

CYBER CRIME AND THE CHALLENGES FACED BY RESOLVING THE JURISDICTIONAL ISSUES IN CYBER SPACE.

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ABSTRACT:

This paper tries to focus on the rampant increase of cybercrime in the 21st century let it be in terms of hacking, defamation or anything related to banking forgery has become an important subject of discussion. There is yet a lacuna on the procedure were the crime can be controlled and main factor being once they come to the clutches how they need to be tried under which court is the question of the hour.

This paper highlights on the jurisprudence of cyber law, classification of cybercrime with that of conventional crime and its jurisdictional issue relating to it. The paper justifies the topic by giving several judicial pronouncement and the steps adopted to solve the issues.

Keywords: Cyber crime, Cyber space, Conventional crime, Jurisdiction.

Introduction:

Genesis of Internet:

Origin of Internet was from 1969, sept known as ARPANET (Advanced Research Project Administration Network) .This is confined only to researches related to defence carried out in laboratories of universities, defence contractors and military works. In 1970 FTPC (File Transfer Protocol) was created to transfer files possible between network of military and academic computers. It did not make any appreciable amount of work as it was time consuming and due to complex command structure it was user unfriendly. But in 1974 Internet protocol (I.P) and Transmission control protocol(T.C.P). It guaranteed the transferring of data and information between two or more computers. This altered Internet keen on an uncluttered network against ARPANET. This network made the real beginning of the contemporary revolution as it free the system by creating inter-connection two hardware's possible.

The development of Internet across has paved a way towards a rampant increase in cyber-crime. The newspaper column speaks more about cyber-crime in this covid period. The economic

instability and the use of cash free transaction provoked the mind of the criminal to do all sorts of fraud via internet challenging the right to privacy as per the Indian Constitution.

Cybercrime is quite different from conventional crime .Crime done by the help of computer or through the cyber medium has been stated to be cybercrime were computer is a target or people are targeted to leak out the private information and utilise it for their own purpose.

An insight of cyber jurisprudence in Indian Scenario is largely founded upon the IT Act, 2000 and amended Act 2008. Cyber Jurisprudence like any other journal science is stated to be the study of law relating to cyber.

Cybercrime: The utilization of computer technology to abet illegal ends like Intellectual Property theft, frauds, stealing identities or violating privacy, trafficking Child Pornography, through computer is included under Cyber Crime. Americans were the first in adopting the technology, most of the victims and villains were from United States.

Increase in the crime rate was a great concern and many conventions in order to control

cybercrime was held. Among the conventions, the council of Europe along with government delegates from Canada, Japan and the United states drafted a preliminary international treaty dealing with cyber-crime in the year 1996. Across the globe civil libertarian group dissent the provision of that treaty which stands in need of ISP to keep data and information on their consumers' transactions and to turn on data when demanded. This function proceeded till Nov 23, 2001 in order to protect cybercrime. Cybercrime cases almost doubled during the Covid period due to economic crisis. In order to resolve the dispute to tried the case , the jurisdictional part in relation to cyber space needs to be crystal clear and there is no relatedness between the geographical location and

- i) The role of regional government to declare command over internet based conduct,
- ii) The actions over online conduct on people or things.
- iii) The authenticity of the endeavours of national or regional sovereign to implement rules relevant to worldwide peculiarities
- iv) The capacity of actual area to provide notice regarding the applicability of a set of norms to apply has become the foremost area of concern.

Jurisdiction is the power conferred on court to choose matters that are prosecuted and to take cognizance of those issues. The concept also states the ability to decide and hear a case is totally vested with suitable court in the legal system. Jurisdiction are of various types namely:-

- i. Territorial Jurisdiction
- ii. Pecuniary Jurisdiction
- iii. Personal Jurisdiction
- iv. Perspective Jurisdiction
- v. Subject-matter Jurisdiction
- vi. Extra-territorial Jurisdiction.

