—(1) India that is Bharat, shall be a Union of States.

(2) The States and the territories thereof shall be as specified in the First Schedule.

(3) The territory of India shall comprise—

(a) The territories of the States;

(b) The Union territories specified in the First Schedule; and

(c) Such other territories as may be acquire

The case related to the territorial limits of the county was came to the question by the special leave petition N. Masthan Sahib vs. Chief Commissioner of Pondicherry⁴⁶

Sivaramma Reddiar, the appellant was a citizen of India and was engaged in the business of motor transport. By an official notification dated December 27, 1958, the State Transport Commission of Pondicherry invited applications for the grant of stage carriage permits to be submitted. The appellant applied and was granted the permit on April 30, 1960 and all other applicants were rejected including that of the respondent. But on May 4, 1960, the chief commissioner constituted himself as the appellate authority and on September 5, 1960 set aside the order of the State Transport Authority and granted the permit to the respondent. The relief sought was to set aside the orders passed by the Chief Commissioner of Pondicherry as the State Transport Appellate Authority (under the Motor Vehicles Act). The first question before the Supreme Court was whether Pondicherry was comprised within the territory of India. The court referred to Article 1(3) of the constitution. Article 1(3) (c) states that the territory of India shall comprise of such other territories as may be acquired. The court held that ‘acquired’ should be taken to be a reference to ‘acquisition’ in Public International Law. In this case by the Merger Agreement, 1954, the Government of France transferred, and the Government of India took over the administration of the territory of all the French Establishment in India, including Pondicherry, with effect from 1st Nov, 1954. This was expressed to be a de facto transfer and was intended to be followed up by a de jure

⁴⁶ AIR(1962)SC797 :(1962)supp 1 SCR 981: (1962)2 SCA 401.

transfer. A Treaty of Cession providing for de jure transfer had been signed by the Government of France and the Government of India on the 28th May, 1956 but had not been ratified in accordance with the French law. The sequence of reasoning can be depicted as below:

Thakur Amer singhji vs. state of Rajsthan⁴⁷

In this case the land of bhumidhar of rajstan subject to sovereignty under the king of the state of rajsthan the ex- ruler is continues existence of the sovereignty upon the land after the conquest of the territory

In effect, there was a conquest of the territory and a re-grant of the same to the ex-rulers, whose title to the lands should thereafter be held to rest on the recognition of it by the ruler of Jodhpur. Now what was the status of the Bhomichars or the land under their control? Were Bhomichars Zamindars so as to bring them under the purview of Land Acquisition Act? The Supreme Court laid down the foremost principle governing the status of a territory. "When a territory is acquired by a sovereign state for the first time it is an act of state". It matters not how the acquisition has been brought about.

Article 12 deals about the definition of state come the parliament and other authority.

Supreme Court provision relating to jurisdiction

Art. 131: Original jurisdiction of the Supreme Court

Art. 132: Appellate jurisdiction of the Supreme Court in appeals from High Courts in certain cases

Art. 133: Appellate jurisdiction of the Supreme Court in appeals from High Courts in regard to civil matters.

Art. 134: Appellate jurisdiction of the Supreme Court in appeals from High Courts in regard to criminal matters.

Art. 135: Jurisdiction and powers of the Federal Court under existing law to be exercisable by the Supreme Court.

Art. 136: Special leave to appeal by the Supreme Court.

Art. 137: Review of judgements or orders by the Supreme Court.

Art. 138: Enlargement of the jurisdiction of the Supreme Court.

Art.139: Conferment on the Supreme Court of powers to issue certain writs.

⁴⁷ AIR 1955 SC 504.

Art. 139 A: Transfer of certain cases.

Art. 140: Ancillary powers of the Supreme Court.

Art. 141: Law declared by the Supreme Court to be binding on all courts.

Art. 142: Enforcement of decrees and orders of Supreme Court and orders as to discovery etc. Original, appellate and special leave jurisdiction have the territorial limit defined as the territory of India while the writ jurisdiction under Art 32 and 139 are not circumscribed by territorial limits in terms of the territory of India. The enforcement jurisdiction, importantly, is bounded by territorial limits of the State. Art 138 and 140 enables the parliament to enlarge the jurisdiction and powers of the Supreme Court and to make provision for supplemental powers for the effective exercise of its jurisdiction.

