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Jurisdiction on Internet

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ABSTRACT

The world has reached a time where human existence and lifestyle without internet access is almost unimaginable as it has now become a fundamental necessity. Owing to the enormous connectivity, information exchange and communication platform that the internet provides, it plays a vital role in each and every aspect of life wherein anyone from any part of the world can access the resources in the blink of an eye, be it education, governance, technology, medicine, infrastructure, etc.

With the advent of Internet, the concept of Cyberspace has evolved. Cyberspace being a virtual space poses several threats to the conventional conceptions of jurisdiction. Jurisdiction is a part of the state sovereignty which extends to administrative, judicial and legislative competence. Jurisdiction as a notion includes the jurisdiction to adjudicate, the jurisdiction to prescribe, and the jurisdiction to enact. Crimes committed in the virtual world of cyberspace are called cybercrimes which are interpreted as any crime for which the use of internet was required. As Internet is trans-border and non-territorial, it becomes impossible to establish which state has jurisdiction over a specific cybercrime.

I. INTRODUCTION

The Internet is trans-border and non-territorial in nature since its onset, it has resulted in unprecedented benefits for the world. By default, the World Wide Web allows access to all the resources irrespective of the physical location. However, the Internet has no explicit recognition to territorial sovereignty and geographical limitations. Internet actions which are lawful in one state wherein they are initiated might be unlawful and even criminal in another, even though the particular action is not specifically aimed towards that state. Hence the subject of jurisdiction has become a debatable issue concerning the future of the Internet as it fuels conflicts between states on the grounds of territoriality of internet jurisdiction.²

Digging into the history, it can also be observed that trans-border interactions and disputes were rare, the cooperation mechanisms at the international level were structured to treat them as exceptions. However, with the access of Internet, such trans-border interactions are turning out to be very common. As a result, several trans-border disputes over jurisdiction on the

¹ Author is a student at Symbiosis Law School Pune, India.

² Bernard De La Chapelle & Paul Fehlinger, Jurisdiction on The Internet: From Legal Arms Race to Transnational Cooperation, Global Comm. on Internet Governance 1, 3-7 (2016).

internet arise which even the conventional theories of jurisdiction like *territoriality theory*³, *nationality theory*⁴, *protection theory*⁵, *universality theory*⁶, *derived jurisdiction theory*⁷ are unable to resolve.

II. ANALYSIS

The case of *International Shoe Co. v. Washington*⁸ was one of the first cases which used the 'Minimum Contact Test' to determine the Jurisdiction of Internet. As a result of this case and the resulting test, determining jurisdiction over the Internet has now become industry standard practice. The claimant in this instance made about \$30,000 a year, although he did not own a home in Washington state. The state imposed a tax on businesses operating in the state in order to collect funds for the Unemployment Compensation Fund, and the same was applied to the plaintiff. Courts may exercise jurisdiction over non-resident parties that have "minimum links" to the state where the case is being litigated, according to the US Supreme Court. As a result, this strategy was restricted to "purposeful availment" of state resources by the party in question. In "*Asahi Metal Industry Co. v. Superior Court*"⁹, As stated by the US Court of Law, non-resident parties may be subject to jurisdiction in the forum state if their conduct inflict an alleged harm that is "particularly intended" at forum state citizens. There are no "random exchanges" involved in a party's "Purposeful Availment," according to a ruling from the Supreme Court.

But it was in the case of "*Zippo Manufacturing Co. v. Zippo Dot Com, Inc.*"¹⁰, As a result of the Court's investigation into the type and quality of commercial activities on websites, "sliding scale studies" were conducted on inactive, active, and interactive websites in order to determine its jurisdiction.

"In the case of *Calder v. Jones*"¹¹, the Supreme Court established jurisdiction on the basis of the effect test *i.e.*, the effect that the online interaction has upon the forum state. This test is made applicable where an online interaction is aimed at a specific platform in cases of lack of minimum contacts. This test is used to analyze the precise nature of a party's online operations

³ Jeffrey Pollock & Debra Lightner, *Civil Procedure in the Age of the Internet Jurisdiction*, New Jersey L.J. (2000).

