

A Study of Jurisdiction in Cyber Space

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1. Introduction

The concept of Jurisdiction gives the power to the State to regulate the conduct of its subjects by legislations, adjudication and enforcement. In simpler terms, Jurisdiction can be defined as the limit of a judicial authority or the extent to which a court of law can exercise its authority over suits, cases, appeals, etc. The reasoning behind the introduction of the concept of jurisdiction in law is that a court should be able to try and adjudicate only in those matters with which it has some connection or which fall within the geographical or political or pecuniary limits of its authority. In the case of **Hriday Nath Roy v. Ram Chandra**¹, Calcutta High Court went ahead to explain the concept of jurisdiction. The Bench observed and I quote:

“An examination of the cases in the books discloses numerous attempts to define the term ‘jurisdiction’, which has been stated to be ‘the power to hear and determine issues of law and fact;’ ‘the authority to hear and decide a legal controversy;’ ‘the power to hear and determine the subject matter in controversy between parties to a suit and to determine or exercise any judicial power over them;’ ‘the power or authority which is conferred upon a Court by the Legislative to hear and determine causes between parties and to carry the judgements into effect;’ ‘the power to enquire into the facts, to apply the law, to pronounce the judgment and to carry it into execution.’”

Generally, Legislative, Enforcement and Adjudicative jurisdiction are the types of the jurisdiction.

Legislative, Enforcement and Adjudicative Jurisdiction:

Jurisdiction to legislate is the right of the State to lay down certain normative standards for the regulation of its subjects. Jurisdiction of enforcement is the right of the State to validly enforce its law. Adjudicative jurisdiction means State’s authority to decide claims in that particular area that is legally bound by its own laws. However, while doing so, the State has to consider the limitation of international law in the exercise of jurisdiction in cases that involve non territory entities. Prescriptive jurisdiction of State is not unlimited. Unlimited power of prescription measures will seriously undermine the sovereign authority of the other State. Therefore, generally, State adopts the principle of territoriality or effects doctrine and the legislative power of the State.

1. AIR 1929 Cal 445

Personal Jurisdiction:

Personal jurisdiction refers to the power of a court to hear and decide a dispute involving the particular parties before it.

Types of Personal Jurisdiction are follows:

1. General Jurisdiction – The general jurisdiction subjects a person to the power of the appropriate court with respect to any cause of action that might be brought before it. This type completely relies upon the contacts between the person and the state, such as residency or domicile within the state, physical presence in the state at the time of service of process, or some other substantial “continuous and systematic” contact with the forum state.
2. Specific Jurisdiction – The specific jurisdiction refers to the power of the appropriate court with respect to the cause of action based upon some set of “minimum contacts” with the forum state.
3. Subject-matter Jurisdiction – The authority of a court to hear and decide a particular dispute before it.
4. Original Jurisdiction – The authority of a court to hear and decide a case in the first instance over the authority of other courts. For example, trial courts are courts of original jurisdiction in many cases. Then if not satisfied with the decision of the original court, one may approach other court (higher) with an appeal.
5. Appellate Jurisdiction – The authority of a court to review a prior decision in the same case by another “lower” court.

In both, Civil and Criminal matters, basic rule of jurisdiction is two dimensional. In Civil matters, it comprises of Subject-matter jurisdiction and personal jurisdiction, whereas, in Criminal matters it is personal and territorial, related to the place of commission of crime. As in the matters of civil jurisdiction, variable rules are found when contractual, consumer, copyright, intellectual property and trademark disputes are concerned. Wherever jurisdictions overlap, it is resolved by resorting to theories like choice of law rule and minimum contacts theory.

Subjective Territoriality – Under this aspect of territorial jurisdiction, a sovereign is recognized as having the power to adopt/make criminal laws that apply to crimes that are physically committed within its territorial borders. If others states make inadequate adjudication, the State can bring the culprit within their domestic laws. For example, the Unites Kingdom can adopt a statute that makes it a crime for anyone to commit an act of murder within its borders.

