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Jurisdictional Aspect in E-Commerce Transaction: Indian Perspective

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ABSTRACT

Maturing of internet has removed the geographical constrains, making whole world a single market for every consumer. E-commerce has proven to be a reward for every consumer, and has acted as a bridge for movement of goods and services from the place of profusion to the place of deficit. Ensuring maximum profit for the produced goods, E-commerce has proven to be beneficial for producers, leading to efficient utilization of resources. However, the merits are not enough to hide the defects of this budding platform. Transactions done on internet promote privacy, which is used by the fraudsters as a tool to remain anonymous and perform fake dealings, which hamper the interest of general parties. The frustration for parties increase when they become more vulnerable while protecting their interest due to several issues such as dispute in respect of the law applicable, period of limitation for raising claims, jurisdiction of local court to entertaining such disputes etc. Countries have attempted to come together and take necessary steps to protect the interest of parties involved in cyber transactions and to overcome the issues, but several questions such as jurisdiction of courts in Cyberspace still remains question of debate. Judiciary of different countries, in order to prove its supremacy, laid down several tests and doctrines, which brings the dispute within their ambit. The present paper is an attempt to analyse the approach of Indian courts and tests laid down by higher judiciary as to when courts in India have the jurisdiction to decide the dispute, in case no specific jurisdiction is provided in the contract, and whether such tests are in pursuance of the international standards. In addition to this, papers deals with the advancements required in current scenario to create a systemized and beneficial arrangement for the aggrieved.

I. INTRODUCTION

The evolution of internet is proven to be beneficial to different parts of the society. It has removed the territorial barriers in the field of communication, entertainment, knowledge and education etc. One of such concepts which has gained significant attention of users around

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the world is e-commerce. Today, a person has the power to search for any commodity without any territorial restriction, has the power to buy it at the cheapest price available, and has the right to enter into any transaction with any person all around the world. The best examples of these E-commerce platforms are *flip kart* or *amazon*, where a person can search for any product and get it delivered to the desired location without any difficulty. This has proven to be beneficial for both the parties, as sellers get a huge audience, and can sell their products as per the demands around the world, ensuring that they get the maximum price for their products. Similarly, consumers are able to search for any desired product.

However, Cyberspace has its own drawbacks. As transactions are entered between strangers, one cannot assure the quality of the performance. Various instances were seen in the country, where consumers ordered some commodity from online platform, and got another one. Another issue observed is violation of intellectual property rights and using the brand name of a well-established brand to sell own products, pretending to be a part of such company. For ex. X is interested in purchasing shoes of a particular brand. Y, a seller, offers him to sale shoes of a brand which appears to be deceptively similar. X, thinking that Y is selling him authentic product, buys the same. This amounts to fraud and violation of trademark of the particular brand. However, the same is hard to be identified in cyber world.

Although laws are settled at national level, problem arises when one of the parties does not belong to the same state. For ex. a dispute regarding right over intellectual property arises between a person from India and USA. Now the question arises which law should be applied over such dispute.

One of the biggest issues of cyberspace is its jurisdictional aspect. It is an undisputable fact that each court has an authority to adjudicate all the matters arising within a particular territory, which can be referred as its jurisdiction. However, question of such jurisdiction regularly arises in respect of cyberspace, as parties from different parts are involved in a transaction, and these parties are subjects of their own territorial laws. This leads to a question that when a person can be held liable under the laws to which he is not a subject. In other words, which court will have the authority to try other person according to the laws of the state.

The question arises when multiple parties are involved in a transaction, and one party wants to take a legal action against any other party, then in which forum he can take that action? Due to lack of uniform legal principle, establishing jurisdiction in cyberspace has been a challenging task for judiciary all around the world.

The present research is an attempt to analyse how the same is dealt by Indian Judiciary in the light of international trends, in order to protect the interest of the parties involved in such transaction.

(A) Research Objectives

The present research is conducted with an aim to analyse the emerging legal issues in E – commerce transactions, and how judiciary has actively participated in securing the rights of parties in these issues. Following are the objectives of this research.