High Court Jurisdiction: Selected Articles

Art. 225: Jurisdiction of existing High Courts.

Art. 226: Power of High Courts to issue certain writs

Art. 227: Power of superintendence over all courts by the High Court.

Art. 228: Transfer of certain cases to High Court.

Art.230: Extension of jurisdiction of High Courts to Union Territories.

He three erstwhile Presidency High Courts were having Letters of Patent for the conferment of the ordinary original civil jurisdiction. By virtue of the Admiralty Court Act 1861, the Colonial Courts of Admiralty Act 1890 and Colonial Courts of Admiralty (India) Act, 1891 the Presidency High Courts were conferred the Admiralty jurisdiction. This special admiralty jurisdiction was saved by the Government of India Act, 1915 as also that of 1935 and subsequently protected in terms of Article 225 of the Constitution.

Special Provision of The State Of Jammu And Kashmir Under Indian Constitution

Article 370 deals with the temporary provisions with the respect of state of jammu and Kashmir it grant special status to the state of Jammu and Kashmir. Article 370(1) (b)(ii), The Constitution (Application to Jammu and Kashmir) Order 1950 was promulgated by the President of India in consultation with the government of J&K. the order specified the matters with respect to which the Union Parliament was to be competent to make laws for the state. The Order of 1950 was replaced by an order with the same title in 1954. This is the basic order which, as

amended and modified from time to time, regulates the constitutional status of the state. The essentials of the constitutional position of the state are as follows:

- 1 Legislative power of the parliament vis-à-vis the state extends to the matters specified in List 1 excluding entries 8,4,60, 79, 97. Parliament has no residuary power vis-à-vis the state. The state list has been dropped in the state implying that the parliament can legislate on List I and List III (except those excluded) and all the rest of the legislative power vests in the state legislature.
- 2 Parliament's power to legislate to enforce a treaty is subject to the limitation that no decision affecting the disposition of the state is to be made by the Government of India without the consent of the state.
- 3 A proclamation of emergency under Art 352 needs the concurrence of the state. A proclamation of emergency under Art 360 cannot be made. Emergency can be declared under Art 356 if the President is satisfied that the Government of the state cannot be carried out in accordance with the constitution of India or the Constitution of the State.
- 4 The power of the parliament to re-organise the boundaries etc, of the state is conditioned by the restriction that no bill for such a purpose is to be introduced in Parliament without the consent of the state legislature.
- 5 The executive power of the Centre vis-a-vis the state extends to the matters within the parliamentary legislative field.
- 6 Art 365 (effect of failure to comply with, or give effect to, directions given by the Union) does not apply to the state.
- 7 Within the ambit of its administrative power, Centre can do all things in the state which it can do in relation to other states.
- 8 Provisions relating to freedom of trade and commerce, services and citizenship apply to the state.
- 9 The Election Commission has jurisdiction over elections held in the state under its constitution. Like the rest of India, election petitions in the state are heard by the High Court, from where an appeal lies to the Supreme Court..
- 10 An amendment made to the constitution under Art 368 does not take effect in the state unless applied by a Presidential Order under Art 370(1).
- 11 The directive principle of state does not apply to the state of J&K.
- 12 Provisions of the constitution relating to the Central Government apply to the state with a few modifications.
- 13 The jurisdiction of the Supreme Court extends over the state except for Arts 135 and 139.(Art 135: jurisdiction and powers of the Federal Court under existing law-exercisable by the Supreme court; Art 139: conferment of writ jurisdiction on the Supreme Court in addition to Art 32)

14 The state is governed under a constitution of its own drafted by its Constituent Assembly. The provisions of the Indian Constitution relating to the State Government's legislature, executive and judiciary do not apply to the state except certain provisions.

The high court can issue writs only for the enforcement of the fundamental rights and not for any other purpose.