Jurisdiction in Cyber Space:

Cyber Space is a concept which just goes on evolving with each passing day with everyday development of sophisticated technology in the form of software and hardware. This evolving nature of cyber space has challenged the traditional notion of jurisdiction world-wide. Cyberspace has no physical boundaries. It is an ever-growing dynamic space. It is often referred to as “at a click of”, which means with just a click one could enter or access any website originated in any corner of the world from pole-apart corner of the world. Basically, there are limitations to the access.

Offences in cyber space are either committed against the integrity, availability and confidentiality of computer systems and telecommunication networks or they consist of the use of services of such networks to commit traditional offences, then one may find oneself in the legal quagmire. The question is not only about multiple jurisdictions but also of problems of procedural law connected with information technology. Since there is no limitation to the access or even misuse, thus no limitation to the commission of offences, having the same conventional limited concept of jurisdiction in cyberspace will result in inadequate management and chaos.

In general terms, jurisdiction will be understood in terms of territoriality. Cyber space is a broad term which includes computers, networks, software, data storage devices, the Internet, websites, emails and even electronic devices such as cell phones, ATM machines, etc.

When you are online (accessing any online facility), you are almost everywhere. In cyberworld, territorial jurisdiction covers whole earth. A single infraction or wrong may involve several participants, website owners, online intermediaries, the host, the author or creator of a piece of writing or painter, etc. All of these can very easily come from various countries, given the nature of Net. By this logic, if the traditional concept of jurisdiction is applied, some of these may fall in different jurisdiction due to personal jurisdiction and yet some of the participants may remain uncovered by these principles.

Traditional theories of jurisdiction are inapplicable to the internet due to the following reasons:

1. Material posted on the internet has worldwide audience;
2. It is easy to move website from one territory to another;
3. A website can be hosted on one area, but directed at users in another geographic location;
4. Parts of a website may be hosted in one area, while other parts of the websites are hosted in another location; and
5. It is not always possible to determine where a website or user is located.

Concept of Jurisdiction Under Information Technology Act, 2000

The substantive source of cyber law in India is the Information Technology Act, 2000. The objective of the Act is to provide legal recognition to e-commerce and to facilitate storage of electronic records with the Government.

The State legislative enactments primarily reflect its prescriptive jurisdiction. For example, the IT Act, 2000 provides for prescriptive jurisdiction as it States: “The provisions of this Act shall apply also to any offence or contravention committed outside India by any person irrespective of his nationality.”. Further this Act shall 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. It is the legislative function of the Government to enact laws and judicial and/or administrative function to enforce those laws. Thus, the principles of jurisdiction followed by a State must not exceed the limits which international law places upon its jurisdiction. The Indian Information Technology Act under the Section 1(2) and Section 75 of the Act incorporates the effect test of jurisdiction.

The IT Act also penalizes various cybercrimes and provides strict punishments. In pursuant to this there are certain provision under this act which renders the idea of jurisdiction of court for the trial of cases pertaining cyber crimes in India as well as outside India

The Information Technology Act 2000 seems exhaustive when it comes to adjudicate the matter where the parties are Indian citizen and the offence or any contravention has been committed in India as the Indian Courts follow the Principle of *lex foris* that means the law of the country but it still creates confusion in order to exercise its extra territorial jurisdiction where the offence has been committed outside India or by any non-citizen.

For instance, if an American citizen damaged the reputation of one of the Indian Politician by publishing lewd comments through the social media and the aggrieved person approached to Indian court for the justice. It is obvious that IT act, 2000 provides for extra territorial jurisdiction but the issue arises here that how far would it be effective to bring the American citizen to India to be prosecuted for cyber defamation as the IT Act is not applicable to the American citizen.

The case of **Super Cassettes Industries Ltd. v. Myspace Inc. & another**², is related to copyright issues, cyber law and international jurisdiction. The plaintiff filed the suit for restraining infringement of copyright, damages etc. through website of Myspace having base at US. Defendant Myspace raised the jurisdictional objection on the ground that:

- (1) The defendant is residing and carrying on business outside the jurisdiction of this court i.e., USA,
- (2) The cause of action has not occurred within the territorial jurisdiction of Indian court.