- To understand the concept of jurisdiction in E-commerce.
- To analyze the major legal issues prevailing in cyberspace.
- To analyze how these issues are resolved by the judiciary.
- To identify the grounds on which courts have claimed jurisdiction over any E-commerce dispute.

(B) Research Question

The present paper is an attempt to research with an aim to find answers to the questions specified below –

- What are the major issues existing within cyberspace?
- How has judiciary taken active steps to ensure protection of parties involved under online transactions?
- Is the existing legal framework sufficient to deal with issues related to cyberspace?
- How Indian Judiciary has dealt with the issues of cyberspace?

(C) Research Methodology

Researcher has conducted a doctrinal type of research, and analyzed various laws, research papers, opinions of the experts, along with various international and national landmark judgments with an aim to have an in-depth study and understanding on the concept of cyberspace, jurisdictional aspect and actions taken by the Judiciary.

II. JURISDICTION – MEANING AND CONCEPT

Jurisdiction is derived from Latin term *'juris-dictio'*, which means *'the saying or speaking of the law'*.² It can be defined as a concept, under which any institution holds authority or can exercise its powers, which it gets under any law in force. Any act which is wrong or against any law shall be construed of same nature within the territory on which such law applies,

² UGC – E Pathshala, 'Jurisdictional Issues in Cyber Law'

however, it should not be inferred as any authority shall have power to investigate or adjudicate the said matter. For ex. – any act which constitutes rape at one place of India will be construed as rape in whole territory of India, with same laws applicable and same punishments prescribed. However, any rape committed in one city (ex. Mumbai) cannot be investigated by police of other city (ex. Delhi). Thus, a particular authority can exercise its power over a specific territory, which is known as its jurisdiction. Talking about jurisdiction of judiciary, it is necessary that courts should exercise its authority and adjudicate over those matters, which are specified to be within its ambit under any law in force. Various attempts have been made to define and explain the concept in detail, in which the case of **Hriday Nath Roy v. Ram Chandra**³ had made a landmark contribution. In this case, the concept of jurisdiction was discussed in detail by the High Court and it was observed that –

“An examination of the cases in the books discloses numerous attempts to define the term ‘jurisdiction’, which has been stated to be ‘the power to hear and determine issues of law and fact’ ‘the authority by which the judicial officers take cognizance of and decide causes’; ‘the authority to hear and decide a legal controversy’ ‘the power to hear and determine the subject matter in controversy between parties to a suit and to adjudicate or exercise any judicial power over them’; ‘the power to hear, determine and pronounce judgment on the issues before the Court’; ‘the power or authority which is conferred upon a Court by the Legislature to hear and determine causes between parties and to carry the judgements into effect’; ‘the power to enquire into the facts, to apply the law, to pronounce the judgement and to carry it into execution’.”

The same was recognized by Supreme Court in **Official Trustees West Bengal Vs. Sachindra Nath Chatterjee**⁴. It has been observed by Supreme Court that any order will not be enforceable by law, if the same is passed without jurisdiction.⁵

With three organs of the state, which are accountable to ensure administration and functioning i.e., legislature, executive and judiciary, jurisdiction can be classified into three categories – Legislative, Enforcement and Adjudicative Jurisdiction.⁶ This can be illustrated as – Parliament has the jurisdiction to make any law which can be enforce for all or any part of India. Similarly, Supreme Court has the power to adjudicate any matter within the territories of India. Adjudicative jurisdiction can be defined as the power of courts to adjudicate upon any specific matter. The question of jurisdiction came into consideration of

³ AIR 1921 Cal 34 (FB)

⁴ AIR 1969 SC 823.

