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# CONSTITUTIONAL SPACE AND LEGISLATIVE DEVELOPMENT IN INDIA ON EXTRA-TERRITORIAL OPERATION OF LAW

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**ABSTRACT**

*The extra-territorial operation of law signifies the exercise of jurisdiction, or legal power, outside territorial borders. The advancements in science and technology have led to a substantial increase in trade, commerce, services, communication, cross border terrorism and other similar transactions. The Constitution of India Article 245(2) read with Article 245(1) solely authorises the parliament of India to make extra-territorial operation of law. Any legal investigation within the ambit of extra-territorial operation of law basically explores the situation, when any enactment of Indian Parliament exercises legal power beyond Indian borders. This research article explores the constitutional space and legislative development on extra-territorial operation of law in India. The study also particularly focuses on the efficacy of enacted laws with judicial response which have extra-territorial operation of law. This study also analyses the specific sections of various enactments that possess extra-territorial operation within the legislative sphere of India.*

**KEYWORDS:** *Extra-territorial Operation, Constitutional Space, Article 245, Legislative Development, Jurisdiction*

## INTRODUCTION

**Biographical notes:**

Dr. Dharmendra Kumar Singh, completed his Bachelor of Laws and Master of Laws from Banaras Hindu University(B.H.U.) and has completed his Doctorate (Ph.D.) in Law from Rohilkhand University. At present, he is working as an Associate Professor in the faculty of law, Bareilly College, Bareilly- India. He teaches Public Laws, Constitutional law and Human Rights Law. He has developed many E-Learning study materials for students of Law.

## Constitutional Space and Legislative Development in India on Extra-territorial Operation of Law

The world that we all live in is a global village. On account of the scientific and technological developments that have taken place over the years, the magnitude of cross border travel, trade, services and transactions has increased tremendously. Global criminal and terror networks activities from outside one's own borders could affect the interests, welfare, well-being and security of a country. The growing sense of social, economic, and political interdependence among nations has led to a substantial increase in cross-border activities, recognized and unrecognized. Within international law, the principles supporting strict territorial jurisdiction have been relaxed to create a greater sense of interdependence and awareness of various extra-territorial aspects and causes although the fine line between 'concern' and 'interference' over extra-territorial matters is evidently notable. Over the course of modern history, such interferences have been deemed as hindrances to the autonomy and sovereignty of nations and the very belief of peaceful co-existence as well. This has eventually led to altercations and disputes among nations, their people and their business enterprises.

The Constitution is not an ordinary statute made in the ordinary legal procedure. It is an embodiment of higher order, multiple values and an enunciation of aspirations, and it is also a solid stanchion of inspiration and diligence for the generations to come. The grid of Constitutional mechanism and structure in a practical sense spells out new working paths with achievable goals.[1] In this rapid changing world and globalised era every written constitution should have efficacy to deal the matter of extra-territorial operation of law related to matters of trade, commerce, services, communication and cross border terrorism and other similar transaction occur outside of the country.

The concept of classical sovereignty outlines a nation's exclusive right to govern itself. The 'extra-territorial operation' constitute of two key words, 'extra-territorial' and 'operation'. The term extra-territorial connotes the exercise of jurisdiction, or legal power, outside territorial borders. The concept of 'extra-territorial operation of law' is an extension as well as a contradiction to the concept of sovereignty and refers to the application of the laws of one country to persons, conduct, or relationships outside of that country. The Constitution of India authorizes the Parliament to legislate with extra-territorial operation of law. Any legal investigation within the ambit of extra-territorial operation of law basically explores the situation, when any enactment of Indian Parliament exercises legal power beyond Indian borders.

The objective of this research article is to analyse the constitutional space and legislative development on exterritorial operation of law in India. The research paper also explores the constitutional norm and its judicial interpretation when extra-territorial operation can be validly allowed. The study also particularly focuses on the efficacy of enacted laws with judicial response which have extra-territorial operation of law.

### (1) Constitutional Space of Extra-territorial Operation of Law

Constitutional structure, values and scheme ensure that the powers vested in the organs of the government are not being transgressed, and that they are being used to realise a general welfare of the populace. Legislative powers are granted to enable the accomplishment of the goals of the nation. The powers of judicial review are granted in order to ensure that legislative and executive powers are used within the limits specified in the Constitution. Nevertheless, the very essence of constitutionalism is also that no organ of the state may arrogate to itself powers beyond what is specified in the Constitution. Judicial restraint is

necessary in dealing with the powers of another coordinate branch of the government; but restraint cannot imply abdication of the responsibility of walking on the defined domain.

