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# CONUNDRUM OF 'AGREEMENT AS TO THE CHOICE OF COURT' UNDER SECTION 15 OF C.P.C.

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***Abstract:***

The Code of Civil Procedure's Section 15 provides for the jurisdiction of a civil court of the lowest grade to entertain a suit. A unique tool in the hands of the parties entering a contractual obligation is the choice of jurisdiction of the forumhaving a natural jurisdiction. The objective of this research is to study the ratio of relevant case laws that throw light on the question of jurisdiction especially when exclusivity has been agreed upon. The analysis highlights the power vested in the contract and its implementation for the innate power of natural jurisdiction. The heavy dependence of facts and circumstances of the case in the absence of exclusive wordings is also a prominent consensus in deciding the case. The research nonetheless, with various examples like the foreign jurisdiction clause, ouster clause etc. seeks to understand the provision of the code with the exclusivity contract agreement.

***Keywords: Choice of court, Competency, Contract, Exclusivity, Jurisdiction.***

## Introduction:

The growth of trade and commerce, along with enhanced connectivity, has triggered a worldwide reshaping of jurisdictional structures in civil law. With organizations participating in interstate transactions, the differentiation of conflict resolution mechanisms has become an essential element of contractual structures.The choice of jurisdiction is not a mere procedural nicety, but an articulation of the legal principles of autonomy and effectiveness in dispute resolution. Parties seek to have their interests secured within a hospitable legal environment, thus contributing to the predictability and stability of commercial relations.

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The purpose is to execute the standards of substantive law guaranteeing fair justice to uphold rights.[2]*Section 15*[3]of the Code specifically plays an important role to determine the institution of suits.

The law enshrined under this Section states about the institution of every suit in the lowest court of grade with competence to try the suit.[4]While the traditional geographical limitations continue to erode with deepening globalization, the experience of parties entering into contractual arrangements relating to choice of courts has seen a dramatic rise. The arrangements may range from designating a specific court in a state to selecting an international tribunal as a neutral forum for the resolution of disputes. Such an experience creates essential questions relating to jurisdiction, particularly where exclusivity of jurisdiction is either explicitly stated or even not stated but implied, which raises judicial interpretive challenges.

## Research Problem And Research Objectives

The main research question answered in this research is with regard to uncertainties in the enforceability of jurisdictional agreements of parties, or more specifically in the Indian judicial system. Despite the increasing reliance on jurisdictional agreements, uncertainty remains as to their effectiveness and the circumstances in which they may be enforced, particularly in cases of overlapping jurisdictions.

*The aim of this research is to attain the following objectives:*

- To discuss the legal framework of choice of court and jurisdiction under the CPC, particularly Section 15 and its effects on civil litigation.
- To examine the enforceability of jurisdictional choice agreements, to examine the impact of the presence or absence of express exclusivity provisions on the rights of litigants and even comparative analysis.

[2]Vinit Singh, *Aim and Scope of Civil Procedure Code, 1908*, TAX DOSE (May. 26, 2020), https://www.taxdose.com/aim-and-scope-of-civil-procedure-code-1908-c-p-c/.
[3] Code of Civil Procedure, 1908, § 15, No. 5, Acts of Parliament, 1908 (India).
[4] 6 TAKWANI, CIVIL PROCEDURE (Eastern Book Company 2009).

- To evaluate significant case laws illustrating the enforcement and interpretation of jurisdictional agreements, providing an outlook of the judicial position on the agreements.
- To recognize and address the pragmatic difficulties experienced by litigants while dealing with issues of jurisdiction, especially in transfrontier cases.
- In order to provide suggestions to practitioners and lawmakers that could make jurisdictional agreements more accurate and enforceable in the context of civil litigation.

By examining such objectives, this study aims to enhance the appreciation of the complexity involved in choice of court under the CPC so that parties gain a clearer notion of the procedural implications surrounding their jurisdictional agreements and com.In Hiralal v. Kalinath[5], it was held that there is distinction between inherent lack of jurisdiction and mere absence of territorial or pecuniary jurisdiction. Inherent lack of jurisdiction is to the root of the matter. Objection on the ground of absence of territorial or pecuniary jurisdiction is technical and is not to the root of the matter.

