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The Concepts and Issues of Jurisdiction in Cyberspace

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Abstract: *Cyber jurisdiction or jurisdiction in cyberspace refers to a real world governments power and a normally existing courts authority over internet users and their activities in the cyber world .However The Information Technology Act does not cover the important issues of the jurisdiction which is very important legal aspect in deciding the place of filing the case. Therefore the present law of the jurisdiction in physical words can be applied to cyberspace to solve the jurisdictional issues. This article explores the concept of jurisdiction in cyberspace, examining the various issues and concerns that arise. It delves into the jurisdictional principals that apply to online activities ,the impact of internets borderless nature and the conflicts of laws that arise when the different jurisdiction interact in cyberspace.*

Keywords: cyberspace, jurisdiction, civil and criminal case, transnational crimes

I. INTRODUCTION

The jurisdiction, in general, refers to "A government's general power to exercise authority over all persons and things within its territory". The term "cyber-jurisdiction" refers to a real-world government's power and a normally existing Court's authority over Internet users and their activities in the cyber world.

The main difference between the real world and the cyber world is that the real world is a physical entity with a well-defined border dividing it into sovereign States. functions based on the sovereignty of States over their territory and individuals. The principle of territorial jurisdiction is followed in the real world which is based on mutual respect of sovereign equality between States and is linked with the principle of non-intervention in the affair of other States. Another aspect of the principle is that in case a State wants to enforce a particular law beyond its geographical boundaries and try a citizen of another State, then it has to take the permission of the municipal Court of other State to get the accused extradited. In the Virtual world, there are no physical boundaries, and comes the question of cyber jurisdiction. As the Internet has led to the disappearance of boundaries, sometimes a netizen is not aware of whom he is chatting with and where the person is located. In such a situation if a legal dispute arises between two persons communicating on the Internet then which Court will have jurisdiction to decide that case is still an issue that is yet to be resolved satisfactorily. In other words, there must be a law that should provide whether a particular event in cyberspace is controlled by the laws of the State where the Website is located or by the law of the State where the Internet service provider is located or by the law of the State where the user is located by any specific law/s. A significant reality is that net users and the hardware they use are never visualbut have a physical presence in one country or the other, upon whom the jurisdiction can be exercised, and such jurisdiction is called cyber-jurisdiction or jurisdiction in cyberspace. There is no law or international instrument relating to jurisdiction Cyber World or Cyber Space which is the virtual space between two modems electronic territory does not occupy except the hardware, telephone, and wires. In the Internet or cyberspace area except is broken into small bits which can be transmitted according to available capacity. These packets are labelled with the address of the addressee and may follow capacity different routes from computer to computer until reaching the find destination where the receiving computer reassembles them as these were origin sent. As the Internet uses a packet system of transmission having different nod situated in different continents so any single State cannot claim that any activity hasentirely taken place within its borders so that it can have jurisdiction over it Cyber jurisdiction in cyberspace is still in the stage of development as a legal concept.

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II. CYBER LAW AND JURISDICTION

One of the biggest drawbacks of the Model Law on E-commerce, 1996 and Information Technology Act, 2000, is that these are silent about the jurisdiction of the Courts in the cyber world.

Therefore, in the present scenario, an important question is whether the present law of Jurisdiction of Physical World applies to Cyber World, or a Separate Law is required?

Regarding this there are the following two views:

(i) If the two worlds are not related, then a separate law of jurisdictions required for each.

(ii) But if there is a strong connection between the two, then, with necessary modifications, the existing law of the jurisdiction of the physical world can be applied to both.

The argument in favour of the first view is that physical boundaries hast disappeared in the cyber world therefore physical world and the cyber world are not connected hence separate law of jurisdiction is required for the cyber world However, this view does not appear to be logical because though in the cyber world there are no geographical boundaries but still in the physical world these boundaries are existing. Further, because of various reasons (the especially wide gap between developed and developing countries), it is not possible to enact separate laws jurisdiction for the cyber world.

The argument in favour of the second view is that though in the cyber world there are no geographical boundaries netizens are citizens of some countries and they are governed by the national laws of those countries. Therefore, the physical world and cyber world are connected and hence present law of the jurisdiction of the physical world, with minor modifications, can beapplied to the cyber world. This view appears to be logical. It means the present law of the jurisdiction of the physical world, with minor modifications, applies to the cyber world as well.

III. TYPES OF CYBER JURISDICTION

Problems regarding cyber jurisdiction are faced in the following cases ormatters:

(1) Cyber jurisdiction in National cases:

It can be of following two types:

(a) Cyber jurisdiction in civil cases.

(b) Cyber jurisdiction in criminal cases.