The very first line of the preamble of the Constitution of India declares that India is a Sovereign country. The Constitution of India charges the various organs of the State with affirmative responsibilities of protecting the interests of, the welfare of and the security of the nation. Chapter-1 of the Part XI of the Constitution of India provides distribution of legislative powers. Article 245 provides for the extent of laws made by Parliament and by legislatures of States subject to the provisions of the Constitution. The Parliament makes laws for the whole or any part of the territory of India, and the legislature of a State may make laws for the whole or any part of State[2]. Clause 2 of Article 245 provides that no law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation[3].The Legislature of State has no power to legislate on the matter of extra-territorial law. The Constitution of India Article 245(1) read with Article 245(2) solely authorises parliament of India to make extra-territorial operation of law. The Article 245(2) contains the phrases 'no law made', 'deemed to be invalid' and 'extra-territorial operation' have possessed some specific significance is enumerated below:

**(i)Make/Made laws**

The Article 245(1) uses the verb 'make' with respect to laws, by this word indicating the grant of powers. The subject of Article 245(2) is the law made by the Parliament, pursuant to Article 245(1). The opening Clause of Article 245(2) with the phrase 'No law made by the Parliament' clarify that the Article 245(2) is not an independent source of legislative powers. It is depend on Article 245(1) because power to make law is enumerated in such Article. Article 245(2) uses the past tense of make, 'made', connoting laws that have already been enacted by the Parliament.

**(ii)No law 'deemed to be invalid' create specific exception to Article 245(1)**

The object of Article 245(2) is to state that a law so made by the Parliament, for the whole or any part of territory of India, should not be held to be invalid solely on the ground that such laws require extra-territorial operation. The word 'invalidate' in Article 245(2) have been used in a manner that addressees the all the three organ of government viz. the legislature, the executive and the judiciary respectively. The judicial review is the inherent basic feature of the Constitution of India but the Article 245(2) diminishes the power to invalidate laws on the ground of the extra-territorial operation. Therefore, the law made by legislature specifically possess the quality of extra-territorial operation of laws beyond the judicial scrutiny. Thus the words of Article 245(2) create a specific exception for the law made by Parliament in respect of Article 245(1).

**(iii) Extra-territorial Operation**

The phrase 'extra-territorial operation' and its situational functioning is defined by Apex Court of India in 1989 in the case of Electronics Corporation of India Ltd. v. CIT[4] clarifies the Parliament's power to legislate on extra-territorial operation of law. The Court held that Parliament have competence to enact laws with respect to aspects or causes, that occur, arise or exist, or may be expected to do so, solely within India. The operation of the law can extend to person, things and acts outside the territory of India. Parliament will have no competence to make the law unless a nexus with something in India exists. In view of the substantial importance of the question, the bench referred the case for determination by a Constitution bench. The Constitution bench of the Supreme Court of India in GVK Industries Limited and another v. Income Tax Officer and another[5] held that the Parliament is constitutionally restricted from enacting legislation with respect to extra-territorial aspects or causes that do not have, nor expected to have any direct or indirect, tangible or intangible

impact or the effect or consequence for the territory of India, or any part of India or the interests of the welfare of the well being of or security of inhabitants of India and Indians.

**(2)Legislative Development on Exterritorial operation of Law in India**

The constitution of India provides the legislative scheme which envisages that all laws made by the parliament are primarily applicable within the territory of India or its part. But the constitutional scheme has also allowed the parliament of India to frame extra-territorial operation of laws. In the legislative sphere of India some specific laws made by Parliament of India which have extra-territorial operation of law are given below.

**(i) Indian Penal Code (Section 3 and 4) and Code of Criminal Procedure (Section 188)**

The Indian Penal Code (IPC) is an existing colonial law that deals with the punishment of offences committed within India and extension of Code to extra-territorial offences. It is a general penal code for India which is applicable to every person who committed offences within the territory of India except the State of Jammu and Kashmir. The section 3 of the IPC deals with the punishment of offences committed beyond the territory of India but which legally may be tried within India. Section 4 states that the Act also applies on any Indian citizen who has committed offences beyond the territorial boundary of India. The section 3 and 4 of the Code signify that the attribute of extra-territorial operation of law is an exception of section 1 which provides general rule of territorial jurisdiction of the Code. The section 188[6] of the Code of Criminal Procedure (CrPC) also deals with the offence committed outside India by citizen or non citizen of India. It is the procedural counterpart of section 4 of the IPC which only deals with the procedure and does not make it a substantive offence. The proviso to section 188 of CrPC opens with non-obstante clause and imposes condition that such offences could be inquired into or tried only after having obtained the previous sanction of the Central Government.