The Custom Act 1962

The territorial limits under of Customs Act. -- As per Notification No. 11/87-cus. Dated 14-1-1987 the Customs Act extended to areas in the Continental Shelf and the Exclusive Economic Zone of India. The text of the notification is as under:"In exercise of the powers conferred by Clause (a) of Sub-section (6), Clause (a) of Sub-section (7) of Section 7 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976 (80 of 1975), the Central Government hereby extends the Customs Act, 1962 (52 of 1962) and the Customs Tariff Act, 1975 (51 of 1975) to the designated areas in the Continental Shelf and the Exclusive Economic Zone of India as declared by the Notification of the Government of India in the Ministry of External Affairs S.O. No. 429(E), dated 18th July, 1986. With effect from 15th day of January, 1987."The text of the Notification No. S.O.643 (E), dated 19th September, 1996 is as under:

"G.S.R. 682(E) In exercise of the powers conferred by Clause (a) of Sub-section (6) of Section 6, and Clause (a) of Sub-section (7) of S, 7, of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976 (80 of 1976), the Central Government hereby further extends the Customs Act, 1962 (52 of 1962) and the Customs Tariff Act, 1975(51 of 1975) to the designated areas in the Continental Shelf and Exclusive Economic Zone of India as declared by the notification of the Government of India in the Ministry of External Affairs No. S.O. 643(E), dated 19th September, 1996 with immediate effect.

The Statutory Provisions

Section 25 before proceeding to consider the rival contentions rose by the parties to the petition, it would be necessary to take survey of various relevant provisions of law in this regard. (i) Article 1(3) of the Constitution of India provides that the territory of India shall comprise—

a) The territories of States:

b) The Union territories specified In the First Schedule; and

c) Such other territories as may be acquired.

(ii) The relevant portion of Section 3(28) of the General Clauses Act provides:

"India" shall mean--(a) and (b) of Article 1 (3) of Indian constitution

(c) As respects any period after the commencement of the Constitution all territories for the time being comprised in the territory of India.

Section 2(27) of the Customs Act defines India as under: "India" includes the territorial waters of India. This definition is relevant only for the purposes of the Customs Act. (iii) Section 2(21)-- Foreign going vessel or aircraft means any vessel or aircraft engaged in carriage of goods or passengers between any port or airport in India and any port or airport outside India. Whether touching any intermediate port or airport in India or not and includes--(i) and (ii)

(iii) any vessel or aircraft proceeding to a place outside India for any purpose whatsoever. (iv) Section 2(28) of the Customs Act defines "Indian Customs Waters" means the waters extending into the sea up to the limit of contiguous zone of India under Section 5 of the Maritime Zones Act and includes any bay, gulf, harbour, creek, or tidal river.

Section 53 Transit of goods in same vessel or aircraft Subject to the provisions of Section 11, any goods imported in a vessel or aircraft and mentioned in the import manifest as for transit in the same vessel or aircraft to any port or airport outside India or any customs port or customs airport may be allowed to be so transited without payment of duty. Section 54 . Transshipment of goods without payment of duty. (1) Where any goods Imported into a customs port or customs airport are intended for transshipment, a bill of transshipment shall be presented to the proper officer in the prescribed form. Section 86. Transit and transshipment of stores (1) Any stores imported in a vessel or aircraft may, without payment of duty, remain on board such vessel or aircraft while it is in India. (2) Any stores Imported in a vessel or aircraft may, with the permission of the proper officer, be transferred to any vessel or aircraft as stores for consumption therein as provided in Section 87 or Section 90.

(viii) Section 87. Imported stores may be consumed on board a foreign going vessel or aircraft

Any Imported stores on board a vessel or aircraft (other than stores to which Section 90 applies) may, without payment of duty be consumed thereon as stores during the period such vessel or aircraft is a foreign-going vessel or aircraft.

(ix) Article 297 of the Constitution of India as originally enacted was as under :Article 297: All lands, minerals and other things of value underlying the ocean within the territorial waters of India shall vest in the Union and be held for the purposes of the Union.

Article 297 was amended in 1963 to include the words "or the continental shelf after the words territorial waters. Article 297 was again amended in 1976, Article 297: Things of value within territorial waters or continental shelf and resources of the exclusive economic zone to vest in the Union:

(1) All lands, mineral land other things of value underlying the ocean within the territorial waters, or the continental shelf, or the exclusive economic zone, of India shall vest in the Union and be held for the purposes of the Union.

(2) All other resources of the exclusive economic zone of India shall also vest in the Union and be held for the purposes of the Union.