⁵ *Chandrabai Bhoir v. Krisna Bhoir* AIR 2009 SC 1645 Bom

⁶ Ibid

Supreme Court in *Harshad Chiman Lal Modi v. DLF Universal Ltd.*⁷ in which court classified jurisdiction into several categories. It can be further divided into five categories –

- *Subject matter jurisdiction* – When courts have the power to adjudicate on a particular subject matter. Ex. – Motor Accident Claim Tribunal (MACT) or Consumer Forums.
- *Territorial jurisdiction* – It is considered to be most common mode of jurisdiction, under which courts have the power to try any cause of action arising within a specific territory. Ex. – High Courts have the power to adjudicate any matter within the territory of their respective state.
- *Pecuniary jurisdiction* – Pecuniary is defined as ‘relating to money’⁸. A court is said to have a pecuniary jurisdiction when a particular matter is adjudicated by the court on the basis of monetary value of the cause of action. Ex. District court in Delhi have a pecuniary jurisdiction up to twenty lakhs only.⁹
- *Original jurisdiction* – When courts have the authority to try any matter at the first instance, the court is said to have original jurisdiction over such matter. Ex. High Courts in India have original jurisdiction over disputes related to members of parliament and state legislative assembly.¹⁰
- *Appellate jurisdiction* – It refers to the authority of a court to rehear or review a case that has been already decided by a lower court. In India, both Supreme Court and High Courts have the appellate jurisdiction to try and decide any matter which have been decided by the lower court, and an appeal against the same has been filed. After looking into the facts of the case, court has the power to uphold, modify or overrule the judgment given by the lower court.

Provisions regarding jurisdiction over civil matters are provided in Civil Procedure Code, 1908 (CPC), under sec. 16 to 18. *In case of moveable property, the jurisdictional rule is mostly defendant centric and in case of immoveable property it is the lex situs rule prevails i.e., the law of the forum where the property situated.*¹¹

III. E-COMMERCE AND EMERGING DISPUTES

With the development of technology and interdependence of countries, whole world has

⁷ AIR 2005 SC 4446

⁸ <https://www.merriam-webster.com/dictionary/pecuniary> (last visited Jan. 31, 2021)

⁹ Jurisdiction of Civil Court Under Civil Procedure Code, 1908, <http://www.legalservicesindia.com/article/508/Jurisdiction-Of-Civil-Court-Under-Civil-Procedure-Code.html> (last visited Jan. 31, 2021)

¹⁰ High Courts in India, <https://www.jagranjosh.com/general-knowledge/high-courts-in-india-1437999248-1> (last visited Jan. 31, 2021)

¹¹ Ibid

evolved as a single state. A person is said to be a part of this global state, where he can interact with any person all around the world, without any territorial limit. E-commerce is one of the species of such international relations. E-commerce or Electronic Commerce is defined as entering into a commercial transaction (buying or selling of goods and services) on online platform i.e., internet. It is also known as internet commerce. However, it is not limited to the transaction of buying and selling and includes various activities such as delivery of such goods, online transfer of money and payments, supply chain and service managements. Transactions under E-commerce are divided into four heads –

- *Business to Business (B2B)* – These transactions are done between companies, and no end consumer is involved.
- *Business to Consumer (B2C)* – These are the most common form of online transaction, where any person buys any goods or services from the seller online. Ex. Amazon, Myntira.
- *Consumer to Consumer (C2C)* – In this, consumers enter into transaction with each other, and no company is involved. Ex. OLX.
- *Consumer to Business (C2B)* – This is also considered to be reverse mechanism, as a consumer provides goods or services to the company.

However, one of the perpetual drawbacks of such online transactions is lack of transparency and chances of fraud. This leads to disputes between various parties involved in such a transaction. Such dispute can be divided broadly into two categories –

Contractual disputes – Disputes arising due to non-performance of any obligation arising out of a contract comes under this category. Some of the examples of such disputes are –

- Disputes between Internet Service Provider (ISP) or web hosting services provider and any enterprise.
- Disputes arising between various enterprises i.e., between enterprise and its suppliers, also known as B2B disputes. Ex. An online seller may enter into an agreement with a transportation company liable for the delivery of goods ordered from such websites. Disputes might arise in case of non-performance by any party to such contract.
- Disputes arising between any enterprise and its customers, also known as B2C disputes. This is one of the most common form of dispute, such as non-performance of contract, low quality products or services provided, breach of security etc. Ex. a person orders a particular product (X) from internet and pays for the same in advance. However, at the

time of performance, he is delivered another commodity (Y) by the seller. This leads to a dispute between the seller and the customer regarding ordered product.