The objective here is the ease and convenience of the suitor[6] to bring the suit in the court of the lowest grade, that is competent to try it to avoid overburdening of the higher courts with suits. Additionally, it also prevents ousting the jurisdiction of the courts of higher grades, herein the court of the higher grade should return the suit to the appellant to file the suit in the court of lowest grade competent to try it.[7] The section elaborates on the procedural rule more than its jurisdiction. As the jurisdiction is laid down over a subjectmatter, but when there is an agreement under the *Indian Contract Act, 1872*concerning the trial is any one of the courts having jurisdiction under the Code of Civil Procedure, it essentially does not violate provisions of the contract law.

[5]Hiralal v. Kalinath[5], AIR 1962 SC 199
[6] Germanthangi v. F. Rokunga, AIR 2004 Gan 42.
[7]18 MULLA, THE CODE OF CIVIL PROCEDURE 425 (LexisNexis 2014).

**Agreement as to the choice of Court:**

With the advent of technology and spurred globalisation connecting commercial activities all over the globe, the practice of contracting parties agreeing in advance for the approach mechanism of their dispute resolution has also risen. As per the Code of Civil Procedure, one or more courts may be empowered with the jurisdiction to try a particular case over the subject matter concerning the location of immovable property or place of residence or workplace of a respondent or place of cause of action. When one court has jurisdiction over a said, it is referred to as having exclusive jurisdiction, whereas when more than one court has jurisdiction over a subjectmatter, it is referred to courts of natural or available jurisdiction.[8]

In New Moga Transport Co. v. United India Insurance Co. Ltd, it was ruled that the practice of agreeing to resolve future disputes in any of the courts of natural or available jurisdiction creates an indirect exclusive or non-exclusive jurisdiction in one of the forums. The other practice followed involves having the disputes resolved by a foreign court of the party's choice under the agreement for a neutral forum.[9] Usually, as per *Section 20*[10] of the Code of Civil Procedure, the appellant under a choice of the forum of jurisdiction cannot be coerced to file a suit at the place of business or residence of the respondent and has the choice to present the suit where the cause of action arises. An exclusion clause can save the litigant from being dragged at one of the natural jurisdictions.[11]An agreement to present a suit of dispute in a foreign court is not void and it cannot deprive the jurisdiction of the Indian courts, and when the agreement is contravened with the suit being filed in India is valid was ruled in LT Society v. Lakshminarayan.[12]

In an insurance-related case[13]Isaq Mahmad v. United India Fire & General Insurance Co., the Gujarat High Court held about the non-obstante clause an insurance policy that provides a choice for the forum does not compel the policyholder. It is not contrary to public policy when there is an agreement between parties to try a suit or a proceeding in one of the courts

[8] *Id.*
[9] New Moga Transport Co. v. United India Insurance Co. Ltd, AIR 2004 SC 2154.
[10] Code of Civil Procedure, 1908, § 20, No. 5, Acts of Parliament, 1908 (India).
[11] *When the court has to decide: Chhattisgarh High Court*,PRIME LEGAL **(**June. 15, 2021**),** https://primelegal.in/2021/06/15/when-the-court-has-to-decide-the-question-of-jurisdiction-pursuant-to-an-ouster-clause-it-is-necessary-to-construe-the-ousting-expression-or-clause-properly-chhattisgarh-high-court/.
[12] LT Society v. Lakshminarayan, AIR 1959 Cal 669.
[13] Isaq Mahmad v. United India Fire & General Insurance Co., AIR 1978 Guj 46.

when more than one has the jurisdiction to try it. Such an agreement is held to be valid and does not even contravene *Section 28*[14] of the Indian Contract Act, 1872.[15]Therefore, when one or more courts have the competency of local limits of jurisdiction, parties agreeing to any one of them is not unlawful even though it excludes the natural jurisdiction of the other courts.In Rajendra Mills v. HVM Haji Hasan Dada, it happened because the appellant here voluntarily has agreed to waive his right to present the suit in one particular forum of jurisdiction and hence cannot object to any order of other courts that returns the aggrieved to present his suit to the court agreed by him upon the contract enforcement.[16]

**The Ouster Clause and its applicability:**

In another case, wherein there was a dispute in a contract executed in Kolkata, the respondent's office of business was in Kolkata. As per the contract, execution of the work was monitored through Kolkata and the seat of arbitration for disputes was also to be Calcutta High Court's jurisdiction.

