

Extra Territorial Cyber Jurisdiction in India – An Analytical Study

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Abstract- The current administration is actively pushing digitalization, which is a positive move for the future and openness. The government's "Digital India" initiative places a strong emphasis on connecting every location in the country to the Internet. This will create jobs, facilitate e-governance, and make it easier to conduct business anywhere in the world. In "Digital India," technology guarantees an impenetrable citizen-government interface. This is the aspiration of every young person in our nation. India is seen by the rest of the globe as the next great idea. Digital technologies are being utilized more and more in government offices and retail establishments in daily life. They facilitate information sharing as well as interpersonal connections. As a country, we are working to create a "Digital India," but at the same time, cybercrime is becoming more prevalent. Setting up future-ready policies to handle any cyberspace-related crimes is crucial before becoming "Digital India."

Keywords: Digitilization, Cyber-jurisdiction, Convention, IT Act 2000

INTRODUCTION

The internet has revolutionized communication today, reaching far further than any prior medium. However, this innovation also carries a significant deal of risk, as the internet, while a wonderful tool, may also be abused, leading to an increase in criminal activity and cases of criminal activity abetment that require regulation. The internet's fundamental characteristic is its boundless nature. This is a fundamental feature of the internet and presents a serious difficulty when discussing jurisdiction.

Jurisdiction is the concept where by in any legal system, the power to hear or determine a case is vested with the appropriate court. The main problem of cyber law jurisdiction is the presence of multiple parties in various parts of the world who have only virtual nexus with each other. Then the problem of place is raised that where the party wants to sue and what remedy is available to him?

These days, cyber security is a crucial component of national security. These days, nearly every crime committed involves a computer. To effectively address the risks we currently confront, we must continuously assess the applicability and efficacy of our current legal framework.

The Information Technology Act, 2000, also known as the IT Act, 2000, is a law that allows for the regulation of actions that occur in cyberspace and is currently in effect in India.

Issues of jurisdiction and sovereignty have quickly come to the fore in the era of the Internet. The Internet does not tend to make geographical and jurisdictional boundaries clear, but Internet users remain in physical jurisdictions and are subject to laws independent of their presence on the Internet. As such, a single transaction may involve the laws of at least three jurisdictions:

- The laws of the state/nation in which the user resides,
- The laws of the state/nation that apply where the server hosting the transaction is located, and
- The laws of the state/nation which apply to the person or business with whom the transaction takes place. So a user in one of the states in USA conducting a transaction with another user in Australia through a server in Chennai could theoretically be subject to the laws of all three countries as they relate to the transaction at hand.

A component of state sovereignty, jurisdiction denotes the ability to exercise judicial, legislative, and administrative authority. The Merriam-Webster dictionary defines state sovereignty as "a country's independent authority and the right to govern itself."¹ Despite being a component of sovereignty, jurisdiction does not imply it. A country does not have unrestricted authority over all matters just because its sovereignty—both internal and external—remains intact. The exercise of jurisdiction by a state is restricted by international law.

These days, not only the conventional laws but also the so-called modern laws are completely mocked by the internet. Even the other traditional laws² are in danger from the internet, which poses a threat to the jurisdiction that underpins every justice delivery system and grants a certain court the authority to hear a given case. The paper aims at how the challenge of jurisdiction (national and international) is to be combated with regard to cyber law in India. The paper also aims at discussing the plausible alternatives of dealing with issues regarding cybercrime like arbitration.

INFORMATION TECHNOLOGY ACT 2000

Through the Fifty First Amendment the Indian Parliament has enacted an Act called the Information Technology Act 2000.³ The primary aim of the parliament in making this law was to recognize e-commerce and growing use of internet.