Non – contractual disputes – These disputes are observed when any statutory obligation is not followed by any of the parties. Some of the cases of non-contractual disputes are –

- Copyright dispute – There are cases where parties use such material which is protected under copyright, without the permission of concerned owner, or uses the same more than the permissible limits of fair use.
- Data protection – Parties should respect and follow the laws and principles related to privacy of data. Any case of breach will lead to violation of rights.
- Free expression of ideas – Parties should respect the restrictions on their right to expression and free speech, as they may be held liable for defamation or other offences as specified, on the basis of content or material uploaded by them online.
- Domain name disputes – The enterprise may be subject to trademark infringement suits if it infringes a registered or otherwise legally recognized trademark.¹²

This leads to a question that if any wrong is committed online, what will be the jurisdiction of that wrong? In other words, if a person got defrauded by an online transaction, at what place should he file a complaint and which court will have the jurisdiction to adjudicate such matter.

IV. INTERNATIONAL PERSPECTIVE ON JURISDICTION OVER INTERNET DISPUTES

The question was raised in USA in the case of *International Shoe v. Washington*¹³, in which the issue of applicability of state laws was considered. In this case, the appellant company was incorporated and registered in Delaware, and performed its business in other states through hiring salesmen of those states on commission basis. As a result, State of Washington held the corporation liable to contribute to a specific fund established under its state laws. However, Appellant contended that since it does not have any registered office in Washington, and were not conducting their business in that state, it is not liable to contribute to such fund, as laws of Washington cannot be applied on the company. Court in this case, held that “*in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend "traditional notions of fair play and substantial*

¹² Disputes, <https://cyber.harvard.edu/e-commerce/disputes.html> (last visited Jan. 31, 2021)

¹³ 66 S. Ct. 154 (1945).

justice".¹⁴ Thus, following conditions were laid down by the court, which were considered to be essential to *enforce personal jurisdiction over an outside defendant*.¹⁵ –

- There should be minimum contacts with the forum state, necessary for maintenance of suit.
- It should not violate traditional notion of fair play and justice.

This rule of minimum contact was further extended by the Court in ***Zippo Manufacturing Company v. Zippo Dot Com***¹⁶, in which plaintiff sued defendant in court of Pennsylvania, alleging that defendant has infringed its trademark rights, which were protected under Federal Trademark Act. As defendant was a corporation registered in California, it argued for lack of personal jurisdiction. After looking at the facts of the case, court developed a three- pronged test in order to determine *whether the exercise of specific personal jurisdiction over a non-resident defendant is appropriate*.¹⁷ The facts considered were –

1. The defendant must have sufficient minimum contacts with the forum state.
2. The claim asserted against the defendant must arise out of those contacts, and
3. The exercise of jurisdiction must be reasonable¹⁸.

Court further divided the websites into three categories, depending upon its nature –

- Active website, which promotes frequent transmission of data or documents in the form of compute files.
- Passive website, which is used as a tool for providing information, which is accessible to its users only.
- Interactive website, on which any user can share information with the host computer.¹⁹

Observing the fact that almost 2% of the defendant's subscribers were from Pennsylvania, court held that there is no case of lack of personal jurisdiction on the ground that a significant amount of the said infringement and resulting injury occurred within that territory. Court also observed that "*If the defendant enters into contracts with residents of a foreign jurisdiction that involve the knowing and repeated transmission of computer files over the Internet,*

¹⁴ Int'l Shoe Co. v. Washington - 326 U.S. 310, 66 S. Ct. 154 (1945), <https://www.lexisnexis.com/community/casebrief/p/casebrief-int-l-shoe-co-v-washington> (last visited Jan. 31, 2021)

¹⁵ Ibid

¹⁶ 952 F. Supp. 1119, 1124 (W.D. Pa.1997).