⁴ *Supra*, note 1.

⁵ *Unite States v. Zehe*, 601 F. Supp. 196.

⁶ Michael A. & Geist, *Is there a There There? Toward Greater Certainty for Internet Jurisdiction*, 16 *Berkeley Tech L.J.* 1345, 1356-1371 (2001).

⁷ Dr. Kasperson, *Jurisdiction to regulate principles, Cybercrime and Internet Jurisdiction* (March 5, 2009).

⁸ *International Shoe Co. v. Washington*, 326 U.S. 310 (1945)

⁹ *Asahi Metal Industry Co. v. Superior Court*, 480 U.S. 102 (1987)

¹⁰ *Zippo Manufacturing Co. v. Zippo Dot Com, Inc* 952 F. Supp. 1119 (W.D. Pa. 1997)

¹¹ *Calder v. Jones*, 465 U.S. 783 (1984)

in order to assess “if its out-of-state activities were aimed at individuals or organizations within the forum state”¹².

Many courts across the globe have resorted to the aforesaid tests for resolving Internet Jurisdiction case. Indian courts have also referred to these tests while being mindful of the basic provision to determine jurisdiction under section 19¹³ and section 20 of CPC¹⁴ in addition to Trademark Act Section 134¹⁵ dealing with intellectual property in the form of domain names.¹⁶ “*Casio India Co. v. Ashita Tele Systems Pvt. Ltd.*”¹⁷ was the first case in India to address the question of Internet Jurisdiction.¹⁸ On behalf of the plaintiff in this case, which was an entirely owned subsidiary of a Japanese corporation, the Japanese firm brought an action for passing off against a defendant operating out of Bombay, India. The domain name “casio India” had been registered in error by the accuser. Trademark “casio” has been used in connection with electrical and other items by the Plaintiff. For this reason, the court issued an injunction prohibiting the defendant from using the defendant's website and ruled that, as long as the website was available in Delhi, the court had jurisdiction over it.

In “*India TV Independent News Service Pvt. Limited v. India Broadcast Live Llc And Ors*”¹⁹, the plaintiff, being the registered owners of the trademark ‘INDIA TV’ and domain ‘indiatv.com’, initiated a passing off action against the defendants who were residents of Arizona and hosted a website under the name ‘www.indiatvlive.com’. According to the judgement of the Court, the mere fact that the website could be accessed from Delhi does not give rise to jurisdiction. Despite this, the Court reaffirmed that if the website is passive, interactive, and oriented at the forum state's people, jurisdiction may be invoked by the courts of the forum state. The Delhi high court concluded that the defendants aimed at targeting the resident as well as non-resident Indians and hence the activities of the defendants would fall within the jurisdiction of the Court.

In “*Banyan Tree Holding (P) Limited v. A. Murali Krishna Reddy and Anr*”²⁰, the Indian position on the Jurisdiction was made even clearer. However, even though none of the parties resided in Delhi, both of their websites could be accessed from Delhi, making this case

¹² *Id.*

¹³ Code of Civil Procedure, 1908, § 19, No. 5, Acts of Parliament, 1908 (India).

¹⁴ Code of Civil Procedure, 1908, § 20, No. 5, Acts of Parliament, 1908 (India).

¹⁵ The Trade Marks Act, 1999, § 134, No. 47, Acts of Parliament, 1999 (India).

¹⁶ *Satyam Infoway Ltd. v. Sifnet Solutions Pvt. Ltd.*, AIR 2004 SC 3540; *Tata Sons Ltd. & Anr. vs Arno Palmen & Anr.*, 199 (2013) DLT 437.

¹⁷ *Casio India Co. v. Ashita Tele Systems Pvt. Ltd.*, 2003 (27) PTC 265 (Del).