The act aimed at meeting with future legal problems that might arise due to the rapid increase in use of the internet. The Indian Parliament captured the spirit of the General Assembly's recommendations dated 30 January 1997 in the United Nations Model Law on Electronic Commerce 1996 (UNCITRAL Model) in the form of The IT Act 2000⁴. The basic principles of the Model Law were:

- To facilitate rather than regulate electronic commerce.
- To adapt existing legal requirements.
- To provide basic legal validity and raise legal certainty.

In addition to facilitating domestic and international trade, the Act also serves as a substitute for paper-based communication and information storage methods by promoting e-commerce and e-governance. It creates a legal framework for the nation and specifies penalties for certain offenses and cybercrimes.

The extent of the application of this act is stated in Section 1(2). Section 1(2)⁵ of IT Act 2006 states: *(2) It shall extend to the whole of India and, save as otherwise provided in this Act, it applies also to any offence or contravention thereunder committed outside India by any person.*

It can be understood that the act applies to any offence or contravention committed thereunder outside India

by any person. It can be seen that sub-section (2) highlights the extra-territorial jurisdictional power of the nation over the wrong doer, irrespective of his nationality, domicile, status etc. But to completely understand Sub-section 2, one should read it with Section 75. Section 75⁶ IT Act, 2000 reads:

Act to apply for offence or contravention committed outside India-

(1) Subject to the provisions of sub-section (2), the provisions of this Act shall apply also to any offence or contravention committed outside India by any person irrespective of his nationality.

(2) For the purposes of sub-section (1), 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.

Thus, Section 75 of the IT Act, 2000 specifies that, if the act or conduct constituting the offence or contravention involves a computer, computer system, or computer network located in India⁷, then the act applies to any offence or contravention committed outside India by any person, regardless of his nationality [S.1(2)].

The statute created a Cyber Appellate Tribunal for domestic lawsuits and cases; this tribunal is described in Section 2(1)(n). The establishment of this Tribunal is mandated under Section 48 (1).

The relevant clauses of Section 2(1)⁸ read:

(n) "Cyber Appellate Tribunal" means the Cyber Appellate Tribunal established under subsection (1) of section 48.

(na) "Cyber cafe" means any facility from where access to the internet is offered by any person in the ordinary course of business to the members of the public.

(nb) "Cyber Security" means protecting information, equipment, devices computer, computer resource, communication device and information stored therein from unauthorised access, use, disclosure, disruption, modification or destruction.

Section 48(1)⁹ reads:

Establishment of Cyber Appellate Tribunal. – (1) The Central Government shall, by notification, establish

one or more appellate tribunals to be known as the Cyber Appellate Tribunal.

A court's jurisdiction can be characterized as its ability to hear a matter, evaluate it, make a decision about it, and then employ all of its judicial authority to address it. Stated differently, jurisdiction refers to the power vested in the court to make decisions on cases that are brought before it or to receive formal submissions for consideration.

As a result, the IT Act of 2000 establishes the Tribunal as a means for an individual to safeguard his online rights. As previously said, the legislation was designed with a futuristic perspective from the outset, but its failure was caused by the internet's unanticipated quick expansion. A new class of crimes known as cybercrimes has gained entry thanks to the growth of online marketing, e-commerce, e-banking, and other similar internet portals. The concern is whether the current legal framework can handle the fundamental complexity of cyberspace, such as jurisdiction.

JURISDICTION AND CYBERSPACE

Conventionally, jurisdiction is determined by the place where the cause of action originates, but how can this be done when there are several parties participating in different areas of the world? Since there are three parties to every cyberspace transaction: the user, the service provider, and the person or business with whom the transaction is made, the most effective law should ideally address whether a specific cyberspace event is governed by the laws of the state or country in which the user is located, or whether all other states' and countries' laws apply.

Unlike in the conventional way, there are three parties to any transaction in the cyber space. The User, the server Host and with whom the transaction is taking place with.¹⁰ The primary issue is, which country's law should apply? Hence, the key issues that can identified are :-

- When there is cross border interactions on what basis do we decide which country's law applies and which court has jurisdiction?
- What are the basis on which nation can claim to apply laws and regulations if the internet activity originate from different jurisdiction.¹¹

Therefore, when the parties to a contract or those involved in a dispute are of different nationalities,

matters of jurisdiction are subject to both domestic and international law. When there are foreign parties to a dispute, the state is required by international law to apply its own laws.

