



INTERNATIONAL JOURNAL OF CREATIVE RESEARCH THOUGHTS (IJCRT)

An International Open Access, Peer-reviewed, Refereed Journal

CYBER JURISDICTION ISSUES UNDER CYBER LAW

*KULJINDER KAUR¹

ABSTRACT

In the today world the cyber-crimes are increased day by day. But in India there is not a specific law policy to control the cyber matters. The internet transaction is complete with an easy manner. The deficiency of the forensic investigation in the India and inappropriate cyber rules is a major problem of the India .Now a days, the majority of the world depends on the computers, the internet and modern technology. Technical proceed have concluded in a recent form of crime. Computer wrong or cyber-crime defined as a simple meaning is described as any unlawful doings which has been dedicated through computer or assist by internet. The internet, computer, and mobile technologies have considerably restructured current society. However, it is complicated to realize, less than two decades ago most individuals did not possess a cell phone and individual processor were motionless rather exclusive portion of tackle. Persons could not text, and email was unusual. Internet connectivity was probable through dial-up modems or Ether net cabling and citizens rewarded by the hour for admittance to the net.

But the jurisdiction problem is faced by the law authorities to punish the accused. At present there are practically 2 billion internet users and over 5 billion mobile phones links worldwide. Everyday 294 billion e-mails and 5 billion phone messages are swap over. The increasing reputation and expediency of computers and internet-based networking, cyber-crime and digital attack incidents have increased around the world. These attacks- include financial scams, computer hacking, downloading pornographic images from the internet, virus attack, e-mail stalking and creating websites that promote racial hatred. Today, computers play a major role in almost every crime that is committed.

INTRODUCTION:

In the present time the communication system depends on the network and in the whole world computer programs interlinked with each other. But the accurate jurisdiction in the cyber space is an important topic of discussion. Because the internet transaction is easy but the area of network operator is very difficult to find. There is no specific law to control cyber problems. The contract matters, online shopping, online money frauds, false identity, misuse of other data etc. are certain crimes of cyber area. The Layer-to-Layer Communication is very important point in the cyber area. In device one person sends a message to another. At the sending website or other site, the message is move from the layer to layer. At the beginning first layer is the whole internet package is transformed in a form that can be modifying the sending message to the receiving site. At the receiving site, the communication is stimulated up from layer first to seven layers. Interfaces between Layers are the transitory of the data and set of connections in sequence down all the way through the layers of the conveyance device and back up through the layers of the receiving device is made probable by a boundary between each pair of adjoining layers. Each crossing point defines what information and services a layer must make available for the layer above it. The connection of the Layers deals with the seven layers can be consideration of as belong to three subgroups. Layers 1, 2, and 3 corporeal, statistics link, and network are the network maintenance layers. They are connecting with the physical feature of moving data from one device to another such as electrical stipulation; physical links, physical addressing, and message convey point in time and dependability. Layers 5, 6, and 7 conference, production, and purpose can be consideration of as the consumer support layers; they permit interoperability among unconnected software systems. Layer 4, the transportation layer, relatives the two subgroups and make sure that what the lower layers have put out is in a figure that the upper layers can use. Upon attainment its purpose, the sign passes into layer 1 and is distorted back into digital form. The statistics

*Research scholar, UILS, Chandigarh University, Gharuan, Punjab.

component then moves back up throughout the OSI layers. As every block of data achieve the next higher layer, the headers and trailers fond of to it at the equivalent sending layer are detached, and actions suitable to that layer are taken. By the time it accomplishes layer 7, the communication is again in a form proper to the claim and is made obtainable to the recipient.

Physical Layer:

The physical layer is accountable for the progress of individual bits from one node to another. The physical layer manages the purpose requisite to bear a bit flow over a physical medium. It defines with the automatic and electrical stipulation of the boundary and broadcast medium. The application layer is responsible for providing services to the user.

Set of connections defines under practical Terms –It is a computer resource transaction description of a substantial workstation and it permits a client to record on to a distant multitude work area. For complete that function the submission generates an application of computer programs of a visual display unit at the secluded mass communication form. The client process or discussion to the application of computer programming points in a systematic way which in revolve discuss to the computer server and other net issues. Folder and file relocate admission of the programs in computer and organization. The submission allows as a consumer to entrée records in a computer server, to recover files from a relocate computer for utilize in the limited computer, and to administer a manage documentation in a remote computer locally. Electronic Mail policy is also a part of the internet communication. The relevance of data described the foundation for message sending to other and storage of a device in the email exchange process. The worldwide internet connection interlinked with each other for collection of the necessary updates. This purpose defined the circulated catalog basis of information and admittance for international data in sequence about a range of objectives and servers.