The Supreme Court in the case of **Ajay Agrawal v. Union of India and others**[7] the question arises, whether the prosecution of the appellant under section 120(B) read with section 420 and 471 of the Indian Penal Code was bad in the absence of sanction under section 188 of the Criminal Procedure?. The Supreme Court held that sanction under Section 188, Cr.P.C. was not a condition standardized to take cognizance of the offence. If need be, it could be obtained before trial begins.

In this case before the Apex Court, it was alleged that the offence of conspiracy was initially appeared at Chandigarh. Though the conspiracy in itself is completed offence, but it being a continuing offence, part of the conspiracy and overt act in furtherance thereof took place at Dubai and partly at Chandigarh. In consequence, other offences were committed including the offence of cheating of the Punjab National Bank at Chandigarh. The Supreme Court held that since the offences were committed during the continuing course of transaction, the need to obtain sanction for various offences, under proviso to section 188, Cr.P.C. is obviated.

The Supreme Court in this judgment did not disturb the ratio of cases of **T. Fakhrulla Khan and others v. Emperor**[8] and **In Re: M.L. Verghese**[9]. In case of Fakhrulla Khan and Varghese, the offences were committed outside India. The offences were completed in themselves without conspiracy and so, it was held that prior sanction under section 188, CrPC was necessary before cognizance could be taken. In this judgment the Supreme Court also held that since the proviso to section 188, CrPC begins with non-obstante clause it's observance is mandatory but it would only come into play if the principal clause is applicable namely that the offence has been committed and it is committed outside the country.

The Supreme Court of India in **Om Hemarajani v. State of U.P. and another**[10] upheld the decision of Allahabad High Court that the word 'inquiry' used in proviso to Section 188

Cr.P.C. is confined to proceedings before the Magistrate prior to trial alone but cannot be extended to investigation by the police. The Apex Court relied on the law laid down in **Sahebrao Bajirao v. Suryabhan Ziblaji**[11] and **Emperor v. Vinayak Damodar Savarkar**[12] further observed that:

> "*The scheme underlying Section 188 is to dispel any objection or plea of want of jurisdiction at the behest of a fugitive who has committed an offence in any other country. If such a person is found anywhere in India, the offence can be inquired into and tried by any court that may be approached by the victim. The victim who has suffered at the hands of the accused on a foreign land can complain about the offence to a court, otherwise competent, which he may find convenient. The convenience is of the victim and not that of the accused. It is not the requirement of Section 188 that the victim shall state in the complaint as to which place the accused may be found. It is enough to allege that the accused may be found in India."*

In **Thota Venkatesh Warlu v. State of A.P.**[13] the question which had been called upon to consider in this case was whether offences arising out of the same transaction could be tried together, some of which were committed within India and some outside India, without the previous sanction of the Central Government, as envisaged in the proviso to Section 188 CrPC? The court relied on in Ajay Aggarwal case[14] case and held that the offences committed in Botswana by an Indian citizen would also be amenable to the provisions of the IPC Section-4, subject to the limitation imposed under the proviso to Section 188 CrPC. The Magistrate is free to proceed against the accused in respect of offences having been committed in India and to complete the trial and pass judgment therein, without being inhibited by the other alleged offences committed outside of India for which sanction would be required.

The aforesaid decisions clearly cull out that sanction under Section 188 CrPC is only necessary before the commencement of trial and it is not a condition precedent for taking cognizance of offence by police or investigation by police.

**(iii) Section 9 (1) of the Income-tax Act, 1961**

The territorial jurisdiction of Income tax Act 1961 extends to the whole of India but section 9(1) of the Act invoked its extra-territorial nature as it said that the Act is applicable to non-resident assesses, although it seeks to tax only that part of their income which has a nexus in India. The act apply to all income accruing or arising, whether directly or indirectly, through or from any business connection in India, any property in India, any asset or source of income in India, or through the transfer of a capital asset situate in India.

In the case of **Electronics Corporation of India Ltd. v. CIT**[15], a Norwegian company entered into an agreement with Electronics Corporation of India Ltd. (ECIL), Hyderabad to provide technical know-how and services including facility for training of personnel for which it was paid in Norwegian currency. Norwegian company did not have any office or any business activity in India. It appears that the services were all rendered in Norway. The question was whether the appellant was liable to deduct tax at source in respect of fees for technical services falling under Section 9(1)(vii). The High Court repelled the contention that Section 9(1)(vii) of Income Tax Act 1961 was beyond the legislative competence of Parliament as it had the potential of extra-territorial operation. On appeal to the Supreme Court, for the three judge's bench, R.S. Pathak, C.J. observed that a Parliamentary statute having extra-territorial operation cannot be ruled out from contemplation. The court held that the Parliament's power to legislate, incorporate only competence to enact laws with respect to aspects or causes, that occur, arise or exist, or may be expected to do so, solely within India. The operation of the law can extend to person, things and acts outside the territory of India. Parliament will have no competence to make the law unless a nexus with something in India

exists. In view of the substantial importance of the question, the bench referred the case for determination by a Constitution bench.