(3) The limits of the territorial waters, the continental shelf, the exclusive economic zone, and other maritime zones, of India shall be such as may be specified, from time to time, by or under any law made by Parliament,

(4) The Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other that under Customs Act goods entering into India becomes imported goods and chargeable to duty under Section 12, unless they are exempt from payment of duty by virtue of some of the specific provisions. It is significant to note that ship stores or spares thereof are not exempted from the operation of Section 12, but by virtue of Section 53 of the Act are allowed to be transited without payment of duty. Similar provision is to be found in Section 54 in respect of the goods imported into a customs port or customs airport but is intended for transshipment of goods. Section 86(2) of the Act inter alia provides that any Imported stores may be transferred to any vessel as stores for consumption therein as provided in Section 87.

Section 87 Inter alia provides that imported stores imported without payment of duty is consumed on the vessel as stores during the period such vessel is a foreign going vessel. Article 127 UNCLOS of 1982 deals with Customs duties, taxes and other charges. Clause (1) thereof provides that traffic in transit shall not be subject to any customs duties, taxes or other charges except charges levied for specific services rendered in connection with such traffic; whereas Clause (2) provides that means of transport in transit and other facilities provided for and used by the land locked States shall not be subject to taxes or charges higher than those levied for the use of means of transport: of the transit State.

Section 50. Provides that where the goods are in transit to other country shall not be subject to any customs duties, taxes or other charges except for the charges levied for the specific services in connection with such traffic. In other words, there is no prohibition for levying customs duties on the goods which are not in transit for onward transmission to any other country. If the goods are brought in only while proceeding to other country, then no customs duty can be levied. In all other cases it seems to be permission.

Income Tax Act 1961

Section 2(25A) “India” means the territory of India as referred to in article 1 of the Constitution, its territorial waters, seabed and subsoil underlying such waters, continental shelf, exclusive economic zone or any other Maritime zone as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 (80 of 1976), and the air space above its territory and territorial Waters; the applicability of the income tax in the case McDermott International Inc. (No. 1) v. Union of India⁴⁸

In this case the petitioner-company, established under the laws of the Republic of Panama, carried on business of designing, fabrication, construction of platform jackets, decks and piles, bridges, pipelines and similar construction work on shore and off-shore. The petitioner at the relevant time was engaged in the activity of installing platform jackets, decks and laying pipelines at the Bombay High off-shore area, which was at a distance of about 100 nautical miles from the Indian coastline.

The Income-tax Officer informed the petitioner-company that it came under the purview of notification No. G.S.R. 304(E) (see [1983] 142 ITR (St.) 11), dated March 31, 1983, issued by the Central Government and directed the petitioner to pay income-tax in respect of the personnel employed by it in the previous year relevant to the assessment year 1983-84. A notice under section 226(3) of the Income-tax Act, 1961, was also issued to the O.N.G.C. requesting them to pay forthwith any amount held by it for or on account of H of whom the petitioner was a sub-contractor which was complied with by the O.N.G.C. In that case, the question arose whether, by virtue of the notification which came into effect from April 1, 1983, the income which had accrued to the employees of the petitioner within the area of the continental shelf or economic zone, and beyond the territorial waters of India, in the accounting year April 1, 1982, to March 31, 1983, was subject to income-tax under the Income-tax Act, 1961.

⁴⁸ 1988 ITR BOM. High court p.155

The learned single judge of the Bombay High Court held that the relevant assessment year is 1983-84, when the Income-tax Act, 1961, was made applicable to the continental shelf and the exclusive economic zone of India by virtue of Notification No. G.S.R. 304(E) (see [1983] 142 ITR (St.) 11), dated March 31, 1983. The learned judge further found that the income-tax is actually levied on income which accrued during the previous accounting year 1982-83, and as the territory in which the income arose was beyond 12 nautical miles, the Income-tax Act was not applicable to such income during the accounting year 1982-83. The income-tax, therefore, cannot be levied on income which accrued during the period when the territory in which it accrued was not part of India and was not governed by the Income-tax Act, 1961. The learned single judge further held as follows (at page 161) :

"Therefore, when it is sought to tax income arising in the previous year relevant to the assessment year from which the Income-tax Act is made applicable, an express provision has to be made to cover income accruing in the previous year. In the absence of such an express provision, income accruing in an accounting year for which the Income-tax Act was not applicable, cannot be brought to tax simply because from the relevant assessment year, the Income-tax Act is made applicable.

