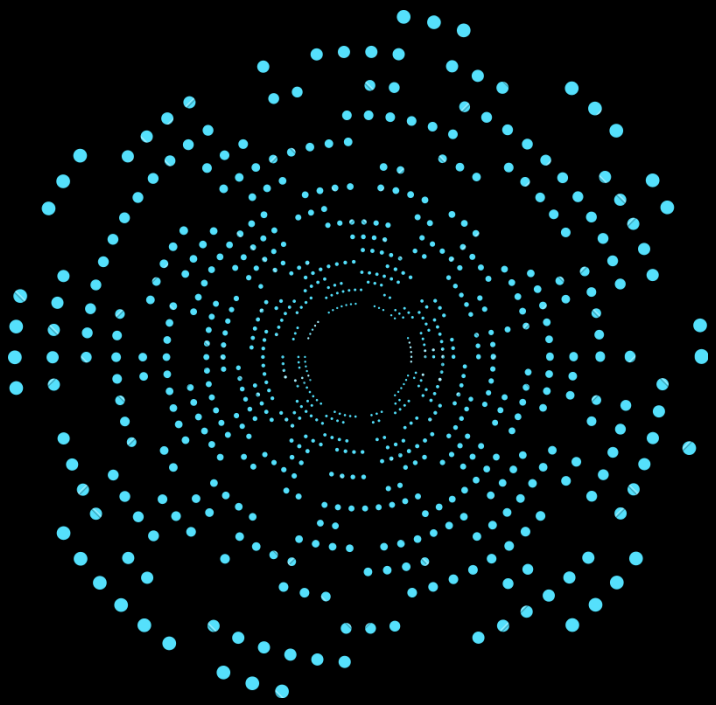
INTERNATIONAL JOURNAL ON CYBERSPACE LAW AND POLICY



VOLUME 1 AND ISSUE 1 OF 2023

INSTITUTE OF LEGAL EDUCATION

International Journal on Cyberspace Law and Policy

(Free Publication and Open Access Journal)

Journal's Home Page – https://ijclp.iledu.in/

Journal's Editorial Page - https://ijclp.iledu.in/editorial-board/

Volume 1 and Issue 1 (Access Full Issue on - https://ijclp.iledu.in/category/volume-1-and-issue-1-of-2023/)

Publisher

Prasanna S,

Chairman of Institute of Legal Education (Established by I.L.E. Educational Trust)

No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

Phone : +91 94896 71437 - info@iledu.in / Chairman@iledu.in

INTERNATIONAL JOURNAL ON CYBERSPACE LAW AND POLICY

Volume I and Issue I of 2023

ISBN - 978-81-960677-4-8

Published by

Institute of Legal Education

https://iledu.in

JURISDICTION ISSUES IN CYBER SPACE

Author - Aiswarya Lakshmi JS, Student of Sastra Deemed to be University, Tamilnadu

Best Citation - Aiswarya Lakshmi JS, JURISDICTION ISSUES IN CYBER SPACE, *International Journal on Cyberspace Law and Policy,* 1 (1) of 2023, Pg. 1, ISBN - 978-81-960677-4-8.

ABSTRACT

The term Jurisdiction refers to authority and capacity. It is derived from the Latin words "juris" and "dicere", which mean "law" and "speak" respectively. Overall, jurisdiction refers to what the law says. Thus, jurisdiction refers to the power to decide and hear a case that is vested in an appropriate and competent Court of Law, and that power is provided by any statutes, Acts, etc. In general, jurisdiction is determined by the territoriality or locality of the Court of Law.

However, when we discuss jurisdiction in cyberspace, the concept becomes broader because the Internet knows no borders and is worldwide in nature; sites processed and made in the United States can be easily accessible and used in any part, each and every nation-state of the entire planet unless expressly prohibited by the Government of that specific State.

In this article, I attempted to encapsulate a detailed and concise discussion of the Issues of Jurisdiction in Cyberspace. The primary issue in cyberspace is determining the Courts' Jurisdiction. Because the Internet is worldwide in nature and can be accessed from any part of the world unless expressly prohibited, it is extremely difficult to determine the location of the offence, which complicates the Jurisdiction. And, in order to address these issues, certain doctrines and tests have been developed and will be discussed in the following section of this document.

Keyword: Jurisdiction, Cyberspace, Law and Justice, Internet, Offences.