¹⁷ ZIPPO MANUFACTURING CO. v. ZIPPO DOT COM, INC. - 952 F.Supp. 1119, <https://www.lexisnexis.com/community/casebrief/p/casebrief-zippo-manufacturing-co-v-zippo-dot-com-inc> (last visited Jan. 31, 2021)

¹⁸ Ibid

¹⁹ Ibid

personal jurisdiction is proper.”²⁰

However, the approach was criticized and was not considered to be valid due to changing circumstances and factors such as nature of websites, increasing users etc. The case of *Calder v. Jones*²¹ made a significant movement in the way of changing judiciary’s approach towards determining the jurisdiction. In this case, one article was published by the petitioner related to the respondent, which stated that respondent had drinking problems, and same had a negative effect over her career. Aggrieved by such article, respondent brought a suit for libel against the petitioners. However, petitioner challenged the jurisdiction of California to try the matter, on the ground that they did not made any physical contacts within the territory of California. However, Court in this case evolved a new concept of place of actual harm. Under this, court will analyse as to who is facing the harm, and after that the court, in the area of which any party has faced the harm, shall have the jurisdiction. Court, in this case, further observed that respondent had her career in California and due to publication of such article in California, she suffered the harm within its territories²². As a result, it was held that *California had personal jurisdiction over the petitioners.*²³

V. INDIAN JUDICIARY AND CYBERSPACE

It is an undisputable fact that with the evolution of internet, India has made a move towards borderless world and promoting transactions without any territorial restriction. Thus, the old principles of jurisdictions cannot be applied on such a new concept. However, various existing laws are applied on such transactions in order to reduce the instances of fraud or wrongs. For example – as the transactions entered online are nothing but the commercial contracts, which are entered into by parties for a specific consideration, these are governed under Indian Contract Act, 1872. In addition to it, due to its nature, Information Technology Act, 2000 comes into picture, under which these contracts are considered to be valid (sec. 10 A).

Supreme Court in *Trimex International FZE Ltd. Dubai v. Vedanta Aluminium Ltd.*²⁴ interpreted the applicability of the existing laws and held that when both the parties mutually recognize and accepts their obligations through official communications (E-mail), it

²⁰ Zippo Mfr. Co. v. Zippo Dot Com, Inc., 952 F. Supp. 1119 (W.D. Pa. 1997) Case Abstract, <https://cyber.harvard.edu/property00/jurisdiction/zipposum.html> (last visited Jan. 31, 2021)

²¹ 456 US 783 (1984)

²² *Calder v. Jones* - 465 U.S. 783, 104 S. Ct. 1482 (1984), <https://www.lexisnexis.com/community/casebrief/p/casebrief-calder-v-jones> (last visited Jan. 31, 2021)

²³ *Calder v. Jones*, <https://www.casebriefs.com/blog/law/civil-procedure/civil-procedure-keyed-to-subrin/the-choice-of-an-appropriate-court-personal-jurisdiction-notice-and-venue/calder-v-jones/> (last visited Jan. 31, 2021)

²⁴ 2010 (1) SCALE 574

constitutes a valid contract.

With an aim to facilitate and promote various transactions based on internet, several laws have been amended with the change in circumstances. One of the most important statute, which was enacted by the legislature with an aim to legally recognize transactions based on electronic commerce²⁵ is Information and Technology Act, 2000. In addition to recognize E-commerce transactions, the statute aims to facilitate electronic governance, by laying down a framework of cyber laws and to provide for punishments for different cybercrimes and offences. The act also applies on those offences, which are committed outside India, by any person, irrespective of his nationality.²⁶ The provisions of this act can be applied only if any computer, computer system or computer network, which is located in India, is used in that particular offence.