Theories and Tests:

- Minimum Contacts Theory

The Minimum Contact theory comes into picture when either or both of the parties seem to be from outside the Court's territorial jurisdiction. It is used as a method to establish the Court's jurisdiction over the parties to a case by determining their quality and intensity of their contact i.e. services or transactions with the Forum State. Minimum contact rule establishes that so long as a corporation had a degree of contact within the state bringing suit, they are subject to the laws of the state and can be sued by and within the forum state in court. Examples of minimum contacts include conducting business within the state, incorporating in the state, and visiting the state

- Effects Test or Calder Effect Test

The theory was laid down in a landmark case i.e. **Calder v. Jones, 465 U.S. 783 (1984)**³, It was a case in which the United States Supreme Court held that a court within a state could assert personal jurisdiction over the author and editor of a national magazine which published an allegedly libellous article about a resident of that state, and where the magazine had wide circulation in that state. Held: A state's courts could assert personal jurisdiction over the author or editor of a libellous article, where the author or editor knew that the article would be widely circulated in the state where the subject of the article would be injured by the libellous assertion. Held that California courts had jurisdiction over the defendant.

2. Super Cassettes Industries ltd. v. Myspace Inc. & another, 2011

3. 465 U.S. 783 (1984)

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- Sliding scale Theory

This theory was given by the court in **Zippo manufacturing Co. v. Zippo Dot Com Inc.**⁴ This theory is generally accepted as the standard in Federal Courts in deciding personal jurisdiction in Internet cases. Such cases are now primarily decided based on a determination of the website's "interactivity". Courts have held that the greater the commercial nature and level of interactivity associated with the website, the more likely it is that the website operator has "purposefully availed itself" of the forum state's jurisdiction.

- Country-of-origin or Country of Destination Theory

There are divergent opinions regarding the rules of country-of-destination applicable to online commercial activity as the business house is required to answer in a law court a few 100 miles away for non-compliance with the law of that country. Then it will become not only impractical for the entrepreneur to run business in this way but it will also have to be on an extra charge to face a litigation outside and away from their own jurisdiction.

- Forum Selection Theory

The parties may themselves agree beforehand that for resolution of their disputes, they would either approach any of the available courts of natural jurisdiction or to have the disputes resolved by a foreign court of their choice as a neutral forum according to the law applicable to that court.

If one or more courts have the jurisdiction to try any suit, it is open for the parties to choose any one of the two competent courts to decide their disputes. In case parties under their own agreement expressly agree that their dispute shall be tried by only one of them then the parties can only file the suit in that court alone to which they have so agreed.

Jurisdiction in E-Contracts

Now-a-days we all enter into E-contracts, for example, to purchase grocery, books, vegetables, garments, travel booking, online movies, cabs, even visiting any website. E-contract has the similar definition as traditional contract. However, the only difference is that it is carried out through online mode of communication without the parties directly meeting.

4. 952 F. Supp. 1119 (1997)

There are three types of E-contracts, **Click-warp Agreement**, **Browse-wrap Agreement** and **Shrink-warp Agreements**.

E-contract involves instant communication of offer and acceptance. Wherein the contract is complete at the end of originator where acceptance is received. While discussing the jurisdiction for the enforcement of these contracts, we have to take a look at the case of **Bhagwandas Goverdhandas Kedia v. Girdhari Lal Parshottamdas & Co.**⁵ In this case it was held that at the place of proposer where the acceptance is received shall have the jurisdiction of enforcement of contracts entered into by means of computer internet.

An E-contract crosses the jurisdictional boundaries as it can be created from any place on the globe. This raises the question of jurisdiction of the court in case of any dispute between the parties to E-contracts.

If there is nay dispute among the parties belonging to the same jurisdiction related to E-contract, then such dispute can be resolved similar to the traditional contract disputes. However, the challenges would arise when the parties to E-contract are belonging to the different countries. Jurisdictional problem in E-contract has been resolved under IT Act in India, specifically Section 13 of the IT Act deals with the time and place of despatch and receipt of an electronic record and electronic contracts.