The Bombay High Court here in Pacific Refractories Ltd. v. Stein Heurtey India Projects Pvt. Ltd held that the absence of certain words like alone, only, exclusively etc in the contract would not imply the non-applicability of the exclusive jurisdiction that was conferred upon the Calcutta High Court.[17]

The Supreme Court has interpreted that when the court has the power to decide upon the court's jurisdiction upon an ouster clause, it becomes paramount to understand such a clause in its entirety and with caution as mostly such a clause is made at a particular location. Such a factor proves to be a tie between the jurisdiction of the forum of the place in any dispute that may arise out of the agreement and it would not ipso facto make the other courts devoid of their natural jurisdiction in ABC LaminartPvt. Ltd. v. A.P. Agencies.[18]Furthermore, it can be observed that when such an ouster clause is present, the presence of other court's ouster clause's clarity and unambiguity binds the parties. So, when the absence of *ad idem* is clear, the other courts should avoid exercising the jurisdiction.

[14]Indian Contract Act, 1872, § 28, No. 9, Acts of Parliament, 1872 (India).
[15]18 MULLA, THE CODE OF CIVIL PROCEDURE 425 (LexisNexis 2014).
[16] Rajendra Mills v. HVM Haji Hasan Dada, AIR 1970 Cal 342.
[17] Pacific Refractories Ltd. v. Stein Heurtey India Projects Pvt. Ltd., AIR 2006 Bom 231.
[18]ABC Laminart Pvt. Ltd. v. A.P. Agencies, AIR 1989 SC 1239.

Apart from ouster clause words like only, excluding, alone etc, maxim like "*expressiouniusestexclusioalterius"*also apply to the exclusion. The maxim means *"Express Mention and Implied Exclusion"* and the appropriate suit depends on the facts and circumstances of each case. In another Supreme Court case, Hanil Era Textiles Ltd. v. Puromatic Filters[19], the contract clause mentioned subjecting the legal proceedings arising out of order to the courts in Mumbai. When parties entered into a contract at the place where the corporation has its subordinate office, and no clause of exclusivity of jurisdiction was agreed to, the cause of action arose about a transaction held at the same office. In such a situation, the civil court having competent jurisdiction at the place of the office is not disqualified from taking the suit.[20]

Here, in the absence of words like only, alone or exclusively, facts and circumstances play a vital role in the inference of exclusion of jurisdiction of courts. Carrying out other mandates of the case like advance payment, order at their branch office of Mumbai implied the clear intention of the parties to confine the jurisdiction to Mumbai and exclude it from other courts.[21]

**Critical Analysisof Exclusivity ofJurisdiction:**

As observed from precedents and the provision's interpretation, when two or more courts have jurisdiction, parties in a harmonious agreement can choose either one giving the court exclusive jurisdiction. When such an agreement is explicit, unambiguous, clear it is not in contravention of *Section 28* of the *Indian Contract Act, 1872*. The provision thus empowers the choice of such parties in the agreement unless the agreement is oppressive, it is enforceable by the court as observed in EDI Parry (India) Ltd v. Sanami Transport.[22]In the light of this, it becomes an accepted norm that even though the choice of courts made by consent is respected, the courts cannot rule out the enforcement of the same in all conditions. This heavily being dependent on facts of the case, the court may not enforce the clause where the enforcement becomes oppressive for the appellant. Where there is no independent