Internet is a mode of communication. The international and national criminal acts are occurred and it is a topic of violation of jurisdiction laws. The cybercrime is different from traditional crime. Under the traditional crime both the parties are determined the territorial jurisdiction for case proceedings. The internet allowed persons from any geographical area for transaction between the persons. In case of different jurisdictions, the different laws are applicable. But the extra jurisdiction matter is arising; the court has no power to solve the case matter in internet area. The common example of the extra territorial matter in internet issues are money related frauds in the United Nations. In the United Nations in case of **Computer Serve Inc. V Patterson** the intellectual property dispute arose between Patterson and CompuServe market trade name. Patterson was sale duplicate computer product with name of CompuServe. This suit was dismissed on the ground that CompuServe has no jurisdiction to file case in the United Nations. In this matter the jurisdiction.

Personal Jurisdiction based upon enduring relationship:

A Court may exercise personal jurisdiction over a person domiciled in, organized under the laws of, or maintaining his or its principal place of business in, this state as to any cause of action. The Principal of Lex Foris is applicable with full force in all matters of procedure. No rule of procedure of foreign law is recognized.

Plea of the absence of jurisdiction:

In the case of Chief Engineer **Hyde Project vs. Ravinder** said that the plea of objection to the jurisdiction. The Court said that the matter related to online data theft is a cyber -crime. The court has no jurisdiction to solve the matter related to online crimes because the court has no information related to computer operator and geographical access of computer.

Pecuniary jurisdiction:

Pecuniary means related to money. It relates to the monetary value of a suit. The jurisdiction of the court granted different kinds of monetary limits. But in case of internet issues the limit is dynamic. The main purpose of the defining pecuniary jurisdiction is to prevent the court of a higher degree from getting burden and to prove the party issues. The court accepts the valuation of the plaintiff.

Territorial Jurisdiction:

In this kind of jurisdiction, the geographical limits are provided by the court authority. In short it is extended the area to which the court has power to precede the case. In other words it is a territorial limit of the law. Section 14 (C.P.C) defines the territorial jurisdiction on the basis of immovable property of particular location. In the cyber space the territorial jurisdiction is not defined in a particular manner because the internet access is easy to use but there is limit related any territory.

Harshad Chiman Lal vs. D.L.F.Universal Ltd In this case the court said that where the opposite party tries to suit, there is no territorial jurisdiction. So the case is transfer in Delhi Court but the accused is not resident of that area. The question arises on the multiple jurisdictions.

Where defendant is a corporation or a company (Section 20):

Where the defendant is a corporation or company, following two circumstances happen-

- a) The corporation has its single or main office at a specific area but does not in reality continue the business matters on same area, where the single or main office is situated it is the place of the jurisdiction.
- b) Where the cause of action is occurred at that area where the secondary office of the corporation is situated that area would have jurisdiction and not the main area of the business.

Subject Matter Jurisdiction:

The subject matter can be defined as the power vested in a court to hear and try cases pertaining to a particular type and subject matter. It relates to the nature of claim.

Appellate Jurisdiction:

It refers the court authority to review or rehear the cases that have already decided in the lower court. It is generally conferred upon the higher courts.

Section 2B-106-Law relating to Multijurisdictional Transactions:

- (a) In an access or other online contract or a contract providing for delivery of a copy by electronic communication, the contract is governed by the Law of the jurisdiction in which the licensor is located when the transfer of rights occurred or was to have occurred.
- (b) The jurisdiction law applies where the business place is located according the United Nations. It is applicable according The Uniform Commercial Code.
- (c) A party is located at its place of business than the jurisdiction is applied in that area. If the business place is two or more than two than first business area is held as jurisdiction. First business area means primary area of business, where business is start at first stage.

Issues of Jurisdiction:

The issue of Jurisdiction has defined into two points:

1. Prescriptive Jurisdiction:

It describes a State ability to define its own laws in respect of any matters it chooses. As a general rule a state prescriptive jurisdiction is unlimited and a State may legislate for any matter irrespective of where it occurs or the nationality of the persons involved.