In **GVK Industries Limited & another v. Income Tax Officer and another**[16] the five judges constitutional bench of the Supreme Court considering the arguments of the Attorney General that the Parliament has inherent power to legislate for any territory including territories, beyond India and that no Court in India may question or invalidate such laws on the ground that they have extra-territorial laws, which in other words views that Parliament may enact legislation even to extra-territorial expects or cause that have no impact, effect in or consequence for India. The considering the scope of Article 245(1) and 245(2) of the Constitution of India, the apex court bolstered on the cases decided by the Privy Council[17] with the cases on the concept of sovereignty related to International Law[18] and also taking into account the scientific and technological development, which have the magnitude of cross-border travel and transactions including the aspects of crime having global criminal and terror networks. B. Sudershan Reddy, J. for the bench held that the Parliament is constitutionally restricted from enacting legislation with respect to extra-territorial aspects or causes that do not have, nor expected to have any direct or indirect, tangible or intangible impact or the effect or consequence for the territory of India, or any part of India or the interests of the welfare of the well being of or security of inhabitants of India and Indians.

**(iii) Information Technology Act, 2000**

Information Technology Act, 2000 provides legal recognition for transactions carried out by means of electronic data interchange and other means of electronic communication. The territorial jurisdiction of the Act is extended to the whole of India, its provision also applies to any offence or contravention committed outside of India by any person[19].The section 75 of the Act invoked the mode of extra-territorial operation of Act, apply to an offence or contravention committed outside India by any person if the act or conduct constituting the offence or contravention involves a computer, computer system or computer network located in India. The conjoint reading of Section 1(2) and section 75 provides extra-territorial operation to the Act, having a nexus with offence or contravention committed outside India.

**(iv) Section 32 of the Competitions Act 2002**

The Monopolistic and Restrictive Trade Practices (MRTP) Act, 1969 was repealed by the Competition Act, 2002 due to the economic development of the country and to promote and sustain competition in markets. Competition Commission of India (CCI) established under the Section 32 of the Act started looking into violations of the Act by *suo moto* or complaints by individuals and references made State or Central government or statutory authorities. Territorial jurisdiction of the Act extends whole of India except the State of Jammu and Kashmir like most of the other prevailing laws in India. However, Section 32 of the Act gives CCI extra-territorial powers to inquire and pass adequate orders regarding anti-competitive agreements having an adverse effect on competition in India.

In **Haridas Exports**[20] case arose under the MRTP Act, 1969, the Appellant was aggrieved by the orders passed by the MRTP Commission, whereby Indonesian manufacturers of float glass had been restrained from exporting the same to India at allegedly predatory prices. While considering the correctness of the order impugned in that case, the question relating to extra-territorial jurisdiction came up for consideration. The question arose as to whether MRTP Act, 1969 has extra-territorial jurisdiction and as to whether it can pass orders against parties who are not in India and who do not carry business here and where agreements were entered into outside India with no Indian being a party to it. The Court enunciated that while applying Sections 1, 2, 2(a) and 14 of the MRTP Act, 1969, for the Commission to exercise any jurisdiction, goods should be imported into India and so long as the import had not taken place and the goods were merely intended for exports to India, the same would not fall within

the definition of the word 'goods' in Section 2(e). Finally the Haridas Exports case enshrines the 'effects doctrine', which recognizes the effect of preventing, distorting or restricting competition or gives rise to a restrictive trade practice even if the 'practice' took place outside India but the resultant adverse effect was experienced in India, then the MRTP Commission had the jurisdiction to entertain the complaint.

In case of **Sh. Dhanraj Pillay and Others v. M/s. Hockey India**[21] the aspect of extra-territorial jurisdiction of the Competition Act was underlined over International Hockey Federation (FIH) being an international federation founded under Swiss law. The Director General (DG) under Competition Act, 2002 envisaged on the basis of the definition of person Section 2(l) and scope of Section 32, concluding that Hockey India (HI) and FIH both falls well within the ambit of Competition Act. The CCI concurs with the finding of the Director General (DG) and held that the activities carried out by HI as well as FIH in respect of grant of franchise rights, media rights, TV rights, sponsorship rights and various other rights yielded revenue which are different from a charitable non-profit activity because the revenues were in the commercial field. Thus the economic activities carried out by HI and FIH bring it within the ambit of the definition of enterprise as defined in the Act. Finally the CCI enunciated that if the activity of an enterprise located outside India has effect on competition in India, it falls within the jurisdiction of the Commission and the Commission has full authority to take action against an enterprise located outside India. Thus the Commission had the authority under the Act to examine the conduct of FIH, if it had an effect in India.