INTRODUCTION

Cyberspace jurisdiction has long been a contentious issue, not only in India but also globally. Various jurisdictional issues must always be addressed in cyberspace. Any case or complaint must deal with the issue of jurisdiction at various levels.

In today's world, a person can survive without food for a day, but he or she cannot survive without internet access for even a day. The internet and cyberspace have evolved into human necessities. The Internet has become increasingly important in all aspects of our lives, including business, education, globalization, politics, medicine, and infrastructure, as well as science and technology. Because it gave birth to a virtual world, the advancement of the internet became known as cyberspace. If the real world is full of crimes and wrongdoings, how can we expect the virtual world to be any different? Cyberspace encompasses all electronic devices that communicate via the internet. Software, data storage devices, the internet, websites, emails, and even mobile phones and ATM machines are examples of devices.

Everything has advantages and disadvantages. Similarly, cyberspace has both benefits and drawbacks. It has both simplified and complicated our lives due to the prevalence of cybercrime. Cyber Crimes are criminal activities that range from minor electronic offences to more serious offences such as illegal gambling, theft of personal information, cyber defamation, cyberstalking, cyberbullying, web jacking, social media hacking, data diddling, and so on.

INTERNATIONAL JOURNAL ON CYBERSPACE LAW AND POLICY
Volume I and Issue I of 2023
ISBN - 978-81-960677-4-8
Published by
Institute of Legal Education
https://iledu.in

The offences and proving the offence are not major issues in cybercrime, but the main issue in this type of case is the jurisdiction. We are all aware that cyberspace is not bound by physical boundaries or any particular jurisdiction. This allows the criminal to commit crimes from anywhere in the world.

WHAT IS THE CONCEPT OF JURISDICTION IN CYBER SPACE?

The scope of cyber law is so broad that determining cyber jurisdiction in a case involving multiple countries is extremely difficult. A website, app, product, or content that is legal in one country may be illegal in another, and the parties may be residents or non-residents, making this concept even more complicated. The jurisdiction of cyber law is determined by the type of cybercrime and the location from which it was committed.

The use of computers and mobile phones increased significantly between the end of the twentieth century and the beginning of the twenty-first century. Later, with increasing utility, the internet's rise began in the 1990s. In the last 15-16 years, the role played by social media, online payments, education, gaming, communication, movies, and search engines has become an essential part of everyone's day-to-day life, and so has its misuse. The real reason for this is a lack of strict laws, awareness, gaps in a user's safety and privacy, and so on.

Cyber-crime refers to criminal activities on the internet. Cybercrime is discouraged and protected by cyber laws. One of the primary reasons for cybercrime is the lack of physical limits on the internet and ineffective security of the user's data.

Individuals are more susceptible to cybercrime (hackers, internet stalkers, cyber terrorists, scammers, etc.) as a result of the growing number of Internet users and free access to content from around the world. Other nations. You could, for instance, engage in online fraud by claiming to be selling goods to a person in another nation, accepting payments online, and failing to ship the specified goods. The issue of cyber jurisdiction rises as he participates in this activity with other clients in various nations.

PREREQUISITES OF JURISDICTION IN CYBERSPACE:

It is necessary to adhere to three prerequisites for valid jurisdictions. A person is obligated to abide by the state's regulations. Those who break these laws can be punished by the state.

- Prescriptive jurisdiction: This is a type of jurisdiction that enables a nation to enact laws, particularly regarding an individual's activity, status, circumstances, or choice. There is no limit to this authority. As a result, a nation can enact any law, regardless of whether the individual's nationality differs or the act occurred in a different location. But international law says that no state can pass a law like this that hurts the interests of other countries.
- Jurisdiction to Adjudicate: This jurisdiction grants the state the authority to rule on a person in civil or criminal cases, whether or not the state was a party; it suffices to have a relationship between the two. A state with prescribed jurisdiction does not have to also have jurisdiction to adjudicate.
- Enforcement Jurisdiction – The existence of prescriptive jurisdiction is necessary for this jurisdiction; therefore, it cannot be enforced to punish a person who violates its laws and regulations if prescriptive jurisdiction is lacking; However, a state cannot enforce its jurisdiction over a person or a crime that occurred in a different country because this jurisdiction is not exercised in an absolute sense.

