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**CYBER CRIME AND CYBER SPACE: JURISDICTIONAL  
COMPLINACES**- Akhil Jaitly & Stuti Narula Markan<sup>1</sup>**ABSTRACT**

Contrary to the physical world, cyberspace is made up of virtual components that frequently exist in several locations for multiple people. India is a developing country that has transitioned from an agrarian-based society to one that is industrialised and technologically advanced. Every request, command, deed, reaction, and phrase is now sent to every country with a simple click. Consequently, the answer is presented to the world on a ready platter. Nowadays, anyone can travel anywhere online regardless of their nationality, place of residence, or level of expertise. Rights, responsibilities, and freedom all exist in the actual world. The cyber world has less freedom due to its lack of borders, yet it makes no claim to actual rights. The times have changed. We now have to deal with issues over intangible property, which has replaced disputes over movable and immovable property in the past. These immaterial assets include copyrights, trademarks, domain names, etc., which are all equally owned and managed by an individual at his expense.

**INTRODUCTION**

With global trade booming, there is now a convergence of interests across all nations due to the flow of goods, services, and non-monetary goods such as ideas, thoughts, and expressions. When we take a step back and look back at our history, we see that there were distinctions in every exchange, transaction, and point of commonality. We are successful in creating procedures for resolving disputes or legal infringements in any situation, but what about the virtually existing cyber world? There is no actual visible transaction taking place, nor is there any physical body, in a place where all the members exist virtually without any assurance of their existence. Our lives now are made easier by the Internet, but it also leaves us in a

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frustrating and perplexing tangle. If everyone is allowed to act however they like online, anarchy will quickly develop, with negative repercussions for both the online and offline worlds. Who then determines what is morally right and immoral online? When two people from two different nations engage in a straightforward transaction, the laws of the country in which they choose to be governed are often applicable, or the parties may choose to be governed by the laws of the country in where the transaction takes place.

This conveys the significance of the region and its well defined bounds. The internet, however, is exempt from this explanation because it is not geographically relevant. So who resolves disagreements that arise on the Internet? To impose an order or judgement on one of the disputing parties, the court must have a particular jurisdiction. The authority granted to a court to decide cases and render judgements that are accurate and lawful despite all odds is known as jurisdiction.

Any court is a hearing device without jurisdiction if it lacks jurisdiction. There are two different sorts of jurisdictions:

1. Jurisdictions that let the court to decide matters according to a particular group
2. Personal jurisdiction, which enables a court to make decisions regarding citizens or residents of the person's territory if they have some contact with it, independent of the person's current location.

### **INDIAN COURTS POSITION**

Indian courts have the authority to hear cases involving the internet. The "lexforis" idea, sometimes known as the "Law of the Forum," is followed by Indian courts. This indicates that no foreign law's procedural rules are followed by Indian courts. They acknowledge that the well-established principles of international private law apply and that any legal procedures shall be governed by the laws of the forum in which they were first brought. In Indian courts, personal jurisdiction is controlled by the Code of Civil Procedure (CPC), which was first published in 1908.

Conflicts governed by international private law are not handled differently by the CPC. The Code of Civil Procedure provides a differentiation on which sort of suit will be ruled, but it leaves the foundation for determining the territorial jurisdiction the same as it would be for any domestic issue. for real estate lawsuits Section 20 is a "default rule" for any other category of suits since it covers suits that aren't covered by the aforementioned two categories for mobile

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property suits and mistakes for individuals.

According to Section 20 of the CPC, a court may have jurisdiction over cases in which the defendant, or each defendant if there are multiple defendants, actually resides and consents to being sued, conducts business, or actively seeks employment. B) When there are multiple defendants, any defendant who is a resident in fact and voluntarily at the time the lawsuit was filed or who conducts business or personally works for profit may do so, provided that permission from the court was obtained in advance or that the defendants who do not reside, conduct business, or personally work for profit agree to do so. C) the entire or a portion of the section's reason arises.

### **ACCOUNT OF PARTIES**

The "agreement clause" in contracts between parties is a crucial consideration when determining the court's jurisdiction. The selection of the applicable law and the venue for the litigation is made by the parties. The Indian courts permit both parties to select the courts they want to hear any future disputes, but they do not permit the parties to be subject to the jurisdiction of an unconstitutional court. Therefore, the courts permit the parties' autonomy, but not at the price of the parties who choose an incompetent court.

According to section 20 of the CPC, Indian courts determine their jurisdiction based on the parties' residence within the territorial boundaries, including within the territory under which one of the parties conducts its business, regardless of whether the party currently resides in the territory or is located there. Similarly, regardless of the defendant's absence from the jurisdiction, the defendant's activity in the forum also grants the forum court jurisdiction. If the cause of action originates on Indian territory, Indian courts will also have jurisdiction. If the cause of the action occurs within the court's jurisdiction, the courts may also employ this authority to judge non-resident foreigners.