There three kinds of jurisdiction that exists in matters of determining a country's jurisdiction under international law. These are, prescriptive jurisdiction, jurisdiction to adjudicate, jurisdiction to enforce.

Prescriptive Jurisdiction

States have the capacity to enact laws that apply to specific individuals and situations; nevertheless, in cases when there is a conflict of interest with another state, international law limits a state's ability to enact laws.

Jurisdiction to Adjudicate

Whether or not the state is a party to the proceedings, the state has the authority to submit a person or object to a civil or criminal court or administrative body. whether there is a sufficient connection between the individual and the state.

Jurisdiction to Enforce

Is the state's ability to enforce laws and regulations or impose penalties for breaking them.

Nonetheless, officers have the authority to enforce state laws if the relevant state officials give their consent. It is not possible for police to make an arrest, produce documents, or carry out an arrest without permission. Nonetheless, there can be situations in which the state has the authority to prescribe but not to decide. Because courts do not apply the criminal laws of other states, jurisdiction to adjudicate does not exist in criminal cases in particular.

Personal jurisdiction refers to having authority over the parties or objects of the litigation. Asking yourself "What right does a court have to determine the rights of the parties involved in the action?" is one way to consider personal jurisdiction. Put otherwise, the inquiry into whether a court has personal jurisdiction over an individual encompasses the question of whether it would be justifiable for the court to render a verdict against said individual. The element that must be satisfied for a court to have personal jurisdiction is the law that governs the court must give it authority to assert jurisdiction over the parties to the case.¹²

Similar to the US, India bases its decisions on the "Long Arm Statute" when it comes to personal jurisdiction on the global stage. We will also talk about the ideas of Minimal Contact and Long Arm Statute in relation to personal jurisdiction over cybercrime disputes. Despite not being a signatory to the convention on cybercrime—which will be discussed later—India has accepted the concept of universal jurisdiction, which allows the Act to apply to both cybercrimes and cyberviolations. There has been contention that imposing the jurisdiction of Indian courts on people of various nations would be exceedingly challenging from an application standpoint. Furthermore, none of the extradition treaties that India has ratified to date do not cover cybercrime as an extraditable offence.¹³

LONG ARM STATUTE & MINIMUM CONTACT

What constitutes the least amount of contact? According to the minimum contact rule, a corporation is subject to state law and may be sued in court by parties inside the forum¹⁴ state as long as it has some degree of interaction there. It's not quite that simple in black and white. According to the legislation, only few or minimal contacts are necessary to establish contact. However, there is also a right to substantial justice and fair play, which establishes three requirements that must be met in order to extend long arm statute jurisdiction and bring a defendant corporation to court:

- Closeness of the relationship between the claim and the contact
- Convenience of bringing the defendant corporation to the forum state
- State has an interest in protecting the rights of its citizens

In summary, the minimum contact rule may be implemented provided that it does not impede equitable play and substantial justice. This approach is frequently used to determine whether the long arm statute can be applied to grant a state personal jurisdiction over issues arising on the international front. India is currently adopting this notion as well, since the current laws do not adequately define and clarify the question of jurisdiction with regard to cybercrimes alone. When read in conjunction with Section 75, the provisions of Section 1(2) grant the court the long arm jurisdiction that is vitally required.