Cases

1. **International Shoe Co. v. Washington, 326 U.S. 310 (1945)**⁶

International Shoe Co. was incorporated in Delaware and had its principal place of business in St. Louis, Missouri. While the corporation did not have an office in Washington. It employed eleven to thirteen salesmen, who were residents of Washington and who exhibited product samples to prospective buyers from Washington. The State issued a Notice of Assessment holding the corporation liable for contributions to the State's unemployment compensation fund by virtue of the Washington Unemployment Compensation Act. Notice was served via mail and personal service to Washington salesmen. The corporation refused to pay, arguing that they were not conducting business in Washington and thus the State had no jurisdiction over it. They further argued that the service of notice was insufficient to constitute due process.

5. 1966 AIR 543, 1966 SCR (1) 656

6. 326 U.S. 310 (1945)

The trial court ruled in favour of the State and the Supreme Court of Washington ruled that there was sufficient business activity to hold the corporation liable for taxes to the State. The corporation appealed the decision to the Supreme Court of the United States.

The issue here was: Can a non-resident corporation's activities in a state make it subject to the jurisdiction of that state?

The court held that Due process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice."

2. **Calder v. Jones, 462 U.S. 783 (1984)**⁷

The California resident brought a libel action against a national magazine based in Florida and against its reporter and magazine's editor, individually. Both reporter and magazine's editor were served by mail in Florida. They both moved to quash service for lack of personal jurisdiction. The lower court granted the motion. On appeal, the state appellate court reversed the lower court order and found jurisdiction. The case was elevated to the Supreme Court of the United States on appeal.

The issue here was: Can California exercise jurisdiction over the case?

The court held that jurisdiction was proper based upon the effects of their intentional conduct in California. Respondent's career was centered in California, the article was drawn from California sources, and the harm was suffered in California. The Supreme Court noted that petitioners were not charged with untargeted negligence, but rather their intentional, and allegedly tortious, actions were expressly aimed at California, and under the circumstances, petitioners must have reasonably anticipated being sued there. The Supreme Court held that petitioners' status as employees did not shield them from jurisdiction, because their individual contacts with California were sufficient.

462 U.S. 783 (1984)

3. **Zippo Manufacturing Co. v. Zippo Dot Com Inc.**⁸

Defendant operated a website, which advertised in and offered to ship various Zippo products to PA, where plaintiff sued defendant for copyright infringement and other IP-related breaches. Defendant moved to dismiss, citing lack of personal jurisdiction.

The issue here was: Did the Court have jurisdiction over defendant, and the lawsuit against the defendant?

In dismissing defendant's motion to dismiss for lack of personal jurisdiction, the Court noted that a significant amount of alleged infringement, dilution, and resulting injury occurred in Pennsylvania, thus the cause of action arose out of defendant's forum-related activities.

Court uses a three-pronged test for determining whether the exercise of specific personal jurisdiction over a non-resident defendant is appropriate: (1) the defendant must have sufficient minimum contacts with the forum state, (2) the claim asserted against the defendant must arise out of those contacts, and (3) the exercise of jurisdiction must be reasonable.

4. **Modi Entertainment Network v. W.S.G. Cricket Pvt. Ltd.**⁹

In the present case, the respondent, WSG Cricket, had the exclusive telecasting and selling commercial rights of an ICC Tournament ("Event") in Kenya. The second appellant and respondent entered into an agreement wherein the exclusive license was granted to the second appellant to telecast the Event on Doordarshan. Thereon, the second appellant assigned its rights to the first appellant under the agreement. Soon after the commencement of the telecast, respondent alleged breach of the agreement by the appellant and also threatened to discontinue the telecast given to Doordarshan. In a round of cross allegations, the appellants alleged that due to the open threats of the respondents, they had faced a tremendous loss of revenue as advertisers had pulled out. Subsequently, on 9 May 2001, appellants filed a suit in the Bombay High Court and then on 22 November 2001, respondents filed a suit in the English Court. The jurisdiction clause of the agreement provided that parties shall be governed by English law and they submitted to the non-exclusive jurisdiction of English Courts.

7. 952 F. Supp. 1119

8. 422 (2003)

The main issue for consideration by the Supreme Court, in this case, was, whether the Division Bench of the High Court of Bombay erred in vacating the anti-injunction suit which restrained the respondents from initiating proceedings in the English Court, the forum chosen by the parties as the forum of choice.