The commission of cybercrime are very difficult to trace as it is boundary less. The primary issue that mists the jurisdiction of cyber space is the parties associated with a litigation are basically belongs to various areas across the globe and have just a virtual association that ties them all

into one domain. In present the cyberspace doesn't state any geographical or jurisdictional limits clear but the users of cyberspace remain in the real physical jurisdiction across the globe. The state law will be applicable. Customarily Jurisdiction applicable where the cause of action arise. Moreover, the strategy for assurance of jurisdiction particularly in virtual space is quiet difficult when there are involvement of multiple parties from all corners of world.

Basically when we look into the root of cyber world there are involvements of three parties i)the user ii)the server host and iii) the person with whom the transaction is taking place.

In order to find the solution of the emerging problems, firstly we need to find out whether the specific concern in cyber space is supervised by any laws of a particular state or the location of the user or the law of the countries where the user, server and offender resides. The main issues being, whether the country law prevails! The second phase involves whether the matter related to jurisdiction varies from one case to another. Whether the matter related to cybercrime will be decided from theoretical perspectives or from practical angel is very important part to be taken into consideration.

There are three kind of jurisdiction to solve the matter relating to cyber space are as follows:

- 1) Prescriptive Jurisdictions: it means the power of the state to subject an individual or thing to an administrative tribunal or a court either criminal or civil were state is a party to the proceedings.
- 2) Jurisdiction to adjudicate: It refers to the power of the state to prosecute an individual or thing to an administrative tribunal or a court either civil or criminal, whether or not the state is a party to the proceedings. And
- 3) Jurisdiction to Enforce: It is the regulative power of a state to induce and punish someone for disobeying the laws and regulations.

Legislative Provisions

The Information Technology Act, 2000: – Section 75 of the said act, describes that the Act will apply to a contravention or offence

committed outside the territory of India by any individual if the commission of the conduct or act constitutes the crime that comprises a computer, computer network or computer system situated in India.

Indian Penal Code, 1860: – Power of Indian Court to deal with the litigations involved in extra-jurisdictional territory is explained in Section 3 and 4 of the Act.

The Code of Criminal Procedure, 1973: - Section 188 of Cr.P.C. states that regardless of whether an Indian citizen outside the nation carries out the offense, the same is subjected to the jurisdiction of courts of India also. In India, lawful jurisdiction on the internet is similar to jurisdiction as that identifying with conventional violations and the notion of subjective territoriality shall prevail. Furthermore, Section 178 of the said Act deals with the offence or part of the offence committed in India and the consequences of crime in Indian Territory is dealt in Section 179.

In a landmark case concerned to cybercrime, “*SMC Pneumatics (India) Pvt. Ltd. v. Jogesh Kwatra*,” concerning first ever case relating to cyber defamation in India, the High Court of Delhi presumed jurisdiction in excess of a litigation in which a company reputation is being defamed and criticized via e-mail, and delivered an order of prominent ex-parte injunction. Thus, the cause of action and concept of consequence expands jurisdiction, yet a contrasting circumstance emerges where there was no clarified law in one point. For instance, the Act doesn't give at all rules to arrest the web pornography on foreign sites however just for websites in India.

In the matter of, “*SIL Import v. Exim Aides Silk Importers*”, the Supreme Court of India, found that the obligation of the courts is in interpreting a rule by considering any pertinent technological change that had happened. Until there is an explicit enactment of legislation statute as to the jurisdiction of the Indian Courts as regards to disputes or litigations concerning cyberspace or Internet or except if India is a party to an International Convention or Treaty where the national courts' jurisdiction and the conditions in which they may be implemented are expressly indicated, the Courts of India should provide a broad elucidation to the prevailing statutes, for

exercising cases relating to cybercrimes and internet disputes.