What, however, is the "Long Arm Statute"? Put simply, it relates to a court's authority over corporations that are defendants yet are located outside of the state. The historic case of *International Shoe v. Washington*¹⁵ established precedence for the government's ability to file a lawsuit against a defendant corporation under the long arm statute. The Long-Arm Statute went one step farther than "minimum contacts" by examining whether the interactions were adequate to prove "purposeful benefit," such as:

- Purposefully and successfully solicitation of business from forum state residents
- Establishment of contract with the forum state residents
- Associated with other forum state related activity
- Substantial enough connection with the forum state¹⁶

The court had to decide whether it was reasonable to subject the non-resident defendant to the forum's personal jurisdiction to the extent that the federal constitution's due process requirements would permit after determining that there were enough "minimum contacts" for it to exercise specific jurisdiction over the defendant. The *International Shoe Company's* case is significant because it demonstrated, for the first time, that personal jurisdiction may exist even in cases when the defendant was not physically present in the forum state. It served as a model for the long-arm statutes in the state. Subsequently, as e-commerce emerged, courts across the country adopted this ruling as a set precedent for determining the "minimum contacts" necessary to establish personal jurisdiction. A company or party based in one state or nation may be covered by the long arm statute if it conducts business in another state and employs people in still another state or nation.

Therefore, as long as the government can demonstrate that the defendant has at least minimal contacts in the impacted or forum state, the long arm statute essentially permits a state to exercise jurisdiction over out-of-state defendants. This means that, in the event that a corporation is sued in a nation where it does not, in fact, conduct business or use cyber services, but has a connection to the state (affecting the state's computer systems), the party is deemed to have sufficient minimum contact to be sued within the forum state. Nonetheless, the case of *Cybersell, Inc. v. Cybersell*,

Inc.¹⁷ concerns a disagreement over a service mark between two corporations—one based in Florida and the other in Arizona. The court decided that a company is not subject to the effect test in the same way that an individual does.

Another important case in this area is *Yahoo Inc. vs. La Ligue contre Le Racisme, l'Antisémitisme*¹⁸, also referred to as the Yahoo case, which emphasizes jurisdictional concerns in cyberspace. According to the case's facts, Yahoo was sued by the International League against Racism and Anti-Semitism and the Union of French Students for holding auctions that included and sold Nazi propaganda. Yahoo contended that there was no jurisdiction over the French court. Yahoo, however, chose to contest the order's execution in the US rather than file an appeal after this was turned down. The US court determined that jurisdiction existed based on the Effect Theory, despite the French courts' claims to have the declaratory judgment dismissed in the meantime. Put simply, the effects theory is a doctrine—an expanded version of the objective territorial principle¹⁹—that was primarily created by American courts in antitrust cases, asserting jurisdiction over foreign nationals' actions that they perform abroad but have an impact on the American market.

Only in the places where the defendant can be located or where his property can be located can a state execute its laws. A judgment delivered by one court cannot be enforced unless it is recognized by another court. The United States adheres to the Principle of Comity. Comity is the acceptance of the legislative, judicial, and executive actions of another state within the borders of one's own country. But practices could differ greatly over the world. Unless there is a breach of public policy, personal jurisdiction, or due process, the concept of comity is upheld. To put it another way, the Principle of Comity is the idea that a sovereign nation should freely accept or uphold the laws of another sovereign nation out of mutual respect, deference, and mutuality. For instance, India abides by the Principle of Comity if it makes use of a US court ruling on cybercrime. India follows the US out of respect, deference, and mutuality even though it is not required to under the US Constitution.

POSITION IN EUROPEAN COUNTRIES

The Brussels Convention²⁰ does not require minimum contact between the state and the defendant. The convention permits assertion of jurisdiction if the plaintiff suffers from tort injury within the forum.

POSITION IN INDIA

Unfortunately, India's higher courts have only decided a very small number of instances involving personal jurisdiction in cyberspace. The reason could be that, in addition to an incredibly delayed justice delivery system, Indians have not yet come to terms with or adjusted to this new technology as a suitable means of carrying out their legal obligations. The method chosen is comparable to the US "minimum contacts" strategy combined with the Indian procedural codes' compliance with the proximity test.