Some of the unique features of IT Act, 2000 are –

- With an aim to provide legality to electronic transactions, the Act provides for electronic filing of any document with government department. Act also allows government departments to grant any license or receipt of payment in digital format.²⁷
- Act recognizes e-mail as a valid mode of communication, which are necessary for entering into any contract such as *communication of proposals, the acceptance of proposals, the revocation of proposals and acceptances*.²⁸ Ex. – X offers to provide consultancy services to Y at a particular fee, and latter accepts the same. The contract of providing such services is valid if the communication of such offer and acceptance is done through e-mail.
- The act also gives legal recognition to digital signatures and permits digital records. Any document having digital signature is legally valid and enforceable in the court of law in case of any dispute.

In addition to these features, the act intends to amend various laws such as Indian Penal Code, Indian Evidence Act etc., with an aim to promote E-commerce.

However, the said act does not contain any specific provision regarding the jurisdiction over such contract or transaction. Thus, reference can be made to Civil Procedure Code (CPC), 1908, under which jurisdiction of various courts is specified based on the subject matter of the dispute. It can be classified as –

²⁵ Preamble, Information Technology Act, 2000

²⁶ Sec. 75, Information Technology Act, 2000

²⁷ Sec. 6, Information Technology Act, 2000

²⁸ Sec. 10 A, Information Technology Act, 2000

- Dispute related to immovable property, under which suits are brought in those courts within the local limits of whose jurisdiction the property is situated.
- Dispute related to movable property, under which plaintiff has an option to file a suit either at the place of incident i.e., where the wrong has been committed, or on the basis of defendant's location, i.e., *where defendant resides, carries on business, or personally works for gain*²⁹.
- Other suits, under sec. 20 of the Act, which covers international jurisdiction, and enables a court to assume jurisdiction irrespective of the place of residence or place of carrying of business. As a result, it includes the internet related cases.

Although the law considering the jurisdiction is said to be straight, judiciary has given various interpretations as per the changing circumstances, which has led to a shift in its approach towards jurisdictional aspect.

The first notable judgement in this regard was *Casio India Company Limited v/s Ashita Tele Systems Private Limited*,³⁰ in which plaintiff filed a suit in Delhi, against the defendant, who was a resident of Bombay. Rejecting the contention of the defendant that the said court has no jurisdiction over the matter, court held that “*once access to the impugned domain name website, could be had from anywhere else, the jurisdiction in such matters cannot be confined to the territorial limits of the residence of the defendant.*”³¹

However, a different view was observed in the case of *India TV Independent News Service Pvt. Ltd. v. India Broadcast Live Llc & ors.*,³² in which plaintiff filed a suit for trademark violation. However, the defendant argued that no legal action can be taken against them, *as they were American entities and did not reside or work for the gain in India.*³³ Due to incompetency and weakness of the existing jurisdictional rules, Court referred and relied on the principle of jurisdiction laid down by the USA court. Court highlighted the impact of interactive website and observed that level of interactivity is a relevant factor for considering the jurisdiction. It was held by the court that factors such as accessibility of the website and services provided and access to such services may lead to injury to plaintiff in economic terms.

The court observed that “*the mere fact that a website is accessible in a particular place may*

²⁹ Sec. 19 of Civil Procedure Code.

³⁰ 2003 (3) RAJ 506

³¹ Casio India Company Limited v/s Ashita Tele Systems Private Limited, <https://www.lawyerservices.in/Casio-India-Company-Limited-Versus-Ashita-Tele-Systems-Private-Limited-2003-09-08> (last visited Jan 31, 2021)

³² 2007(35) PTC 177 (Del.).

³³ Ibid

not itself be sufficient for the courts of that place to exercise personal jurisdiction over the owners of the website. However, where the website is not merely 'passive' but is interactive permitting the browsers to not only access the contents thereof but also subscribe to the services provided by the owners/operators, the position would be different."³⁴

Based on these premises, court held that *the defendant is carrying on activities within the jurisdiction of this court and has sufficient contacts with the jurisdiction of the court.*³⁵

Court resolved the dispute of different interpretations in the case of ***Banyan Tree Holding (P) Limited v. A. Murali Krishna Reddy***³⁶, in which the plaintiff, which was a company having registered office in Singapore, filed a suit against the defendant, residing in Hyderabad over the use of 'Banyan Tree' in one of its projects and advertising the same on its website. Plaintiff alleged dishonesty on the part of the defendant. In order to create a clarity on the jurisdictional aspect, Court framed following questions and answered them in reference to the principles established by US courts.