There is no such express provision in the notification of March 31, 1983. The income arising in the accounting year April 1, 1982, to March 31, 1983, to the petitioner in the territory beyond 12 nautical miles is not, therefore, subject to the Income-tax Act, 1961."

For all the reasons stated above, we are of the view that the Tribunal is quite right in holding that the continental shelf and the exclusive economic zone were not part of India prior to the notification of the Government of India No. 5147/F. No. 133(79) /82, TPL, dated March 31, 1983, in view of the provisions of sections 6(6) and section 7(7) of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976, and consequently the salary income earned by the assesses prior to April 1, 1983, was not chargeable to tax under the Income-tax Act, 1961, in the assessment year 1983-84.

UK/India Double Taxation Convention

Singed in 25 January 1993 and come in to force on 25 October 1993 effective in India from 1 January 1994.

Article 1 scope of the convention⁴⁹

(1) This Convention shall apply to persons who are residents of one or both of the Contracting States.

⁴⁹ Singed by UK/INDIA 25 January 1993

(2) This Convention extends to the territory of each Contracting State⁵⁰, including its territorial sea, and to those areas of the exclusive economic zone or the continental shelf adjacent to the outer limit of the territorial sea of each State over which it has, in accordance with international law, sovereign rights for the purpose of exploration and exploitation of the natural resources of such areas, and references in this Convention to the Contracting State or to either of them shall be construed accordingly

Article 2 Taxes covered (1) the taxes which are the subject of this Convention are:

(a) In the United Kingdom:

- (i) The income tax;
- (ii) The corporation tax;
- (iii) The capital gains tax; and
- (iv) The petroleum revenue tax;

(Hereinafter referred to as "United Kingdom tax");

(b) In India:

The income-tax including any surcharge thereon;

(2) This Convention shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of this Convention in addition to, or in place of, the taxes of that Contracting State referred to in paragraph (1) of this Article. The competent authorities of the Contracting States shall notify each other of any substantial changes which are made in their respective taxation laws and article 4 deals the provision related to fiscal domicile.

(1) For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the law of that State, is liable to taxation therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. (2) Where by reason of the provisions of paragraph (1) of this Article an individual is a resident of both Contracting States, then his status shall be determined in accordance with the following rules:

(a) He shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him. If he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closer (centre of vital interests);

(b) If the Contracting State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;

⁵⁰ Contracting states includes UK/INDIA given under article 3(1)(a) of the convention.

(c) If he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national;

(d) If he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

Article 9 takes about tax related the Shipping

(1) Income of an enterprise of a Contracting State from the operation of ships in international traffic shall be taxable only in that State. (2) The provisions of paragraph (1) of this Article shall not apply to income from journeys between places which are situated in a Contracting State. (3) For the purposes of this Article, income from the operation of ships includes income derived from the rental on a bareboat basis of ships if such rental income is incidental to the income described in paragraph (1) of this Article. (4) Notwithstanding the provisions of Article 7 (Business profits) of this Convention, the provisions of paragraphs (1) and (2) of this Article shall likewise apply to income of an enterprise of a Contracting State from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) used for the transport of goods or merchandise. (5) The provisions of this Article shall apply also to income derived from participation in a pool, a joint business or an international operating agency. (6) Gains derived by an enterprise of a Contracting State from the alienation of ships or containers owned and operated by the enterprise shall be taxed only in that State if either the income from the operation of the alienated ships or containers was taxed only in that State, or the ships or containers are situated outside the other Contracting State at the time of the alienation.

Merchant Shipping Act 1958

The merchant shipping Act, section 1. short title and commencement (1) this Act may be called the merchant shipping Act, 1958. (2) it shall come in to force on such date as the central government may, by notification in the official Gazette appoint, and different dates may be appointed for different provisions of this Act.

Section 2 of the Act takes about the application of the act – this act shall be apply those ship which are registered in India and also a ship which are found in territorial water of the India unless otherwise expressly provided by the Act.

Section 40 provision related to the ship outside but the through the registration the consular appointed by the Indian government the ship become the ship become the registered in India. Section 86 recognised the competency of the certificate which are registered in the other country section

Section 116 the provision related to the seamen who are outside the India but the M.S. Act 1958 applicable upon those. The section 3(15), 443 and 445- Detention of the foreign vessel Damage –what is whether confined a physical damage or wide enough to includes all maritime claims. And the recognition of the conventional certificate issued outside India.