The term '*Lex Fori*' literally means the law of the forum or the law of the jurisdiction where the case is pending. The exercise of jurisdiction is regulated by the procedural laws. Procedure is the judicial process for enforcing rights and duties recognized by substantive law and for justly administering redress for infractions.

Procedure involves all aspects such filing of suit, collection of evidences, enforcing of judgements. According to Indian law, the Civil Procedure Code of 1908 governs jurisdiction. Part 6 of the CPC addresses monetary jurisdiction, and Section 16 deals with subject matter jurisdiction. These are the provisions that deal with jurisdiction. Section 19 addresses lawsuits involving movable property, while Section 20 specifies territorial jurisdiction—that is, the place where the defendant resides or the cause of action originates.

The Rajasthan High Court Advocates Association vs Union of India²¹ case established the definition of a cause of action as any fact that the plaintiff must establish, if proven, to bolster his claim to the court's ruling. The courts would have jurisdiction whether the defendants were located in Hyderabad or elsewhere, for example, if the cause of action had originated there entirely or in part as a result of a transaction.

The problems that arise with respect to Section 20, which talks about territorial jurisdiction is when parties are located in different jurisdictions, medium of communication is in different country, or also when under certain jurisdiction of a country certain act is an offence while in another country it is not.

Section 20 of CPC²² states

Other suits to be instituted where defendants reside or cause of action arise.- Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction—

(a) The defendant, or each of the defendants where there are more than one, at the time of the commencement of the Suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

(c) The cause of action, wholly or in part, arises
Another way to decide jurisdiction is agreement between parties, parties by agreement can confer to one jurisdiction and exclude the rest. The Indian law recognises and give effect to the autonomy of parties.

JURISDICTION OF INDIAN COURTS OVER FOREIGN CITIZENS OR PERSONS

Section 16 of the code²³ states that:

“Subject to the pecuniary or other limitations prescribed by any law, suits-

- (a) For the recovery of immovable property with or without rent or profits,
- (b) For the partition of immovable property,
- (c) For foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property,
- (d) For the determination of any other right to or interest in immovable property
- (e) For compensation for wrong to immovable property,
- (f) For the recovery of movable property actually under distraint or attachment, shall be instituted in the Court within the local limits of whose jurisdiction the property is situate:

Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant, may where the relief sought can be entirely obtained through his personal obedience be instituted either in the Court within the

local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain.”

Therefore Indian courts cannot assume jurisdiction over immovable property located in foreign countries. Section 19 of the code²⁴ states that

“Where a suit is for compensation for wrong done to the person or to movable property, if the wrong was done within the local limits of the jurisdiction of one Court and the defendant resides, or carries on business, or personally works for gain, within the local limits of the jurisdiction of another Court, the suit may be instituted at the option of the plaintiff in either of the said Courts.”

ENFORCEMENT OF FOREIGN JUDGEMENT

In India foreign judgement can be enforced in two ways

- a) Reciprocating Territories
- b) Non-reciprocating Territories

Reciprocating Territories

By requesting an executive decree, one can directly enforce it if it is a reciprocating territory.

Any nation or territory outside of India that the Central Government may designate as a reciprocating territory for the purposes of this section by publication in the Official Gazette is referred to as "superior Courts"; any such region refers to the courts that the aforementioned notification may list.²⁵ Countries that reciprocate include the UK and Canada.

Non Reciprocity Countries

Judgements from a non reciprocity country can be enforced in Indian courts only by filing a law suit. The foreign judgement is considered as evidence.

CONVENTION OF CYBER CRIMES

As has already been examined, the rules pertaining to cybercrimes vary throughout nations. The many methods used all across the world to combat these international crimes are completely ineffective. Therefore, in 2001, in Budapest, another attempt was made to resolve this jurisdictional issue with the adoption of the Convention on Cybercrime²⁶ by the

Council of Europe and other non-member nations. The Council of Europe was established in 1949 to advance democracy, human rights, and the rule of law throughout Europe. It is not a part of the European Union.²⁷ Important non-member nations that have ratified the treaty, such the US and Canada, are among its signatories.