The competition act 2002 contains explicit provision of extra-territorial operation and also efficient to counter cross border economic terrorism. If an agreement may enter into outside the territorial jurisdiction of the Commission but if it results in a restrictive trade practice in India then the CCI will have jurisdiction to pass appropriate orders in respect of such restrictive trade practice. The Competition Appellate Tribunal in case of **Mohd. Ekram Khan and Sons and others v. Mahindra and Mahindra Limited and others**[22] relied on the reasoning of Haridas Exports[23] as well as the nature of the powers conferred on the CCI under Section 36-D read along with Section 14 held that if the effect of an unfair trade practice is felt in India, this would not clothe the Commission with jurisdiction unless the 'effect' is itself an 'unfair trade practice' within India.

**(v)Hindu Marriage Act 1955 section 1(2) and 19**

The Section 1(2) of the Hindu Marriage Act 1955 pertains to the extent of jurisdiction where the Act applies. The first part of Section 1(2) of the act applies to intra-territorial jurisdiction, and second part extends the jurisdiction as extra-territorial operation. The combined reading of Section 1 with Section 2(1)(a) and (b) makes its intra-territorial operation of the Act applies to all Hindus, Buddhists, Jains and Sikhs whether they are domiciled in India or not. The provision of clause (c) of Section 2(1) contemplates extra-territorial operation only in the sense that persons domiciled in other territories to which the Act may extend are governed by Hindu law even though they reside outside the territories and would come within the purview of this Act. Citizenship is not a condition precedent to the application of the Hindu Marriage Act inasmuch as the Act has omitted to make residence in India a condition precedent. The Section 19[24] of the Hindu Marriage Act refers to the jurisdiction of the District Court and empowers the court to hear the petition would be where the marriage was solemnised. The scope of Section 19(iv) extends beyond the consideration of domicile by providing that petition under the Act shall be presented to the District Court within the local limits of whose ordinary original civil jurisdiction the petitioner is residing at the time of the presentation of the petition in a case where the respondent is, at that time, residing outside the territories to which the Act extends.

In **the case of Nitaben Vs. Dhirendra Chandrakant Shukla**[25] a conjoint reading the provision of the section 1(2), 2(1), 19(i)and 19(iv) of the Hindu Marriage Act 1955, the Gujrat High Court settled that if the marriage might have taken place somewhere else or the respondent might be residing somewhere else or at a place outside the territories to which the Hindu Marriage Act extends, then also the District Court where the petitioner resides at the time of the presentation of the petition would get jurisdiction. Though the word used in this Section is not 'domicile' but 'residing', the fact would show that extra-territorial jurisdiction was given in a case where other party was residing outside the territories to which the Act applies. The court construed the intention of the Legislature of Hindu Marriage Act regarding its extra-territorial operation that 'this law applicable to all Hindus irrespective of domicile and/or residence. The only thing is that they must be Hindus and the marriage must be performed according to Hindu rites. In **Varindra Singh and Anr. v. State of Rajasthan**[26] Rajasthan High Court held that the clause (a) of Sub-section (1) of Section 2 of the Act of 1955 makes the Hindu Marriage Act of 1955 applicable to all persons who are Hindu by religion irrespective of the fact where they reside.

In the case of **Sondur Gopal v. Sondur Rajini**[27], the wife filed petition seeking decree of judicial separation under Section 10 of the Hindu Marriage Act and also prayed for permanent custody of the minor child. The husband raised a plea that as he was not domiciled in India, hence, the petition was hit by provisions of Section 1(2) of the Hindu Marriage Act. In short, his case was that they were citizens of Sweden and presently the husband is domiciled in Australia, therefore, the petition under Hindu Marriage Act in India was not maintainable. After the family Court this matter came up before the Bombay High Court. The Bombay High Court held that even if it is assumed that the husband had abandoned his domicile of his origin i.e. India and acquired domicile of Sweden along with citizenship in 1997, he had abandoned the domicile of Sweden when he shifted to Sydney, Australia. In view of the settled principle of International Law that if domicile of origin is displaced as a result of acquisition of domicile of choice, domicile of origin remains in the background ready to revive the moment he abandons his domicile of choice. In this case, it was clear that domicile of India got revived immediately on his abandoning the Swedish domicile. The Supreme Court held that both husband and wife were domiciled in India and the Court in India had jurisdiction.