However, it is very difficult to claim that one sovereign state has jurisdiction over another,

INTERNATIONAL JOURNAL ON CYBERSPACE LAW AND POLICY
Volume I and Issue I of 2023
ISBN - 978-81-960677-4-8
Published by
Institute of Legal Education
https://iledu.in

and the international community must rely on justice to enforce the laws of one state on the land of another. We have developed certain principles to find better ways to manage .These principles apply equally in the physical world and in cyberspace. These principles are not mutually exclusive, and courts generally rely on multiple principles to determine jurisdiction.

PRINCIPLES OF EXTRA TERRITORIAL JURISDICTION:

There are 6 types of extra territorial jurisdiction principle. They are:

1. **Territorial principle:**

According to this principle, a state's territory includes its land and dependent territories, airspace, aircraft, ships, territorial sea, contagious zones, continental shelf, and exclusive economic zone for limited purposes. Except for those who have been granted immunity under international law, the principle as adopted by the national courts is governed by national law.

The objective territorial principle is further subdivided into two variations: This means that even if some elements of the crime or civil wrong take place elsewhere, a state can exercise its jurisdiction over all activities that take place entirely within its territory: in addition to the Subjective Territorial Principle: It says that a state has jurisdiction over things that start on its territory and end there, even if the end may have happened elsewhere.

In the primary case of the *SS Lotus (France vs. turkey)*[1], According to the Permanent Court of International Justice, unless an international treaty or customary law permits it, a state cannot exercise its jurisdiction in any form in the lands of another state.

2. **Nationality principle:**

It is up to each state to determine who its nationals are under its own laws. Any question as to whether a person has the nationality of a particular state must be resolved in accordance with that state's law. Above all, nationality serves to ensure that the person to whom it is conferred has the rights and is bound by the obligations that the law of the state in question grants or imposes on its nationals.

Under the guise of nationality, a state may exercise jurisdiction over its own nationals regardless of where the relevant acts occurred. A state may even assert extraterritoriality.

3. **Protective principle:**

When a state's national security or a matter of public interest is at stake, it invokes this principle. A state has the right to defend itself against international conspiracies and terrorism, as well as drug trafficking.

The district court of Jerusalem held in *Attorney General of the Government of Israel vs. Eichmann*[2] "The State of Israel's 'right to penalize' the accused derives, in our opinion, from two accumulated sources: a universal source (pertaining to the whole of human race), which shall be vested the right to prosecute and sland and purposes, to in principle penalize crimes of this order in each and every State within the family of nations; and a particular or national source, which gives the complainant nation the right to try any who assault its existence

4. **Passive Personality Principle:**

It extends the principle of nationality to all crimes committed against that citizen, regardless of where that citizen is located. In a sense, it stipulates that when citizens of one country visit another country, they carry their own laws with them for their own "protection" and subjugate those they come into contact with. About the operation of this law. The judicial

[1] France vs. turkey, 1927 P.C.I.J. (ser. A) No. 10 (Sept.7).

[2] Attorney- general of the government of Israel vs. Eichmann, 36 ILR (1961) 5.

INTERNATIONAL JOURNAL ON CYBERSPACE LAW AND POLICY
Volume I and Issue I of 2023
ISBN - 978-81-960677-4-8
Published by
Institute of Legal Education
https://iledu.in

aspect of "passive personality" was further elaborated in *United States v. Yunis*[3], in which the United States District Court had jurisdiction. District of Columbia:

"This principle of passive personality gives states the power to assert jurisdiction over crimes committed against citizens abroad. It recognizes that it has a legitimate interest, and the government argues that this doctrine allows the courts to exercise jurisdiction over Eunice, since an American national was on board the Jordanian plane."

This principle is debatable as it further expands the scope of domestic law in foreign territories. Nevertheless, the principle was taken as the basis for asserting jurisdiction over hostage-takers.

5. **The 'Effects Doctrine':**

It is extraterritorial application of domestic law when actions by a person who has no territorial or national ties to a State affect that State. The situation is exacerbated when the deed is legal where it takes place.

Impact doctrines are doctrines designed primarily to protect American business interests and apply when there are trade restrictions or anti-competitive agreements between companies. *Hartford Fire Insurance Co. v. California*[4] violated US antitrust laws and filed whether or not prosecuted. The U.S. Supreme Court has ruled that U.S. courts have jurisdiction, that there is no contradiction between domestic and foreign law, and that "a person who is the subject of two state regulatory fictions can comply with the laws of both states." made this judgment.