[19]Hanil Era Textiles Ltd. v. Puromatic Filters (P) Ltd, AIR 2004 SC 2432.
[20] National Hydroelectic Power Corpn. Ltd. v. Sova Enterprises, AIR 1991 Cal 324.
[21]B.V.R.Sarma, *Agreements which restrain legal proceedings–An analysis*, MANUPATRA 1, 1-12(2014)
[22] EDI Parry (India) Ltd v. Sanami Transport, AIR 1980 AP 30.

material to prove an agreement in consensus which proves the exclusivity clause, the court believing its jurisdiction to be ousted only based on a clause agreed would be hence unsustainable. But the choice of jurisdiction cannot be enforced upon a contract where only one court has the competency.[23]

The provision made in Section 15 is consistent with public policy to facilitate greater access to justice. However, the determination of jurisdictional agreements by parties can lead to conflict between individual autonomy and public policy. Courts have generally been respectful of such agreements as long as they are well defined, as long as they do not entirely exclude access to other competent courts that by nature have jurisdiction.

The doctrine of party autonomy needs to be balanced against possible impacts on public policy. Parties need to be permitted to control the terms of their resolution of disputes for the sake of encouraging confidence in commercial contracts. The autonomy does not imply the drafting of clauses that defeat litigants' rights to access suitable judicial redress.

Practically speaking, the obligation stipulated under Section 15 necessitates parties to consider, apart from contractual obligations specified under an agreement as far as the selection of the court is concerned, whether the said obligations are compatible with jurisdictional requirements provided under the CPC. Disputes primarily arise where parties conflict regarding the application and enforcement of such clauses and thus result in jurisdictional conflicts in practice.

This causes serious litigation problems since tensions are raised when a party chooses to ignore a jurisdictional agreement. Having two options makes judicial proceedings cumbersome, enabling litigants to engage in forum shopping in search of a more convenient jurisdiction.While courts generally uphold the selected jurisdiction, they have a reviewing function to ensure that such decisions do not result in unjust or oppressive circumstances for any involved party.

## Comparative Analysis

### United States

[23] GM, ONGC, Sibsagar v. Raj Eng. Corpn, AIR 1987 Cal 165.

In the United States, the choice of court contract law is primarily based on common law and complemented by a mixture of federal and state statutes. The doctrine of "forum selection clauses" permits parties to consent to a named court for the resolution of conflicts. In the case of Carnival Cruise Lines, Inc. v. Shute[24], the Supreme Court enforced a forum selection clause, highlighting the importance of party autonomy. In contrast, in the Bremen v. Zapata Off-Shore Co.[25], the enforcement of non-exclusive agreements permits jurisdictional arrangements not to preclude the jurisdiction of other courts. In contrast to Section 15, which prefers the lowest competent court, U.S. law is more variable and less concerned with a hierarchical court system, as long as the chosen forum is reasonable. The U.S. legal system permits greater discretion for parties to decide jurisdiction. [26]

## European Union (EU)

The European Union possesses a body of law that tackles jurisdictional problems, through the Brussels Regulation and the Lugano Convention. These legislative instruments construct strong, reliable structures designed to effectively manage and resolve cross-border disputes that might arise between parties in more than one member state. The Brussels I Regulation actually requires jurisdiction agreements to be enforceable widely, provided that the parties in question have agreed clearly to a designated forum for the resolution of their disputes. This principle is particularly applicable in the context of consumer contracts and employment, where certainty and mutual agreement matter greatly. The legal preference given to the parties' chosen court is solidly rooted in this system, ensuring it remains as a fundamental principle. There are special mechanisms put in place to safeguard weaker parties, such as consumers, and avoid the imposition of unfair or unreasonable jurisdictional clauses that may prejudice them in any legal proceedings.[27]

The judicial approaches in the EU try to reduce jurisdictional conflicts with the emphasis laid on the prevention of forum shopping, which is less in the Indian context owing to the plurality of jurisdictions which are potentially available.In P & M Kaye Ltd v Hosier &

[24]Carnival Cruise Lines, Inc. v. Shute, 499 U.S. 585
[25]Bremen v. Zapata Off-Shore Co. 407 U.S. 1 (1972)
[26]Dudeja, Riya, Comparative analysis of Appellate Jurisdiction of the Supreme Court of India and Supreme Court of the United States of America
[27]Alshammari, Fahad N. A Comparative Analysis of Selected Legal Jurisdictions. *Comparative Law Review.* Online. 4 December 2023. Vol. 29, pp. 45-71

Dickinson Ltd [28], the court made an important decision which highlighted the essential significance of the contractual choice of jurisdiction. The court also considered and weighed a variety of considerations regarding fairness in the legal process.