**(vi) Finance Act, 1994 (Section 66 –A) and Goods and Services Tax Act, 2017**

The Service Tax was introduced in India in the year 1994 under Chapter-V of the Finance Act, 1994. The Section 64 of the Act defines the territorial jurisdiction of the Act and specifically provides that the Act will extend to whole of India except State of Jammu & Kashmir. The Section 66A was inserted by the Finance Act, 2006 which provides an extra-territorial operation of service tax. The Section 66A providing charge of service tax on services received from outside India provided, or to be provided by a person, who has established a business or has a fixed establishment from which services are provided and are received by a person, who has his place of business, fixed establishment, permanent address or usual place of residence in India to be taxable services. The Union Government made Taxation of Services (Provided from Outside India) Rules, 2006 in exercise of powers conferred by Sections 93 and 94 read with Section 66A of Act.

In the case of **Glyph International Ltd v. Union of India and others**[28] the petitioners challenged the validity of Section 66A as inserted by Finance Act, 2006 on its extra-territorial operation and levy service tax on the taxable event outside India. It has been challenged that no service tax can be levied on the services provided outside India by a foreign company irrespective of the fact that the petitioner has taken the subject services, the extra-territorial operation of the act requires to be struck down. The Allahabad high court (*Sunil Ambwani, J. and Hon'ble Kashi Nath Pandey, J.*) held that service tax will be charged on services received

from outside India provided, or to be provided by a person who has established a business or has a fixed establishment from which the services are provided and are received by a person (recipient), who has his place of business, fixed establishment, permanent address or usual place of residence in India. The Taxation of Services (Provided from Outside India) Rules, 2006 made in exercise of powers conferred by Sections 93 and 94 read with Section 66A of the Finance Act, 1994 does not suffer from the vice of unconstitutionality, either on the ground of lack of legislative competence, or on the ground of extra- territorial operation of laws.

The service tax was merged in an integrated indirect tax system- Goods and Services Tax (GST), enforced in India from 1 July 2017. The Central GST and Integrated GST make a provision for levy and collection of tax on intra-state and inter-state supply of goods or services or both within the territory of India. GST is a consumption based tax and if the place of consumption is outside India there is no GST on exported goods and services. But the imported goods and services from outside the India may be levied. The section 2(84) of CGST Act 2017 defines an association of persons or a body of individuals, whether incorporated or not, in India or outside India. The GST registration is mandatory irrespective of turnover for Person supplying online information and database access or retrieval services from a place outside India to a person in India, other than a registered taxable person.

**(vii)The Arbitration and Conciliation Act, 1996 Section 2(1)(f), 28(1) and 44**

The provision of the Arbitration and Conciliation Act, 1996 Section 2(2) is read with Section 28(1) explicitly envisages that where the place of arbitration is situated in India, the procedure of Part I of the Act would apply. The international commercial arbitration defined under section 2(1)(f), where condition precedent is at least one of the parties belong to outside of India. If the scope of arbitration is come within the purview of section 2(1) (f)[29] which tacitly provides an extra-territorial operation to Part 1 of the Act. The part II of the Arbitration Act explicitly deals the enforcement of New York Convention related to foreign awards. The 'foreign award' is defined in Section 44 to mean an arbitral award on differences between persons arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India, made on or after the 11th day of October, 1960.

In **Bhatia International v. Bulk Trading S.A. and another**[30], the three judge's bench of Supreme Court of India held that the provisions of the Arbitration and Conciliation Act, 1996 part I would compulsorily apply to all arbitrations and to all proceedings where such arbitration is held in India. The parties are free to deviate only to the extent permitted by the derogable provisions of Part I. In cases of international commercial arbitrations held outside of India, the provisions of Part I would also apply unless the parties by agreement, express or implied, exclude all or any of its provisions. In that case the laws or Rules chosen by the parties would prevail. Any provision, in Part I, which is contrary to or excluded by that law or Rules will not apply.

In the case of **Bharat Aluminium Co.** v. **Kaiser Aluminium Technical Services Inc. etc.**[31] the Constitution Bench of Supreme Court overruled the ratio of Bhatia International case as 'where the arbitrations which take place outside the India the provisions of Part I would also apply'. The S.S. Nijjar, J. for bench held that a plain reading of Section 2(2) reflects that Part I is limited in its application to arbitration which takes place in India. The Part I and Part II of the Arbitration and Conciliation Act, 1996 are exclusive of each other as is evident from the definition section of both the Parts. The definition of international commercial arbitration contained in Section 2(l) (f) is limited to Part I and Section 44 gives the definition of 'foreign award' for the purpose of Part II. The Court further held that Part I only applies where the seat of arbitration is in India, irrespective of the kind of arbitration. It is held that Section 2(7) does not indicate that Part I is applicable to arbitration held outside India. The Section 28

makes a clear distinction between purely domestic arbitration and international arbitration with a seat in India.