(2) Cyber jurisdiction in International cases;

1 Cyber jurisdiction in National Cases

a) Cyber Jurisdiction in Civil Cases

Cyber jurisdiction in civil matters mainly comes into the picture when a Website or any information posted on the Internet leads to the commitment of a civil wrong in another State. In deciding whether jurisdiction exists over a defendant, the U. S. Federal Courts apply the law of States subject to the limits of the due process clause of the fourteenth amendment. This is illustrated in the following cases:

In Bensusan Restaurant Corp. v King, the Court at New York held that the Court in New York lacked jurisdiction in this case. Here the plaintiff, the operator of the New York club claimed that the defendant, owner of an operator of a small club in Columbia, had violated his rights by using its trademark. Whereas the defendant claimed that the Website was created in Missouri and was aimed at residents at Missouri, and if the ticket is sold on Internet, the buyer has to pick up the ticket at an outlet in Columbia or the club on the night of the show. Creating a Website was similar to putting a product in the field of commerce and its effect could be national or international but it does not amount to an act that was purposely directed toward the other State. Merely because someone can access information on the Internet about an allegedly infringing product, it is not equivalent to a person selling, advertising, promoting, or otherwise attempting to target that product in New York. Therefore, it is not sufficient for the other State to exercise its jurisdiction.

In McDonough v Fallon McElligott, Inc., the defendant from outside California created a Website that was accessed by a Californian. Subsequently, a dispute arose and the matter had gone to the Federal Court. In this case, the "Federal Court in California also refused to exercise personal jurisdiction over the defendant simply because it maintained a

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Website. The Court held that the fact that the defendant had a Website accessed by Californians was not enough by itself to establish jurisdiction."

In Zippo Mfg. v Zippo Dot Com, Inc., the Court differentiated between active and passive Websites and held that a passive Website that only makes information available to the Internet user is not sufficient ground for exercising the jurisdiction Whereas, an active Website, i.e., a Website that entered into contracts and knowingly Whereas, an active website transmitted computer files would be properly subject to personal jurisdiction. In cases dealing with the middle ground, where interacted Website exchange information with a user, the exercise of jurisdiction should be determined by examining the commercial nature of the exchange and the level of interactivity and Here the defendant's Website, which rendered Internet news service, registered the domain names, i.e., "Zippo.Com", "Zippo.net" and "Zippo-news.com." It was having more than one lakh subscribers all over the world out of which roughly 3000 were in Pennsylvania. Further, the defendant had entered into an agreement with seven Internet access providers in Pennsylvania. The plaintiff sued the defendant for trademark dilution, infringement, and false designation for using the domain names) Here the Court held that it has personal jurisdiction that depends upon the entity's presence on the Internet. The Court found that the entity's presence on the Internet is directly proportionate to the nature and quality of commercial activity on the Internet.

b) Cyber Jurisdiction in Criminal Cases:

Initially, cyber jurisdiction was an issue in civil cases only. But in 1996 in U.S.v Thomas, cyber jurisdiction became an issue in criminal cases also. In this case, defendants (a couple) operated a pornographic bulletin board from their home in California in 1991 which was accessed by members having a password, which could be selected, retrieved, and downloaded on their computers. In an appeal, the U.S. District Court upheld the conviction under the statute which prevents the channels of inter-State commerce from being used to disseminate obscene matters. The Court applied the Contemporary Community Standard as was done in Miller v California explaining that obscenity was to be judged by what the average person applying contemporary community standards would find to be obscene. And in this case, the matter was not obscene under California Bay Area standards but was so under the standards of Tennessee. The Court applied the standards of the geographical area where the material was sent.Defendants argued the Internet environment provides broad-ranging connections among people in cyberspace; as such the notion of obscenity tied to geographic locale would put a chill on protected speech. The Defendant's asserted a more flexible definition was needed because BBS operators could not select who received their material.

Attorney General had asserted the right to regulate the activities of an online gambling service based in Las Vegas, Nevada. The Attorney General argued that the defendant had explicitly misrepresented its services as lawful on its Web Page. They denied the defendant's to dismiss for lack of jurisdiction defendant's Website, the availability of a toll-free number advertised on its Web Page that users could call, and the number of Minnesota's residents who had signed on to the defendant's, mailing list. The Court held that the defendant's advertising the Internet constituted a direct marketing campaign at residents of the State of Minnesota and was sufficiently purposeful to subject the defendant to suit in the forum state.

2) Cyber Jurisdiction in International Cases

In the Asahi Metal Industry Co. v Supreme Court, the U. S. Supreme Court gave the principle of a higher jurisdictional threshold when the defendant is a foreign national as compared to when he is a U.S citizen. Here defendant's headquarter was in Japan, the Court refused to exercise the jurisdiction due to the following reasons: (a) Distance between defendants headquarter in Japan and Supreme Court of California and "burden of submitting a dispute between two foreign nationals in a foreign legal system," (b) California's and foreign plaintiff's slight interest in having the case heard in California, and (c) The effect on the "procedural and substantive interests of other nations by California's assertion of jurisdiction over a foreign national".