The Council of Europe enacted the Convention on Cybercrimes in 2001, and it went into effect in 2004. It is the first and only international treaty to address crimes involving information technology and other legal infractions committed via the Internet. The goal of the convention is to safeguard data, networks, and computer systems from misuse and to ensure their confidentiality and integrity.²⁸ This convention is the sole one on cybercrimes, and since many major countries across the world are members of it, India must ratify it. This is the closest thing to a worldwide legal framework that will likely ever be considered. Russia, China, and India, on the other hand, have chosen not to ratify this treaty because they believe it compromises their right to complete sovereignty. Russia has openly said that this is the reason they chose not to sign the pact and has stated that they will not participate in any legal enforcement inquiries concerning cybercrime.

CONCLUSION

International jurisdiction is a recurring problem that has affected many areas of law, including cyberlaw. The subject at hand is highly sensitive and inescapable due to global politics and diplomacy. There is very little that any individual or nation can do because the positions of each nation are so diametrically opposed. The foundation for any of the existing approaches to addressing jurisdiction to be successful is national cooperation. The problem with all of these is that they rely largely on national collaboration. Therefore, the authors of this report propose the establishment of a distinct organization for dispute settlement that specializes in cybercrime.

The parties who approach this body need to be bound by its decision. The UNCITRAL rules already establish recommendations that should be the basis for the dispute resolution process. It is critical that a powerful organization akin to the World Trade Organization be established in order to find a long-term solution to the jurisdiction and international

cooperation problems. The establishment of such a body should be strongly guided by the Cybercrime Convention's regulations and UNCITRAL's regulations.

Additionally, this solution will enable the nations to resolve the issue of extradictory offenses. An international monitoring or regulatory body with some binding authority may be tasked with the task of analyzing, among other things, the rules of cyber jurisdiction, even if the current state of knowledge and understanding of cyberspace and legal issues related thereto does not permit a detailed law on this subject of jurisdiction. Such a body might function similarly to UNCITRAL, etc.²⁹ may suggest and approve specific model laws that the states can use as the foundation for their own domestic laws. However, other matters may have to be decided by domestic courts because problems that cannot be anticipated will only come up in actual factual situations, forcing judges to decide based on the parties' legitimate interests. It is impractical and undesirable to expect a full treaty-based solution to every potential problem, given cyberspace is still in its infancy and many more complex problems have yet to be discovered. And to not take action just because a comprehensive agreement looks difficult is to act contrary to the collected wisdom from the past.

SUGGESTION

- An impartial body that acts as a dispute resolution body to deal with the cyberspace disputes that take place between people from different countries.
- All domestic cyber disputes should be tackled by the domestic courts of the various countries in accordance with their own laws.
- An international monitoring or regulatory body with some binding authority may be assigned the task of analysing, etc. rules of cyber jurisdiction should be made that has binding control over the countries.

To sum up, the internet is huge, multifaceted, sophisticated, and here to stay. Technology has rendered our justice institutions' antiquated approaches completely ineffective. Rather of changing our current systems and attempting to come up with a fresh, creative approach where everyone has to make

a small concession in order to use the compromise for the greater cause of justice and equity.

Returning to our first point, the "Modi Government" has been promoting internet usage and ensuring that all public documents and resources are available online for everyone to view. Even while this concept is innovative and creative, it has the potential to be just as risky and serve as motivation for more serious criminality. Although it is a positive step toward a more open and democratic society, it also encourages and facilitates cyberterrorism, necessitating increased cyber security. When unforeseen cybercrimes arise, they will require rapid attention. Trying to solve problems like jurisdiction at that point will only impede the process and worsen the situation in the long run. The lack of an effective legal framework in digitally advanced nations like India will make cybercrime legislation's jurisdictional issue even more dangerous for state sovereignty.

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