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JURISDICTION IN CYBERSPACE

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ABSTRACT

With the invention of internet in 90's, world has felt rapid changes. Internet has given significant assistance in the development of the world. Internet has given people a new way of communication which is simple and quick. In India also internet has a great impact in every sector of life for instance education, commerce, industry and so on. Internet is also known as cyberspace. With all the good that internet has done, it has also brought in new ways of crime in the world which is also known as cyber-crime. This paper talks about what is the impact of internet in India and about the changes made in Indian laws to control cyber-crime.

LIST OF ABBREVIATIONS



- ARPANET- The Advanced Research Projects Agency Network
- TCP/IP- Transmission Control Protocol/Internet Protocol
- VSNL- Videsh Sanchar Nigam Limited
- &- and
- IPC- Indian Penal Code
- IT- Information Technology
- NDPS Act- Narcotic Drugs and Psychotropic Substances Act, 1985
- Vs- versus
- CPC- Civil Procedure Code, 1908
- UNCITRAL- The United Nations Commission on International Trade Law
- WTO- World Trade Organization
- OECD- Organization for Economic Co-operation & Development
- US- United States

- CC- Cyber crime

INTRODUCTION

1.1 The Internet: A Brief Narrative

Backed via the U.S. Defense, ARPANET used packet switching for several computers to operate on a lone connection, ARPANET procured TCP/IP in Jan, 1983, and since then experts started compiling the “network of networks” which embodied the Internet.

The 90’s IT revolution was getting its hands on the whole globe, India was also feeling the ripples of the same. An enterprise of web service was set up in Aug, 1995 by the VSNL. However, the genesis of net in India took its own sweet time to get on track; it necessitated investments & time for people to get accustomed to the internet. The late 90’s witnessed surge in the number of cyber-cafes within India & in addition the consumers of web also increased in numbers.¹

1.2 Statement of Research Problem: The Internet has no doubt changed the way of living. However, it too requires certain regulations which have been formulated via laws which have been made on the basis of jurisdiction. Further the web, to a great length, degrades significance of the tangible whereabouts of the parties, as transactions in cyberspace are not geographically determined.

1.3 Research Methodology: The study is based on Doctrinal Research. The data & information has been gathered from secondary sources & already available materials such as textbooks, reference materials, journals, periodic reports, magazines, newspapers & websites.

Chapter 2

IMPACT OF WEB IN INDIA

¹<https://www.history.com/news/who-invented-the-internet>

Data concerning internet consumers within India.

Internet Users in India²:-

Internet users in India between 2017-2020 (in millions)

Number of internet users in millions

2020	564.5
2019	525.3
2018	483
2017	437.4

In average human's life, technology has made a huge alter. Human intelligence has progresses the life as easy methods of communication, commerce, business & the banking also.

The impact of Web in India can be summed up as follows:

- The growth of web & its consumption has provided a sturdy base for the IT & software market within India.
- However, has led to a surge in the amount of cyber misdemeanours.
- The internet has no doubt fared better than other forms of communication, however it is a platform that's vulnerable to misuse for committing crimes.
- Currently, the Indian government has been promoting 'Digital India' with the intent of digitalising the nation & also setting up small enterprises & businesses to ensure increased rate of employment in India.
- Digital India has paved way in respect of the youth of the society to be engrossed in creative occupations; further it has also made the lifestyle of the citizens easy by providing access to daily stores online & even to the Prime Minister's office!

²<https://www.statista.com/statistics/255146/number-of-internet-users-in-india/>

- But at the same time misuse of web remains a threat for the vision of Digital India, therefore it is necessary that certain statutes be put into place before venturing ahead with the dream of Digital India.

Chapter 3

CRIME & LAW IN CYBERSPACE

3.1 Concept of Cyber Crime

- The notion behind cyber offence is not considerably different from the prevailing notion of 'crime' itself, excluding the strategy received for commission of crime.

Cyber Crime can be broadly explained as "Offences done via computer/computerized system" yet the complexity cybercrimes can't be explained in such easy & limited term.³

- The OECD suggested a functional explanation of Cyber Crime "computer related crimes are considered to be either any unethical or unauthorized conduct pertaining to electronic functioning & transferring of information."⁴

3.2 Concept of Cyber Law

- Cyber law oversees fields in relation to electronic communications & the regulating elements of net.
- The statutes are extensions of existing laws, to monitor legal elements while working on the web. Thus, all things inspected in relation to net or lawful conduct by persons in cyber space would be covered by the cyber law.
- The progress in the IT zone has resulted in novel trends such as e-contracts, computerized signatures, e-transactions, e-commerce, which have taken the world by storm, but at the same

³Cybercrime: Talat Fatima, (2011) Eastern Book Company, Lucknow.