Further apex Court finally concluded that the Part I of the Arbitration Act, 1996 would have no application to International Commercial Arbitration held outside India. Therefore, such awards would only be subject to the jurisdiction of the Indian courts when the same are sought to be enforced in India in accordance with the provisions contained in Part II of the Arbitration Act, 1996. The provision contained in Section 2(2) of the Arbitration Act, 1996 is not in conflict with any of the provisions either in Part I or in Part II of the Arbitration Act, 1996. In a foreign seated international commercial arbitration, no application for interim relief would be maintainable under Section 9 or any other provision, as applicability of Part I of the Arbitration Act, 1996 is limited to all arbitrations which take place in India.

One other important thing happen in *Bharat Aluminium* case that such a declaration of law was directed to operate only prospectively, to all the arbitration agreements executed hereinafter. In Sasan Power Limited v. North American Coal Corporation India Private Limited the Agreement-I and Agreement-II are anterior to *Bharat Aluminium* judgment date 6 September 2012. The apex court held that this case would be governed by the law laid down in the case of Bhatia International.

**(viii) SEBI ACT 1992 (Section 11, 11B, 11C, 12 and 12A)**

SEBI Act, 1992 established a body corporate in the name of the Securities and Exchange Board of India (SEBI) to protect the interests of investors in securities and to regulate, the securities market. Its territorial jurisdiction extends to the whole of India. The conjoint reading of section 11, 11B, 11C, 12 and 12A of SEBI Act, 1992 along with its 2003 Regulations entitled SEBI to invoke its extra-territorial operation to protect the interests of investors. The Hon'ble Supreme Court in the case of SEBI v. Pan Asia Advisors Ltd., MANU/SC/0761/2015 : (2015) 14 SCC 71 wherein, the Apex Court was examining the principles of 'effects doctrine' in cases involving exercise of extra-territorial jurisdiction and held that to protect the interests of investors, 'effects doctrine' could be applied. The SEBI Act, 1992 read along with the SCR Act, 1956 as well as Regulation 2(1)(c) of the 2003 Regulations provides for proceeding against any person in order to protect the interests of investors and the stock market in India with reference to any fraud played against such interest of the investors in India. The duty of SEBI to protect the interests of investors would automatically come into play as stipulated under Sections 11-B, 11-C, 12 and 12-A of the SEBI Act, 1992.

**(ix) Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016**

The Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 was enacted with the objective of assigning unique identity numbers to individuals residing in India for the purpose of good governance, efficient, transparent, and targeted delivery of subsidies, benefits and services, the expenditure for which is incurred from the Consolidated Fund of India and for the matters connected therewith or incidental thereto. The Aadhaar Act shall extend to the whole of India except the state of Jammu and Kashmir like most of the other prevailing laws in India. The Section 2 of the Act gives it to extra-territorial operation and provides that Act will apply to any offence or contravention committed outside India by any person. The Section 44 explicitly envisages that the Act applies for offence or contravention committed outside India by any person, irrespective of his nationality, if the act or conduct of a person constituting the offence or contravention involves any data in the Central Identities Data Repository.

**(3) CONCLUSIONS**

The constitution of India under Article 245(2) provides the competence to Indian Parliament to legislate on extra-territorial aspects or causes to have any direct or indirect, tangible or intangible impact or the effect or consequence for the territory of India, or any part of India or the interests of the welfare of the well being of or security of inhabitants of India and Indians. The law made by legislature specifically possess the quality of extra-territorial operation of laws beyond the judicial scrutiny and create a specific exception for the law made by Parliament in respect of Article 245(1).

The sections 3 and 4 of the IPC signify that the attribute of extra-territorial operation of law and permission under Section 188 CrPC is only necessary before the commencement of trial and it is not a condition precedent for investigation or taking cognizance of offence by police. The section 9(1) of the Income Tax Act 1961 provides the Act an extra-territorial nature and as it extends to people, things and acts outside the territory of India. The Information Technology Act 2000 sections 1(2) and 75 give jurisdiction outside the territorial border of India and apply to any offence or contravention committed outside of India by any person**.** Competition Commission of India (CCI) established under the Section 32 of the Competition Act 2002 gives CCI extra-territorial powers to inquire and pass adequate orders regarding anti-competitive agreements having an adverse effect on competition in India. The second part of Section 1(2) read with Section-19(1) of the Hindu Marriage Act 1955 extends the jurisdiction as extra-territorial operation.