The decision of the Apex Court, in this case, is well-thought and based on established principles of law. It notes that the parties submitted to the non-exclusive jurisdiction of the English Court under the contract even though the English Court does not have a relation or nexus with the parties and subject matter, and is also not a court of natural jurisdiction. However, the Court has to give effect to the intention of the

parties which can be determined from the contract unless good and sufficient reasons are shown to prove otherwise.

5. Bhagwandas Goverdhandas Kedia v. Girdhari Lal Parshottamdas & Co.¹⁰

On 22nd July 1959, Bhagwandas Goverdhandas Kedia Oil Mills (defendant-appellant) agreed to supply cottonseed cakes to M/s. Girdharilal Parshottamdas and Co. (plaintiff-respondent) of Ahmedabad over a telephone. The respondents brought an action against the appellant in the City Civil Court of Ahmedabad as the appellant failed to supply seed cakes as per the agreement. The appellant contended that the respondents' offer to purchase was accepted at Khamgaon and the delivery and payment of the goods were also agreed to be made in Khamgaon and the City Civil Court of Ahmedabad had no jurisdiction to try the suit. The City Civil Court of Ahmedabad held that it had jurisdiction as the acceptance of the offer was initiated in Ahmedabad and was intimidated to the offeree at Ahmedabad and that the contract was formed in Ahmedabad. The appellants filed an application in the High Court of Gujarat, which was rejected. Then, the appellants with special leave appealed to Supreme Court.

The issues here were:

1. Whether the Ahmedabad Civil Court had jurisdiction over the matter?
2. Whether the contract was formed at the place of acceptance, or where the acceptance was received?

9. 1966 AIR 543, 1966 SCR (1) 656

This case widened the scope of communication of offer and acceptance. The court decided to question the place of origin of the cause of action in a suit where the breach was made. It clarified the rules regarding communication of offer, acceptance, and revocation when made over a telephone. It said the rule applied when acceptance is made through the post is not applicable when made through telephone. In cases of agreement over the telephone, the situation is like a conversation happening in front of each other. Therefore, acceptance of the offer is made at the offeror's place when the communication is instantaneous, i.e., through telephone.

6. P.R. Transport Agency v. Union of India¹¹

In the case at hand, an e-auction was held by Bharat Coking Coal (hereinafter referred to as BCC for the allocation of coal. BCC accepted the bid of P.R. Transport Agency (hereinafter referred to as PRTA) for 4000 metric tons of coal at Rs. 1,625/- per metric tons from Dohari Colliery. On 19th July the acceptance letter of the bid was sent by e-mail to PRTA'S e-mail address.

A sum of Rs. 81.12 Lakhs was deposited by PRTA towards the cheque drawn in favour of BCC in terms of the 'Terms of Allocation'. PRTA accepted the cheque but failed to deliver the coal.

An e-mail was sent by BCC cancelling the cheque deposited by PRTA owing to technical issues and unavoidable reasons. However, the actual reason was that some other person's bid was higher than that of PRTA. The higher bid was not considered due to a flaw in the software. PRTA approached the Hon'ble High Court of Allahabad, aggrieved by this letter.

The issue here was: Whether this court has territorial jurisdiction to entertain and hear this writ petition?

The Court has jurisdiction to entertain and hear this petition since the communication was received at U.P. by PRTA. The place of contract is one of the determinative factors in deciding the territorial jurisdiction in an action based on breach of contract.

10. AIR 2006 All 23, 2006 (1) AWC 504

Conclusion

The issue of jurisdiction of State as well as court becomes important as the first step in the process of regulation of cyberspace. Right from legislative jurisdiction of State to adjudicative jurisdiction of Court the traditional notion of jurisdiction has been challenged by cyberspace. It is very difficult to decide the location of offender or defendant whereas it is equally easy for to commit crime and contraventions. In particular the cross-border nature of offence creates a big challenge for regulation. As cyber space is a world with limitless boundary, hence the need of the hour is to develop a unique law which can be applied to deal with the case of cyber-crime without any difficulty or confusion.

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