⁴ The Criminal Aspect in Cyber Law in The Indian Cyber Law, Suresh T. Vishwanathan, (2001) Bharat Law House, Jaipur

time have provided the offenders with broader scope for committing violations in the virtual space.

- The strenuous task lies in deciding the computational area for initiating judicial proceedings by the parties who only share a mere virtual connection & also the compensation that they will obtain subsequent to said proceeding.
- The international platform has necessitated countries all over to form their own ordinances to combat the trouble by cyber offenders.
- The web has opened the human race to diverse opportunities which were never known to exist prior to it, for instance, an individual seating in any corner of the globe can connect with another by disguising their virtual Id.
- Thus, it's an uphill task for the nations to put into place a legitimate scheme to secure the concerns of the cyber clientele as well as ensure satisfaction for them; as the conventional statutes in place to oversee crime in real-world are ineffective when it come to the virtual world.

Chapter 4

INDIAN CYBERCRIME LEGISLATION

4.1 The Indian Scenario:

Prior to 1999, India didn't have the legal bureaucracy to monitor cyber space. However, in order to accommodate the growing consumption of cyber space, India now has in place an effective legal scheme to defend clients & to curb damages to the virtual space.

India has an exhaustive arrangement of penal ordinances, to be specific, the IPC of 1860. Understandably, given time during which it was embraced, the IPC does not explicitly cover cybercrimes. During the Colonial era the lawmakers couldn't be blamed for not having thought of internet, as internet at in that time period would have been nothing but a wild imagination of mind. The different challenges posed by criminal usage of computer systems & the web are not, along these lines, adequately tended to by IPC, 1860.

4.2 IT Act, 2000

- Brought to force revise the IPC. The amendments pertain to violations relevant to IT & virtual zone.
- The Act was cleared by Parliament in May, 2000 & put into effect in Oct, 2000.
- The Act is contractual, overseeing e-trade & e-commerce & makes provisions to oversee preparations for managing wrongful usage of the web or computers. This has been referred to in the ordinance as cyber offence.
- The misdemeanours mentioned herein are same as that in IPC.
- The Act enumerates broad range of offenses, such as, misuse of electronic sources, displaying hostile texts, infringement of security, violation of privacy; display of obscene material & so on.
 - Further, the act entails penalty for violations mentioned under it (which are culpable) via punishments & fines.

Comparable offenses additionally mentioned in the IPC⁵:

- S. 503: send threatening messages by email
- S. 499: send defamatory messages by email
- S. 463: Forgery of electronic records
- S. 420: Bogus websites, cyber frauds
- S. 463: Email spoofing
- S. 383: Web-jacking
- S. 500: E-Mail Abuse
- S. 292: Pornographic
- Online sale of Drugs NDPS Act
- Online sale of Arms, Arms Act

Thus, one can say that the legal scheme of India highlights the citizen's preparedness to oppose the growing abuse of virtual space.

⁵ Indian Penal Code 1860

Chapter 5

JURISDICTION IN CYBERSPACE IN INDIA

5.1 Indian Jurisdiction

Conventionally jurisdictions lie in place of cause of action. In addition, there are 3 sets of individuals' requisite for completion of a deal within the cyber arena, i.e. user, service provider & individual/enterprise with whom the swap takes place.

However, there persists problems' pertaining to Jurisdiction:

- One, in case of cross-border communications, the criteria to determine that which court possesses the jurisdiction to initiate proceedings & which law will be applicable.⁶
- How to decide which nation's laws will be applied despite the fact that the web activities arise from altogether distinct jurisdiction.⁷

For global purposes, deals in the virtual world between 2 or more nations will be governed by International law.

5.2 Types of Jurisdiction

Jurisdiction can be classified into 3 kinds:

Prescriptive Jurisdiction:

- The States are empowered to make regulations.
- International law can restrain laws by one State if they display incongruity with another State.

Adjudicative Jurisdiction:

⁶Anupa P kumar, "Cyber laws", Mr.Anupa Kumar Patri, 2009

⁷ Chris Reed, "internet law test & materials" Universal publishing Co.Pvt.Ltd 2005

- Individual States are empowered to settle participating calls.
- Further, the States are permitted to bring up any individual/things to forums/tribunals in any case wherein authorities are entangled with the procedures.