Both the systems put in place by the United States and the European Union provide a more transparent and direct mechanism of enforcement of chosen forums than the intricate and subtle system embraced by India with its Section 15. Compared to India's relatively flexible and localized legal system, foreign jurisdictions, particularly those based in the European Union, provide more extensive and detailed levels of regulation control that are meticulously crafted to shield weaker contracting parties in international agreements. This system of regulation also enforces predictability and stability in international commercial agreements, which is critical to the establishment of trust among contracting parties.

## Theoretical Perspective

In the context of jurisdictional agreements brings into play multiple theoreticalperspectives, primarily revolving around contractual and jurisdictional theories.Within the specific scenario of the choice of court agreement, there is an assortment of contract theories that are of particular concern and application. Perhaps the most prominent of principles to keep in mind is that of party autonomy. The principle in effect maintains that individuals and organizational bodies alike have an inherent level of freedom and choice in respect to negotiating the very conditions of their agreements, including issues related to jurisdiction.The autonomy theory is interested in the importance of courts having the capacity to identify and honour the intentions that have been explicitly expressed by the parties to their contracts.

Jurisdictional theories are particularly interested in the important question of how the power exercised by the courts to hear particular kinds of cases and to then make legal determinations based upon provided evidence is established. Jurisdictional theories are important to assist in making sense of the intricate jurisdiction dynamics, especially with respect to the selection of court associated with a specific case and the important implications this selection creates.The use of this particular theory clearly enough expresses itself in the

[28]P & M Kaye Ltd v Hosier & Dickinson Ltd [1972] 1 WLR 146

basic requirement that the selected forum must demonstrate a close connection to the specifics of the case at hand. This connection may involve a variety of different considerations such as the geographical location of the parties themselves, as well as where the cause of action arises and is effectively located.

The point of intersection of contractual doctrine and jurisdictional doctrine is essential to have a thorough understanding of choice of court contracts.The autonomy of parties, from a contractual perspective, needs to be weighed with great care against the principle of territorial jurisdiction. [29]This is to see to it that although the parties can agree on a specific forum for the resolution of their disputes, the jurisdiction of the court in the jurisdiction in question is not undermined or ignored whatsoever.In addition, there are a number of contractual theories that advocate for the need to make sure that contracts comply with and support considerations of public policy. This can create situations where courts feel obligated to interfere with contracts that, at first glance, seem to be valid but could potentially end up in unfair outcomes or abuses of power or rights.

## Conclusion and Recommendations:

In a situation where two or more courts are competent to entertain a suit, the parties in a contract can agree to vest the jurisdiction in one of such to obtain redressal of disputes. Also, as long as the contracting parties do not exclude jurisdictions of all forums that would otherwise have the jurisdiction under law, in its pursuant it cannot be construed that parties have ousted the jurisdiction. I suggest that construing the exclusivity clause properly to understand its clarity and specific nature in unambiguity become the accepted notions of a contract that binds parties except when *ad idem* is detected. Illegal or arbitrary interference is not recommended as a revisional court cannot interfere. It is only possible when the trial court has reached a *mala fide* or perverse conclusion. In conclusion, the fact the stipulation is made at a particular place, a connecting factor is created for the jurisdiction of that place in case of any arising dispute in the contract. Hereby, not taking away jurisdiction of other natural ones.

[29] Geoffrey C. Hazard Jr., A General Theory of State-Court Jurisdiction, 1965 Sup. Ct. Rev. 241 (1965)

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