Question 1 – *For the purposes of a passing off action, or an infringement action where the plaintiff is not carrying on business within the jurisdiction of a court, in what circumstances can it be said that the hosting of a universally accessible website by the defendants lends jurisdiction to such Court where such suit is filed ('the forum court')?*

To this, court answered that in case plaintiff is not carrying its business within the jurisdiction of the court, the plaintiff, in the absence of a long- arm statute, must establish that *the defendant 'purposefully availed' itself of the jurisdiction of the forum court.*³⁷ The plaintiff has to establish that the defendant intends to conclude a commercial transaction through the use of website, with its user, and also that targeting a specific state harms the plaintiff within that forum state.

Question 2 – *In a passing off or infringement action, where the defendant is sought to be sued on the basis that its website is accessible in the forum State, what is the extent of the burden on the plaintiff to prima facie establish that the forum court has jurisdiction to entertain the suit?*

After observing the facts of the case, court held that to satisfy the requirements of sec. 20(c) of Civil Procedure Code, plaintiff must prove that the said 'interactive' website was used by

³⁴ (India Tv) Independent News Service Pvt Limited v/s India Broadcast Live LIC & Others, <https://www.lawyerservices.in/India-Tv-Independent-News-Service-Pvt-Limited-VersusIndia-Broadcast-Live-LIC-and-Others-2007-07-10> (last visited Jan. 31, 2021)

³⁵ Ibid

³⁶ 2010 (42) PTC 361

³⁷ Ibid

the defendant with an aim to specifically target the viewers of a particular forum state, to attract them to enter into a commercial transaction. In order to prove that some part of the cause of action has arisen within the jurisdiction of the court, plaintiff has to produce material which prima facie shows that any user of the forum state has entered into some kind of commercial transaction with the defendant through the website, and such transaction has resulted to an *injury or harm to the plaintiff within the forum state*.

Question 3 – *Is it permissible for the plaintiff to establish such prima facie case through “trap orders” or “trap transactions”?*

Court, while answering to this question, specified that the said transaction should be a real commercial transaction between both the parties i.e., the user and the defendant. It should not be *a set up by the plaintiff itself*. Court also made it clear that if the available evidence is in the form of series of trap transactions, it must be shown that the same has been obtained by using fair means. In case the plaintiff seeks to establish the jurisdiction of a particular court, based on such trap transactions, it has to declare the same in the plaint unambiguously. In addition to it, plaintiff should place supporting material to prove that the said trap transactions satisfy the test specified.

After observing various judgments of different countries, court, overruling the earlier judgement of *Casio India Company Limited v/s Ashita Tele Systems Private Limited*, held that *merely accessing a website in Delhi would not satisfy the exercise of jurisdiction*.³⁸

In order to promote online transactions and to protect the interest of parties, courts try to interpret existing legal framework in accordance with the changing circumstances. The same was observed in the case of *World Wrestling Entertainment, Inc. v. M/S Reshma Collection and others*³⁹ in which the plaintiff, which was a US based company, incorporated under Delaware laws, filed a suit of trademark and copyright infringement. The plaintiff company was engaged in business of *licensing and sale of branded consumer products featuring its well-known World Wrestling Entertainment (WWE) brand and had registered its trademarks worldwide including in India*.⁴⁰ The plaintiff alleged that the defendant, a registered company incorporated in Mumbai, India, was selling goods in Delhi under Plaintiff's logo. As the single judge bench of the Delhi High Court returned the plaint on the ground of lack of

³⁸ Vaish Associates Advocates, India: Interactive Website - Platform for Territorial Jurisdiction for IP Enforcement in India, <https://www.mondaq.com/india/trademark/137480/interactive-website--platform-for-territorial-jurisdiction-for-ip-enforcement-in-india> (last visited Jan.31, 2021)

³⁹ FAO (OS) No. 506 2013.