The service tax was merged in an integrated indirect tax system- GST in 2017 that also has extra-territorial operation. The under section 2(84) of CGST Act 2017 for imported goods and services from outside the India under, GST registration is mandatory irrespective of turnover for person supplying online information and database access or retrieval services from a place outside India to a person in India, other than a registered taxable person. The conjoint reading of section 2(1)(f), 28(1) and 44 of Arbitration and Conciliation Act, 1996 tacitly provides an extra-territorial operation to the Act. The reading of section 11, 11B, 11C, 12 and 12A of SEBI Act, 1992 along with its 2003 Regulations entitled SEBI to invoke its extra-territorial operation to protect the interests of investors and the stock market in India with reference to any fraud played against such interest of the investors in India. The section 2 of Aadhaar Act, 2016 gives it to extra-territorial operation and provides that Act will apply to any offence or contravention committed outside India by any person irrespective of his nationality.

The meteoric progress in the field science, technology, communication, trade, commerce and Hi-tech offence including cross boarder terrorism has created new kinds of socio-economic and political challenges. This study clearly shows the rise in the number of enactments related to extra- territorial operations owing to the growing sense of interdependence and cross-border activities among nations and since science and technology are touching new horizons with each passing day, the researchers hope that there are more such legislations ahead of us.

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2. Art 245(1) , The Constitution of India
3. Art 245(2) , The Constitution of India
4. MANU/SC/0331/1989 : [1990] 183 ITR 43(SC)
5. MANU/SC/0163/2011 : (2011) 4 SCC 36

**6.** Section 188. Offence committed outside India

a. When an offence is committed outside India-

(a) by a citizen of India, whether on the high seas or elsewhere; or

(b) by a person, not being such citizen, on any ship or aircraft registered in India,

b. he may be dealt with in respect of such offence as if it had been committed at any place within India at which he may be found:

c. Provided that, notwithstanding anything in any of the preceding sections of this Chapter, no such offence shall be inquired into or tried in India except with the previous sanction of the Central Government.

**7.** MANU/SC/0265/1993 : 1993 Cr.L.J. 2516

**8.** MANU/TN/0510/1935 : AIR 1935 Madras 326

**9.** MANU/TN/0217/1947

**10.** MANU/SC/1002/2004 : (2005) 1 SCC 617

**11.** MANU/NA/0114/1947

**12.** MANU/MH/0149/1910

**13.** MANU/SC/1010/2011 : (2011) 9 SCC 527

**14.** MANU/SC/0265/1993 : (1993) 3 SCC 609 : 1993 SCC (Cri) 961

**15.** MANU/SC/0331/1989 : [1990] 183 ITR 43(SC)

**16.** MANU/SC/0163/2011 : (2011) 4 SCC 36

**17.** Wallace Brothers and Co. v. Commissioner of Income Tax, Bombay,(1948) 16 ITR 240,

a. A.H. Wadia v. Commissioner of Income Tax, Bombay, (1949) 17 ITR 63

**18.** Trustees Executors and Agency Co. Ltd. v. Federal Commissioner of Taxation (1933) 49 CLR 220 at 239), Woods v. Cloyd W. Miller Co. 333 U.S. 138

**19.** Section 1(2), The Information Technology Act 2000.

**20.** MANU/SC/0596/2002 : (2002) 6 SCC 600

**21.** MANU/CO/0033/2013

**22.** MANU/TA/0048/2016

**23.** MANU/SC/0596/2002: (2002) 6 SCC 600

**24.** Section 19. Every petition under this Act shall be presented to the District Court within the local limits of whose ordinary original civil jurisdiction

(i) the marriage was solemnised, or

a. (iv) the petitioner is residing at the time of the presentation of the petition, in a case where the respondent is, at that time, residing outside the territories to which this Act extends,... ".

**25.** 1984 GLH 529

**26.** MANU/RH/0172/2005 : RLW 2005 (3) Raj. 1791

**27.** MANU/SC/0694/2013:AIR2013SC2678

**28.** MANU/UP/3302/2011

**29.** (f) “international commercial arbitration” means an arbitration relating to disputes arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India and where at least one of the parties is— (i) an individual who is a national of, or habitually resident in, any country other than India; or (ii) a body corporate which is incorporated in any country other than India; or (iii) 2 *** an association or a body of individuals whose central management and control is exercised in any country other than

a. India; or (iv) the Government of a foreign country

**30.** MANU/SC/0185/2002 : (2002) 4 SCC 105

**31.** MANU/SC/0722/2012 : (2012) 9 SCC 552