Enforcement Jurisdiction:

- The States are empowered to order conformance with their laws.
- State's law can be backed up by officials with the assent of the State

Personal Jurisdiction:

- Signifies jurisdiction over people/substances entangled with lawsuit.
- Criteria to be satisfied by court for the same are the guidelines instructing the court which then would grant it the prerogative to mediate between the parties to the case.⁸
- Long Arm Statute: theory concerning personal jurisdiction in India & US. India, although not a signatory to cyber offence conventions, yet espouses principle of universal jurisdiction to include cyber contraventions & misdemeanours.
- Further, India also espouses an approach akin to "minimum contacts" method being pursued by US along with consent of the proximity test of Indian procedural codes.
- LexFori: Implies the law of discussion/the law of the purview where the case is still ongoing.
- Procedural laws monitored determination of jurisdictions.
- The provisions pertaining to jurisdiction are monitored by CPC, 1908. The relevant sections of the same are:
 - S.6: Pecuniary Jurisdiction
 - S.16: Jurisdiction.
 - S.19: Movable Property
 - S.20: Territorial Jurisdiction

In the case Rajasthan High Court Advocates Association v/s UOI⁹ , the SUPREME COURT explained cause of action as every fact which is significant to offended party to

⁸http://nationalparalegal.edu/public_documents/courseware_asp_files/researchLitigation/Jurisdiction/Personal

⁹ 2001 2 SCC 294

demonstrate, whenever navigated to help his entitlement with the judgment of the court. In the event that, for instance, owing to an exchange reason for activity has emerged in Hyderabad wholly or partly then the courts would have jurisdiction even if the defendants reside in India or someplace else.

Section 20 of CPC¹⁰ 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 if they are more than 1, at the starting of the Suit, originally & voluntarily lives, or conducts business, or personally works for gain; or

(b) Any of the defendants, where there are more than 1, at the time of the commencement of the suit, actually & voluntarily resides, or carries on business, or personally works for gain,

Provided that in such case either the leave of the Court is granted, or the defendants who doesn't 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 finalise the jurisdiction is mutual consent between parties, parties by mutual consent can confer to 1 jurisdiction & exclude the rest. The law in India recognises the effect to the autarchy of parties.

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5.3 Jurisdiction Of Indian Courts Over Foreign Citizens Or Persons

Section 16 of the Code¹¹ 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,

¹⁰ Civil Procedure Code, 1908

¹¹ Civil Procedure Code, 1908

(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 originally & voluntarily lives, or conducts business, or personally works for gain.”

Hence immobile asset that lying in external to India can't be simply speculated by Indian judiciary institution.

Section 19 of the Code¹² 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 & the defendant resides, or carries on business, or personally works for gain, within the regional limits of the jurisdiction of another Court, the proceedings can be commenced at the site of sale provide that it falls under the above mentioned Courts.”

5.4 Enforcement Of Foreign Judgement

Overseas judgement in India can be imposed in dual ways:

Reciprocating Territories:

- Imply any zone external to India.

¹² Civil Procedure Code, 1908

- The Federal government can proclaim any territory as external for the purpose of this provision.
- Higher Ranking Courts imply courts as mentioned in the said notification¹³
- Examples of reciprocator nations: Canada & UK

Non Reciprocatory:

- Judgments from such nations are valid in Indian courts by filing of a lawsuit.
- Such decisions shall be examined as evidence.

Chapter 6

Conclusion

International jurisdiction is an ever persistent issue that has been predominant in cyber law but as well as in a few parts of law. It is unavoidable & incredibly touchy an issue in view of the basic explanation of globe legislative issues & politics. No nation can do much as there is such an extraordinary hopeless distinction in every nation's stand. Collaboration by nations is the reason for any of the present strategies for handling jurisdiction will work. What the imperfection with these is that they all rely intensely upon nation participation.

Hence there should be a separate dispute resolution body that specially deals & controls with the cybercrime. The settlements made by this body should be well-assured by the parties in the plea. The main motive of the body to administer the guidelines enumerated by the UNCITRAL. It is sad that a famous body, the WTO was established with the aim that to find out a proper solution to this issue of jurisdiction & international cooperation. The UNCITRAL administers as per the principles of the Cybercrime Convention together should go about as a solid rule for the creation of such a body.

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¹³ Civil Procedure Code, 1908

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