Lacuna in the Indian law

The IT Act 2000, governs the jurisdiction of Courts of India for cases related to the offence over cyber space and internet in which the parties are located in India. Further, the said act had established special independent forums to expediently resolve litigations dealing with internet and cyber space, such as-

i) **Adjudicating Officers** – These officers are designated through the Director and their role was to determine by the geological region or area regarding to which jurisdiction would be applicable to the litigant parties. The hearing official likewise determines with regards to which party acquires an unjust benefit.

ii) **Cyber Regulations Appellate Tribunal** – The tribunal was established by the central government and the same determines the issues that would be taken up in addition to the jurisdiction of the tribunal. It functions as the primary appellate tribunal for any proceedings from the adjudicating officers or the control board.

iii) **High court** – Within 60 days, the parties can plead to the high court in the case that they were dissatisfied with the judgment passed by the tribunal.

The Information Technology Act, 2000 has absolute authority to implement and adjudicate its orders and judgement on cases in which both the parties belong to that of Indian origin. However, what takes place when a single party to the litigation belongs to a foreign region? The Information Technology Act is well implemented in extra-territorial litigations, but was not sufficient for enforcing its order on the foreign party. Thus, the court has no competency to bring the foreign party to India for preliminary. For instance an Indian Citizen's MasterCard had been misused by an American resident, he then, at that point, moved to the Indian courts to get relief. Under the provisions of the IT Act, 2000 the court has the extra-territorial jurisdiction to settle off this case however how viable will it be to get the American resident to India for prosecuting, as the Information Technology Act isn't

enforceable against the American resident. Imagine one more situation where a specific contract that 'X' and 'Y' agrees into is legitimate for 'X' in X's nation to get into yet unlawful for 'Y' in Y's nation to get into? The accessibility of various equally competent courts and the trouble in collecting evidence of region and facts makes it strenuous for Indian courts to procure jurisdiction.

Conclusion and Suggestions:

The current situation where the cyber-crimes and digital violations are expanding to a disturbing degree, the urgent necessity is to have a comprehensive convention that deals with substantive criminal law litigations, criminal procedural inquiries in a line with that of international criminal law agreement and procedure. The I.T. Act, 2000 could be hamper without appropriate legitimate methods of executing it. To resolve this issue, obligatory imperative amendments should be inserted in The Code of Criminal Procedure (Cr.P.C), 1973. Besides, it was noteworthy to mention here that India at current scenario doesn't have an appropriate extradition law dealing with crime and offences that have been perpetrated over the Cyberspace. To resolve the dispute, India ought to turn into a signatory to the Treaty and Convention relating to cybercrime and ought to ratify it. This step could be a breakthrough covenant in settling the litigations related to jurisdiction which may arise in cases concerning cybercrime. Cooperation of nations will solve the main criteria needed to handle these disputes dealing with jurisdiction. If an independent dispute resolution organization or tribunal which deals with cyber-crime has been introduced at international level and it would be easier to regulate and confront cybercrime. The UNCITRAL model of law with rules and guidelines to be followed by the signatory's. There should be much more modifications in rules and regulations dealing with IT Act, 2008 subject to the changing circumstances. More number of cyber cell to detect the commission of offences via the Internet.

References:

[1] https://www.academia.edu/3700793/Jurisdictional_Issues_in_Cyber_Crime.

- [2] <http://www.vaishlaw.com/article/Cyberspace%20Jurisdiction-Amit%20Sachdeva.pdf>
- [3] https://www.academia.edu/3700793/Jurisdictional_Issues_in_Cyber_Crime
- [4] <HTTP://LEGALBITES.IN/CYBER-SPACE-JURISDICTION-ISSUES-CHALLENGES/>
- [5] <HTTP://WWW.FINDARTICLES.COM/>
- [6] <HTTP://WWW.CRIME-RESEARCH.ORG/>
- [7] <HTTP://WWW.CONVENTIONS.COE.INT/>
- [8] Dr. Pavan Dugal- "Textbook on cyber law".
- [9] Dr Jyoti Rattan- "Cyber law and Information Technology".
- [10] Dr.Pavan Duggal, "Cyber law, Essential issues".
- [11] Dr.Pavan Duggal, "A Primer Cyber Security law".
- [12] Himansu Munjal, "Cyber crime and Cyber law".
- [13] Prof. S.K. Verma & Raman Mittal "Legal Dimensions of Cyberspace"