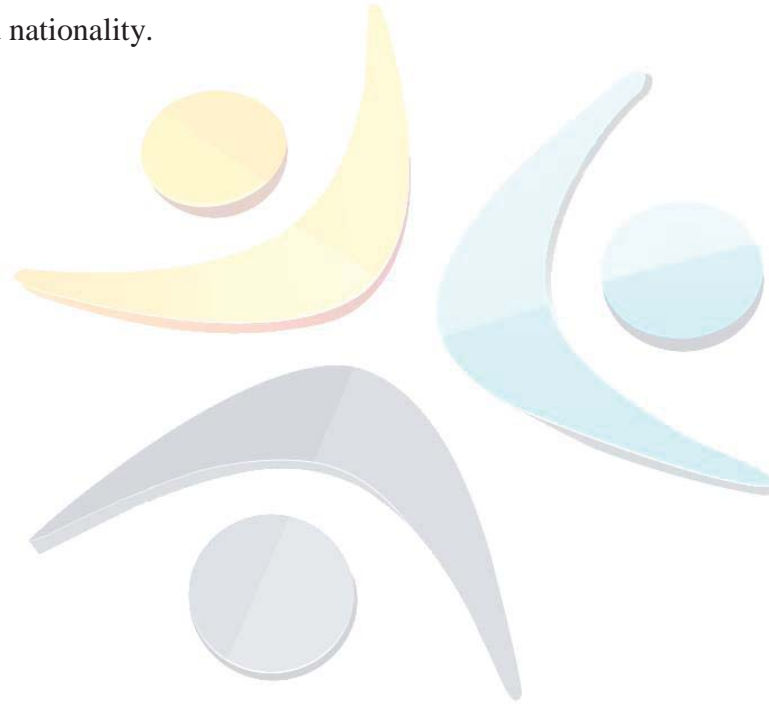
Admiralty jurisdiction in India

The admiralty law in India has been started by earlier in the history of the admiralty law through the deferent Act like the colonial admiralty Act 1890 & 1891. When the Indian government act in 1958 was passed after that there are 1915 government of India Act, 1935 government of India Act, are played the important role admiralty law in India.

The admiralty jurisdiction and laws to be applied by these High Courts were updated by the Colonial Courts of Admiralty Act, 1890. This enactment is still in force in India. Section 3 of this Act enabled Indian legislature to declare any of its courts exercising unlimited civil jurisdiction to be a “Colonial Court of Admiralty” and to provide for exercise by such court of jurisdiction under the Act, and limit territorially or otherwise the extent of such jurisdiction. By virtue of this power the Indian legislature enacted the Colonial Courts of Admiralty (India) Act, 1891 but it refrained from limiting the extent of the jurisdiction as to territory or as to any other matter. This in the current scenario would imply that the High Courts in India, sitting as the Colonial Courts of Admiralty concurrently have the same jurisdiction, equal to that of the High Court in England. Concurrence of Jurisdiction does not imply conflict of jurisdiction at least in admiralty cases and is well accepted in the international arena. Only in some type of admiralty claims the territorial nexus is relevant, but territoriality is not of essence of admiralty jurisdiction. The 1915 government of India Act was only re-stated provision of the high court Act 1861. And the 1935 government of India Act under this Act the federal court was established the federal court had one chief justice and not more than six other judges. The federal court had three kinds of jurisdiction i.e. original, appellate and advisory. The court had exclusive original jurisdiction in any dispute between the federation and its units or the units inter se. admiralty related to jurisdiction its has civil as well as criminal jurisdiction and tort.

Conclusion

Finally I would like to conclude the territorial limits of the India in different statutory provision given under the Indian constitution and other enactment made by the government of India. The constitution provides the balance between the individual and the public interest through the fundamental right & Article 32 in the Supreme Court and Article 226 in the high court's the government of India has exclusive jurisdiction upon the territory of India which are given under Article 1 of the constitution. and other statutory provision related in deferent subject matter like Indian penal code 1860 the deals criminal matter the criminal procedure code, civil procedure code 1908, the custom act 1962 duty imposition and income tax Act 1961 tax imposition under the maritime zones Act 1976 special limits of deferent zone decided by the party, the merchant shipping act 1958 the provision of the registration of the ship and nationality.



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