6. **Universality principle:**

Its principles have a fairly wide scope. The purpose of including this principle is to ensure that crime goes unpunished. States have the power to determine and prescribe penalties for certain types of crimes recognized by the international community as being of universal concern. Universal principles empower states to claim jurisdiction regardless of who did the act or where it took place.

Examples of such acts include terrorist attacks, aircraft attacks or hijackings, and genocide. Looking back at the decade of the 1980s, we escaped the first year of that decade and focused on the second half of the decade when General Efrain Rios Montt became Guatemalan dictator. The operation killed more than 200,000 of his Mayan Ixil community. And when Nobel Peace Prize laureate Rigoberta Menchu filed a lawsuit against Montt in a Spanish court in 1999, the court applied the principle of universality to force General Montt to commit genocide in the country of Guatemala. Held responsible for the crime of the incident was dubbed Menchú Tumn (Rigoberta) and ors against two Guatemalan government officials and six Guatemalan military personnel. The above principles were established before the Internet reached this world, but when the Internet was introduced, it raised a great many subtleties, and on matters made outside the territory of that country, determining the jurisdiction of a country has become more difficult. To that end, the concept of personal jurisdiction in cyberspace has been proposed.

THE JURISDICTIONAL ASPECTS TEST IN CYBER LAW:

1. **Minimum contact test:**

This test was established in the landmark case of *international shoe co vs. state of Washington*[5], Where it has been established that the court's personal jurisdiction may apply to a non-resident defendant if the defendant maintains some minimum contact with the

[3] United States vs. Yunis, 681 F Supp 896 (1988).
[4] Hartford fire insurance co. vs. California, 113 S. Ct 2891 (1993).
[5] International shoe co. vs. state of Washington, 326 US 310 (316) (1945).

INTERNATIONAL JOURNAL ON CYBERSPACE LAW AND POLICY
Volume I and Issue I of 2023
ISBN - 978-81-960677-4-8
Published by
Institute of Legal Education
https://iledu.in

jurisdiction. It incorporates three criteria for minimal contact.

I. Defendants must "deliberately exploit" the privilege of doing business in the jurisdiction.
II. The cause of action arises from the defendant's activities in the forum state. When
III. Exercise of jurisdiction must be reasonable and fair.

This "minimum contact" test laid the groundwork for one state to have jurisdiction over the other's subject matter. Purposeful use means any substantial relationship with the State in connection with starting a purposeful and successful business by a Forum State resident, entering into contracts with a State resident, or any other State-related activity. Means to have it should be noted that this case is the first to establish that personal jurisdiction can exist even if the defendant does not have a physical presence in the forum state.

In *CompuServe Inc. v. Patterson*[6], the court ruled that cyberspace-related contracts are also within the scope of the least contact theory.

2. Long arm statute:

The "long arm law" doctrine empowers states to exercise personal jurisdiction over nonresident defendants who have certain ties to the state. This practice was developed over a long period of time by the United States.

For example, New York's Long Arm Act gives courts the power to exercise jurisdiction over non-New York residents. Doing business in New York or committing any tort (other than defamation) in New York or tort (other than defamation) outside of New York causing damage to any person or property in New York, or being located in New York Own property, use or own New York.

Even the IPC and IT laws have extraterritorial powers that act as long-arm laws but are difficult to apply.

3. Sliding scale test:

The sliding scale theory is also known as the Zippo test. This is the most widely accepted test for determining personal jurisdiction in cyberspace cases. Jurisdiction is determined based on website interactivity. The greater the number of interactions, the more personal jurisdiction the forum court will have.

For passive sites, the courts have little jurisdiction, but for mid-range sites the courts may or may not have jurisdiction. However, for highly interactive websites, the courts have jurisdiction over cyberspace. In the landmark *Zippo Manufacturers v. Zippo.Com case*[7], Pennsylvania writer plaintiff Zippo Manufacturers sued defendant Zippo.com for trademark infringement. Defendant had a lot of interactivities. Therefore, personal jurisdiction applies to defendants.