2. Enforcement Jurisdiction:

A State ability to enforce those laws is necessarily dependent on the existence of prescriptive jurisdiction. The Sovereign equality of States means that one state may not exercise its enforcement jurisdiction in a concrete sense over persons or events actually situated in another

state territory irrespective of the reach of its prescriptive jurisdiction. State enforcement jurisdiction within its own territory is presumptively absolute over all matters and persons situated therein.

Jurisdiction under the Information Technology Act, 2000:

The State legislative enactments primarily reflect its prescriptive jurisdiction.

This Act shall apply to an offence or contravention committed outside India by any person if the act or conduct constituting the offence or contravention involves a computer, computer system or computer network located in India. It is the legislative function of the Government to enact laws and judicial and administrative function to enforce those laws. Thus the principles of jurisdiction followed by a State must not exceed the limits which international law places upon its jurisdiction.

Steven J C. V the Microsoft Network the plaintiff brought an action for defamation. Defendant made a website against plaintiff and found obscene material related plaintiff family. The case concluded in the New York court. The court said that defendant is liable for his legal act and punished for three months imprisonment.

Modi Entertainment Network V W.S.G Cricket Pvt Ltd. It was held that it is a well settled principle that by agreement the parties cannot confer jurisdiction where none exists, on a court to which CPC applies, but this principle does not apply when the parties agree to submit to the exclusive or non-exclusive jurisdiction of a foreign court.

Satya V Teja Singh, The Supreme Court that every case which comes before an Indian Court must be decided in accordance with Indian Law. It is another matter that the Indian conflict of laws may require that the law of a foreign country ought to be applied in a given situation for deciding case, which contains a foreign element.

Indian Laws related Cyber Space:

Under the Information Technology Act, 2000 deals with jurisdiction over foreign parties committing criminal acts outside of India which have an effect on a computer information system located in India. A Court may order law enforcement authorities to seize computer equipment that is suspected of having been used in the commission of a crime related computer. It is possible for more than one punishment to be administered for commission of the same unlawful acts if more than one criminal law has been violated.

Section 75 of the Information Technology Act, 2000 deals with extraterritorial application of the law, the section stated that the provisions of the Act will apply to-

- (a) Any person who commits crime is related to different nationality.
- (b) An offence committed outside India.

The said offence must have been committed against a computer, computer system or computer network located in India. The Act has therefore adopted the principle of the universal jurisdiction to cover both cyber contravention and cyber offences. It is important that universal jurisdiction over specified offences is often a result of universal condemnation of those activities, requires co-operation to suppress them, as reflected in widely accepted Cyber Crime rules.

Conclusion:

Jurisdiction is an aspect of state sovereignty and it refers to judicial, legislative and administrative competence. Although jurisdiction is aspect of state, it is not co-extensive with it. Jurisdiction is the territorial area of authority to hear, internet judge cases. The internet has no territorial boundaries.

There is no proper jurisdictional procedure laid in any other statute. Issues regarding jurisdiction of cyber law is a main problem to solve the case. The universal nature of cyber laws has no geographical limits and it required the extra territorial jurisdiction. In addition, in India the C.P.C helps to solve the cyber law matters.

The internet allowed persons from any geographical area for transaction between the persons. In case of different jurisdictions, the different laws are applicable. But the extra jurisdiction matter is arising; the court has no power to solve the case matter in internet area. The common example of the extra territorial matter in internet issues are money related frauds in the United Nations. In India cyber jurisdiction is also a

problem. Because cyber-crimes are committed in certain areas in the India in different fields like banking, email related issues etc. But the accused cannot be identified and the Court cannot identify the crime factors with the proper investigation. So there is need of the appropriate cyber Law and established the appropriate tools of the forensic inquiry.

REFERANCE

1Krishna Kumar, *Cyber Laws*, Khanna Publication (New Delhi) 2nd Ed, P.124, 2017

2<http://www.lawteacher.net>.

3Adv.Prashant Mali, *Cyber Law*, India Express, 3rd Ed., P23, 2016

4<http://www.law.cornell.edu>.

5Amita Verma, *Cyber Crimes*, p.318.Central Law Publication, Allahabad, 2009

6 <http://www.lexology.Com>

7<https://cyber.harvard.edu>.

8<https://corporate.findlaw.com>