¹⁸ *Id.*

¹⁹ *India TV Independent News Service Pvt. Limited v. India Broadcast Live Llc And Ors*, 2007 (35) PTC 177 (Del)

²⁰ *Banyan Tree Holding (P) Limited v. A. Murali Krishna Reddy and Anr*, CS (OS) No. 894/2008

fascinating. Reversing its decision from the Casio case, the Court said that the mere fact that a website may be accessed from Delhi is not enough to establish jurisdiction of the Court. Reaffirming U.S. precedent, the Court held that the burden of proof to prove 'purposeful availment' towards a forum state lies on the plaintiff, who must demonstrate that use of a website was intended to engage in commercial activity with a site user, which resulted in harm or loss to him or her; this burden of proof falls on the plaintiff.

In *Yahoo Inc. v. Akash Arora*,²¹ Because of this, the Supreme Court of India declared that trademark law should be applied to domain name disputes. Passing off or trademark infringement remedies apply when the domain name is violated, since it is treated as if it were the brand itself.

In *Super Cassette Industries Ltd. v. Myspace Inc. and Anr.*²², it dealt with copyright infringement. Although the defendant were not Indian residents, the plaintiff owned the copyright to a number of songs that were posted on the defendant's website without his consent. The Court opined that the website showed Indian works with the intention to be viewed by Indian users thus invoking jurisdiction of the Court. It was held the jurisdiction in this case could be brought within the purview of the Court as there was enough interactivity towards Indian viewers.

The Jurisdiction disputes over the Internet is an issue for a wide spectrum of actors – Governments, international organizations, technical operators, all platforms on the internet, civil society groups as well as for the ordinary people. However, the issue of Internet Jurisdiction affects more than just those mentioned above. There are a number of policy concerns that might be affected by this, including the advancement of global digital economy, the protection of basic human rights, and effective cyber security.²³

The realpolitik of Internet regulation has become digital sovereignty.²⁴ Examples of national jurisdictions extending outside their boundaries may be seen all throughout the world. When public and private policymakers engage in a legal arms competition that is based on reactive, quick-fix solutions, it may lead to a hazardous downward spiral.

Since 2012, Internet & Jurisdiction, the global multistakeholder policy network, in its Retrospect publication²⁵, has recorded over 1000 high-level cases highlighting the rising

²¹ *Yahoo Inc. v. Akash Arora*, 1999 PTC 201.

²² *Super Cassette Industries Ltd. v. Myspace Inc. and Anr.*, 2008 (9) SCALE 69.

²³ *Supra*, note 4.

²⁴ Bertrand de La Chapelle, *Sovereignty and The Geography Of Cyberspace*, CircleID (December 4, 2012).

²⁵ Prof. Dan Jerker & B. Svantesson, *Retrospect Publication at Internet & Jurisdiction*, Global Status Report 2019 Available at - <https://www.internetjurisdiction.net/uploads/pdfs/GSR2019/Internet-Jurisdiction-Global-Status->

conflict and engaged over a hundred core entities from various stakeholder communities in an ongoing consultation mechanism to discuss the problems, conflicts and provide amicable solutions.

III. SUGGESTIONS AND CONCLUSION

As “the Internet & Jurisdiction Policy Network's stakeholders” stressed, neglecting to settle jurisdictional concerns will ultimately result in a costly price: the discussion today is not whether to rule, but how and by whom. According to one of the experts polled, the internet is neither the source nor the solution to the crisis. Indeed, our lack of effective governance systems threatens to make the internet a victim.²⁶

An essential shift in perspective is required to overcome Internet administration difficulties. From intergovernmental agreements to strategic standards, from intergovernmental associations to issue-based administration groups, a shift in perspective is required.

It is not sufficient to only set precedents through case laws to resolve issues relating to Jurisdiction on the Internet. It is an inevitable necessity to have specific set of guidelines or explicit legislation otherwise relying solely on precedents makes the aforesaid tests to decide jurisdiction highly susceptible. To stop the negative impacts of a legal arms race, the international community must increase efforts to protect the trans-national nature of the Internet and reduce its abuse. It is necessary to have creative co-operation measures which are as translational as the nature of the Internet itself, as well as the requisite policy networks and ongoing negotiation processes to produce them.