4. Effect test:

This test, proposed in *Calder v. Jones*[8], was found to meet the due process requirement of "minimum contact" based on the "impact" out-of-state actions would have in court. Rice field. In this case, the magazine was printed and published in Florida. An article was published defaming the citizens of California. A California citizen has filed a lawsuit against the author of this article, defendants alleging that Florida magazines were published in Florida and sold in Florida itself, and that California courts have no jurisdiction to hear this lawsuit.

The court dismissed the claim, finding that the magazine was also available in California and affected California citizens. Therefore, the responsibility in this case lies with us. And the court proposed a validity test.

[6] CompuServe Inc. v Patterson, 89F 3d 1257(6th Cir1996).
[7] Zippo Manufacturer v Zippo.Com, 952 F Supp 1119 (DCWD Pa 1997).
[8] Calder v Jones, 465 US 783 (1984).

INTERNATIONAL JOURNAL ON CYBERSPACE LAW AND POLICY
Volume I and Issue I of 2023
ISBN - 978-81-960677-4-8
Published by
Institute of Legal Education
https://iledu.in

The same is true for *Banyan Tree Holding. v. Ah Murali Krishna Reddy*[9], of the Delhi High Court held that a similar wordmark used by the defendant and advertised on the same website where the original company advertised had no effect on the marketing of the original owner of this wordmark. The decision was made by applying an "impact test" that was said to give held the defendant liable.

Also, *Nirmaljit Singh Narula v. His Indijobs & ors*[10] at Hubpages.Com had his website of the defendant publishing articles. The servers for this website were located in the United States. The website posted defamatory comments against the plaintiff who filed a complaint with the Delhi High Court. Defendants argued that court jurisdiction was not upheld. The court applied the impact test and ruled that Delhi HC could have jurisdiction because the impact was felt in India.

CONCLUSION:

From our detailed discussion of jurisdictional issues in cyberspace, we can conclude that these rules from the aspect of the physical world and the tests from the cyberspace age are based on some understanding between the civilized nations of this world. Since the Internet has no borders, they developed specific tests and rules after lengthy discussions and debates. In that case, Internet-related problems would not be resolved and the goal of justice would be thwarted. However, these rules only apply where there is a certain interrelationship between states. The only conference on this topic was held in 2001 and was known as the Conference on Cyber Crime. The Internet is growing every day and we must grow with it. Otherwise, traditional methods will not be able to fight news tech crime. And in facilitating it, national cooperation is a key criterion that nations around the world must meet. And a suitable and reasonable solution would be to establish a separate agency to deal with cybercrime at the international level and to comply with UNCITRAL rules so that it can function effectively.

A central focus on cyber law is to find innovative and novel ways to ensure that not only do we not change all legal systems, but we also deal with technology that has become compliant.

REFERENCES / BIBLOGRAPHY

1. France vs. turkey, 1927 P.C.I.J. (ser. A) No. 10 (Sept.7).
2. Attorney- general of the government of Israel vs. Eichmann, 36 ILR (1961) 5.
3. United states vs. Yunis, 681 F Supp 896 (1988).
4. Hartford fire insurance co. vs. California, 113 S. Ct 2891 (1993).
5. International shoe co. vs. state of Washington, 326 US 310 (316) (1945).
6. CompuServe Inc. v Patterson, 89F 3d 1257(6th Cir1996).
7. Zippo Manufacturer v Zippo.Com, 952 F Supp 1119 (DCWD Pa 1997).
8. Calder v Jones, 465 US 783 (1984).
9. Banyan Tree Holding. v. Ah Murali Krishna Reddy 2008 (38) PTC 288 (Del).
10. Nirmaljit Singh Narula v. His Indijobs & ors CS (OS) No.871/2012.
11. Trachtman, Joel (1998) "Cyberspace, Sovereignty, Jurisdiction, and Modernism," Indiana Journal of Global Legal Studies: Vol. 5: Iss. 2, Article 10. Available at: https://www.repository.law.indiana.edu/ijgls/vol5/iss2/10 (last visited Jan. 20, 2023)
12. Henry H. Perritt Jr., Jurisdiction in Cyberspace, 41 Vill. L. Rev. 1 (1996). Available at: https://digitalcommons.law.villanova.edu/vlr/vol41/iss1/1 (last visited Jan. 20, 2023)

[9] Banyan Tree Holding. v. Ah Murali Krishna Reddy 2008 (38) PTC 288 (Del).
[10] Nirmaljit Singh Narula v. His Indijobs & ors CS (OS) No.871/2012.