⁴⁰ Devika Agrawal, Jurisdiction in E-Commerce IP Disputes, <https://spicyip.com/2014/10/jurisdiction-in-e-commerce-ip-disputes.html>. (last visited Feb. 1, 2021)

jurisdiction, petitioner filed an appeal against the said judgment. The primary issue under consideration was *When a transaction takes place over the internet, where is the contract concluded?*⁴¹ The court examined the phrase ‘carries on business’ specified under Trademark and Copyright laws. The court, after applying the rule settled in *Bhangwan Goverdhandas Kedia v. Girdharilal Parshottamdas & Co.*⁴² observed that like telephonic conversation, there is instantaneous communication in online transaction, and as a result, court held that *contracts would be completed at the place where the acceptance is communicated.*⁴³ The court noted that the goods and services which are specified by the plaintiff on its website is an invitation to offer, and if the same is accepted by any person in Delhi, it will be an offer to the plaintiff. Court further specified that when the contract is confirmed and payment is done by the customer through the website, in favour of the plaintiff, it is considered as an acceptance of offer by the plaintiff. As the contract between the two parties is concluded within Delhi, and payment is made to the plaintiff in Delhi, it was interpreted that the plaintiff carries out its business in Delhi.

The case is one of the landmark judgments and acts as a guiding principle for other courts while dealing with such issues.

VI. CONCLUSION

It is an undisputable fact that internet has become an important part of common man. While e-commerce has many benefits, its drawbacks cannot be ignored. Thus, it is essential to create a balance between promoting these online transactions and ensuring security of interest of various parties involved in such transactions. One of the common disputes observed is while these transactions are said to be cross border, where both the buyer and seller are unknown to each other, these relations are still regulated under traditional principles of law, which creates a sense of difficulty for the selection of forum and application of laws.

While US has played an important role in evolution of jurisdictional aspect in cyberspace, by dividing websites into various categories, India, on the other hand, still depend on traditional principles of Civil Procedure Code and other laws in order to deal with the jurisdictional issues. In this regard, Judiciary has played an important role in interpreting these traditional provisions as per the required situation and setting down rules as guiding principles for the future judgments, as observed in *Banyan Tree* case. Although these judgments were given in

⁴¹ Ibid

⁴² AIR 1966 SC 543

⁴³ Ibid

the light of prevailing circumstances, the same were criticized by various experts.⁴⁴

However, the active role of judiciary cannot be condemned as without these interpretations, justice could not have been achieved with the existing legal framework. For ex. in *WWE* case, court highlighted the expeditious nature of online transaction, and specified how the existing provisions need to be interpreted in the light of these factors, in order to protect the rights of the parties.

One of the essential requirements in current cyberspace is piece of codified legislation, in order to restrict different interpretations by judiciary towards a particular direction, to reduce the possibility of clashes between judgments. Currently, the main legislation dealing with E-commerce is IT Act, 2000 and amendment of 2008, and it can be observed that the same does not provide any specific provisions regarding jurisdiction.

Without any specific legislation, in many cases, interpretations are made by the court which are derogatory to the rights of the victim, as seen in the case of *Baba Ramdev and Anr. v. Facebook Inc.*⁴⁵, in which the court held that it has no jurisdiction over the content which is uploaded from outside India.⁴⁶

⁴⁴ Radhika Parthasarathy, The curious case of personal jurisdiction for cyber-based transnational transactions in India: Does one size fit all? , <https://conflictoflaws.net/2020/the-curious-case-of-personal-jurisdiction-for-cyber-based-transnational-transactions-in-india-does-one-size-fit-all/> (last visited 1 Feb 2021)

⁴⁵ CS (OS) 27/2019

⁴⁶ Ibid

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