In general, American courts use a three-part test to evaluate whether Indian courts have personal jurisdiction over matters relating to the internet. The "lexforis" idea, sometimes known as the "Law of the Forum," is followed by Indian courts. This indicates that no foreign law's procedural rules are followed by Indian courts. They acknowledge that the well-established principles of international private law apply and that any legal procedures shall be governed by the laws of the forum in which they were first brought. 2] The Code of Civil Procedure, 1908 (CPC), governs personal jurisdiction in Indian courts.

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International private law conflicts are not handled any differently by the CPC. The basis for determining territorial jurisdiction in the Code of Civil Procedure is the same as it is in any domestic issue, but the code makes a distinction about which types of suits will be governed in order to determine the subject matter of the jurisdiction of a suit. for real estate litigation Section 20 is a " default rule " for any other category of suits since it covers categories of suits not covered by the aforementioned two categories. This is true for mobile property suits and mistakes for persons.

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whether specific personal jurisdiction can be used against non-resident defendants. These

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include any act or transaction within the forum state in which the defendant knowingly exercises the right to conduct activities within the forum; any claim or cause of action resulting from the defendant's forum activities; and the existence of a sufficient connection between the defendant's acts or their effects and the forum for the purposes of exercising jurisdiction over them. Case (supra); Panavision International LP case. India's circumstance is distinct.

Due to the lack of a "long arm statute" to judge foreigners, Indian courts utilise a threefold test to determine if the defendants' behaviour is sufficiently connected to the state of the forum (India).

-Whether the forum is appropriate for the cause of action resulting from the defendant's actions.

-Whether exercising jurisdiction would be wise

If the response is affirmative, the Indian court will decide whether or not the party is a non-resident foreigner. However, Indian courts with authority over them also analyse these criteria. Examining two more factors is also done.

-The defendant's residence -Convenient to the alleged wrongdoing

If these two conditions are met and the Indian court decides to resolve the case, the judgement will be rendered by the Indian court. However, the court would consider the issue of "forum non conveniens" or anti-criminal injunctions in order to establish the most practical forum for the dispute if the defendant is successful in planning a question of another court with better jurisdiction than the Indian court. A party court checker is what Indian courts do. The courts must determine whether the court named in the agreement between the parties is qualified to hear the case.

If the court considers that the contract mentioned court lacks jurisdiction, the disputing parties may be asked to choose another court or the court itself shall give them a court with jurisdiction.

### **Loop holes within the competence of Indian courts**

The Information Technology Act, 2000, which established specific forums for the resolution of disputes in the cyber space, governs the jurisdiction of Indian courts for issues involving the cyber space in which the parties are located in India.

**Adjudicating Officers-** They are chosen by the controller, and their job is to determine which jurisdiction, based on the contesting parties' locations, will apply to them. The hearing officer also determines which party has an undue advantage.

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**Cyber Regulations Appellate Tribunal**– The government established this court, and it determines the cases that will be heard there as well as the court's jurisdiction. It serves as the initial court of appeal in any case brought before the control board or arbitrators.

**High Court**– The parties may appeal to the High court if they are not pleased with the court's ruling within 60 days.

When there are legal problems when both parties are of Indian descent, the IT Act, 2000 has complete jurisdiction to decide the case and carry out the decision. The IT Act is applied correctly in territorial matters as well, but it is not robust enough to enforce its judgement on a foreign party. The international party cannot be brought to India for trial by the court. For instance, an Indian person's credit card was exploited by an American citizen, who then sought redress from Indian courts.

The IT Act of 2000 gives the court extraterritorial jurisdiction to rule on this issue, but since the American citizen is not covered by the IT Act, it is unclear how effective it will be to extradite him to India for trial. Consider a different case where A and B engage in a certain transaction that is acceptable to A in the country of A but prohibited to B in the country of B. It is challenging for Indian courts to establish jurisdiction due to the existence of multiple equally competent courts and the difficulties in getting documentation of location and existence.

The 2001 Cyber Crimes Convention allowing the country to have jurisdiction when cybercrime is committed-

1. in their territory;
2. on a ship flying the country's flag;

A plane that is officially registered in the nation if one of the national countries is responsible for the crime, or if it was committed outside of any State's territorial jurisdiction and is punished by criminal law. In cases when the offence was done in both signatory countries and was against the law, this pact also renders cybercrimes extraditable. A prison sentence of up to one year or more may be imposed as punishment for the crime. Sadly, because the Convention is a creation of international law, signatories are once more permitted to adopt and enforce it. Because the fundamental issue of a court's jurisdiction clouds the justice system, international law is ineffective and permits criminals to operate freely across national borders.

## **Conclusion**

An globally recognised entity with adequate authority to determine the jurisdiction of online

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disputes as well as the ability to prosecute online criminals should be established in order to establish the clear jurisdiction of cyberspace courts. Cyberspace is a hypothetical system that has both benefits and drawbacks. You can succeed and also be let down by the internet. India hasn't seen a lot of instances involving this issue, but the moment is coming when national and international governments should work together to establish a uniform rule of jurisdiction that is capable of prosecuting and apprehending cybercriminal with full potential.



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