In Care Vent Corp. v Nobel Industries AB, the dispute was between California Corp. (plaintiff) and five Swedish citizens and three American citizens (defendants) for publishing articles containing a false and misleading comparison between Core Vent Corp. and Nobel Parma's Dental implants. The US Court of Appeal upheld the dismissal by the U.S. District Court, Central District of California due to lack of jurisdiction. The appellate court held that California's statute

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allowed the Courts to exercise jurisdiction over the defendants to the extent permitted by the due process clause in United States Constitution, which provides that where there is no systematic and continuous contact between foreign defendants and the State then three-pronged minimum contacts test should be applied to decide jurisdiction in the case. The tests are: (a) whether there was purposeful availment, i.e., whether the non-resident defendant had purposefully directed his activity or entered into interaction with the forum State or resident or had performed some act by which he got some privilege of conducting some activity in the forum State, (b) whether the claim arises out of or is related to defendants activities, and (c) whether the exercise of jurisdiction leads to fair play and substantial justice.

IV. THE INDIAN POSITION REGARDING CYBER JURISDICTION

In India, Sections 15 till 20 of the Indian Civil Procedure Code (CPC), 1908, and Sections 177 till 188 of the Indian Criminal Procedure Code (Cr PC), 1973, deal with civil and criminal jurisdiction respectively. Under the Cr PC, territorial jurisdiction depends upon the place where offence or part of the offence is committed.

Present Law of Jurisdiction in India:

There are mainly two types jurisdiction in India:

1. Civil law jurisdiction.
2. Criminal law jurisdiction.

1 Civil Law Jurisdiction -Jurisdiction of Civil Courts in India broadly is of three types:

1.Pecuniary Jurisdiction

2. Subject Matter Jurisdiction and

3 Territorial Jurisdiction.

Territorial Jurisdiction: This jurisdiction is subject to pecuniary limit jurisdiction based on the subject matter.

Civil Procedure Code, 1908 (CPC): It mainly covers:(2) Movable Property and Person1. Immovable Property (Such as Land or Building) Regarding dispute relating to property [Section 16]:

where the dispute is relating to property;

-then the place of Jurisdiction is where the property is situated.

-Suit for relief or compensation for wrong to immovable property [Section 16]:

where the suit is for relief or compensation for the wrong done to immovable property;

then the place of jurisdiction is the place where the property is situated where the defendant actually and voluntarily resides, or carries on business or personally works for gain.

Where the immovable property is situated within the jurisdiction different courts [Section 17]:

where the immovable property is the situation within the jurisdiction different courts;

then the suit may be instituted in any of the said courts.

where there is any dispute regarding the uncertainty of jurisdiction in two more courts;

then any of the said courts, if satisfied, that there is ground for uncertain may adjudicate the same.

2. Movable Property or Person

where a case for compensation for wrong to a person or movables instituted and:

(i) Wrong is done at one place, and

(ii) The defendant resides, or carries on business or personally works fir gain, within the jurisdiction of another court,then the place of jurisdiction is at the option of the plaintiff, in either of said places.

Where the number of defendants is 2 or more than 2 [Section 20]:

- where the number of defendants is 2 or more and :they are residing or carrying on business at the same place then the place of jurisdiction is the place where each of the defendants, actually and voluntarily resides, or carries on business, or personally works for gain, at the time of the commencement of the suit, orthey are residing or carrying on business at different places then the place of jurisdiction is the place where any of the defendants at the time of commencement of the suit, actually and voluntarily reside, or carries on business, or personally works for gain.

It is immaterial whether the Court has granted permission or not, but the resident defendant must have given express or implied consent.

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-Where the defendant is a corporation or a company [Explanation to Section 29):
- Where the defendant is a Corporation or Company, the following two situations arise
The Corporation has its sole or principal office at a particular place but does not actually carry on business at that place, then, Place where the sole or principal office is located in the place of jurisdiction.
Where the cause of action arises at the place where the subordinate office of the corporation is located, then, such a place would have jurisdiction and not the principal place of business.
If a dispute relates to movable property or a person, directly or indirectly arising out of or in connection with the Internet or E-commerce, Then the above provisions of CPC, 1908, would be applicable.
Under the C.P.C., the territorial jurisdiction is based upon (i) the place of residence of the defendant, and (ii) the place where the cause of action arises. But in the cyber world, there may be more than one place of cause of action, such as place of cause of action may be a place where a Website is accessed or place where the server is located or place from where an electronic record is sent or place where an electronic record is received. However, the Information Technology Act 2000, time and place of despatch and receipt of electronic record is defined.
Section 75 of the Information Technology Act, 2000 extends the jurisdiction of Indian courts to an offence or contravention committed outside India by any person irrespective of his Nationality C. Further, this law person is applyto 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, of computer network located in India.
For example, Mr. Z, an Australian national, residing in the USA, gains unauthorized access to a computer located in China and deletes the information. Mr Z has misused a computer located in India to gain the unauthorized access. Mr. Z will be liable under the provisions of the Information Technology Act, 2000.
The main difference between the India Penal Code and the Information Technology Act, 2000 about extraterritorial jurisdiction, is clarified by way of the following example. If the U.K. National Britney Spears, legitimately procures weapons from India and uses the same for committing a criminal act in the United Kingdom or any other country in the world then she would not be liable for any offence in India as per the IPC. However, if Britney Spears were to use a computer located in India to hack the U.K. Government's Website or commit any other offence under the Information Technology Act, 2000, then she will be liable for that offence in India.

2. Criminal Procedure Code, 1973 (Cr PC)
Where offence is committed within the jurisdiction of a court [Section 177]: Every offence shall be inquired into and tried by a court within whose jurisdiction it was committed.
Where an offence is committed at more than one place etc. [Section 178]:
Where an offence is committed in more than one place or where it is continuing and continues to be committed in more than one local area or where the offence consists of several acts done in different local areas then it would be inquired into or tried by a court having jurisdiction over either of such areas.
Where it is uncertain in which of the several areas the offence is committed [Section 178(a)]: Where it is uncertain in which of several areas the offense is committed, it may be inquired into or tried by a court having jurisdiction over either of such areas of uncertainty.
-Where an act is done and consequences are produced [Section 179]: Where act is an it may of anything which has been done Section 1791: Where which has ensued, it may be inquired into or tried by a court within whose jurisdiction such an act has been done or such a consequence has ensued.
-Where an act is an offence by the reason of its relation to any other act [Section 180]: Where an act is an offence by the reason of its relation to any other act or which would be an offence if the doer was capable of committing an offence, the first offence may be inquired into or tried by a court within whose jurisdiction either of acts was done.
Certain specified offences [Section 181]: Certain specified offences have been required by law to be inquired into or tried in certain places.
-The offence of criminal misappropriation or criminal breach of trust [Section 181(4)]: An offence of criminal misappropriation or criminal breach of trust may be inquired into or tried by the court within whose local jurisdiction the offence was committed or any part of the property which is subject of the offence was received or retained or was required to be returned or accounted for by the accused person.

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-Any offence which includes cheating [Section 182]: Any offence which includes cheating, if the deception is practiced using letters or communication messages may be inquired into or tried by the court within whose jurisdiction such letters or messages were sent or where the same was received.

-Any offence of cheating and dishonestly including the delivery of property may be inquired into or tried by the court having jurisdiction on the place where the property was delivered by the person deceived or where it was received such letters or messages were sent or where the same was received by the accused person.

-When two or more than two courts take cognizance of the same offence [Section 186]: If two or more courts take cognizance of the same offence and question arises as to which of the courts has jurisdiction to inquire into or try that offence,

(a) this question would be decided by the High court, under whose jurisdiction both such courts function.

(b) where courts are not subordinate to the same High Court, the question of jurisdiction shall be decided by the High court within whose appellate criminal jurisdiction the proceeding was first commenced.

VI. CONCLUSION

Cyber jurisdiction is still in the nascent stage of development in law and a lot needs to be done fast in this area. Due to manifold increase in economic and other activities in the cyber world, at times illegal in nature, impacting almost every country in the real world, cyber jurisdictional issues need to be sorted out in national laws as well as uniformity in-laws need to be brought about in such cases, and more importantly, not let the cybercriminals go unpunished due to gaping loopholes in existing laws or due to absence of laws altogether covering such matters both at the national as well as international levels.

Due to inadequacies in national lawsquite often ticklish legal situations arise in jurisdictional matters related to the Internet and national Laws are found wanting . many times case laws has shown that personal jurisdiction in court requires that defendant must provide more than mere accessibility to a website or some sort of interaction should have been there. whereas the web creator or information provider has to comply with law of the state where the user is located and becomes subject to the users state jurisdiction and law. In such a situation the international community has to take action due to the nature of the working of the internet and its increasing use E-commerce and disappearance of geographical boundaries and conversion of world into a global market. So in such a crucial area it's a need of hour to come out immediately with a model Law to facilitates such a move and bring about uniformity in national laws covering cyber jurisdiction.

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