

UNIT -6

INDIAN CONTEXT OF JURISDICTION

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6.1 INTRODUCTION

The term jurisdiction refers to the court's authority to hear a particular dispute. The determinants of jurisdiction are generally territory and subject matter. However these traditional jurisdictional factors do not fit into the cyberspace scenario because the limits of cyberspace are not determined by any physical boundary. The developing law of jurisdiction must address whether a particular event in cyber space is controlled by the laws of the state or country where the website is located, by the laws of the state or country where the internet service provider is located, by the laws of the state or country where the user is located, or perhaps by all of these laws.

'Jurisdiction' is the concept where by in any legal system, the power to hear or determine a case is vested in an appropriate court. The system of 'Courts of Law' needs to be understood to understand the principle of jurisdiction. Statutes create the institutions of Courts, which clothes them with appropriate power and jurisdiction. The Courts adjudicate and administer justice based on such powers conferred on them.

In Indian context, the Constitution has provided for the creation of Supreme Court-the apex court for the country and a High Court in each State. Such institutions are conferred with original and appellate jurisdiction to adjudicate on any issue arising between citizen and the State, State and other States or between a State and the Union. The Courts are structured as civil and criminal on the basis of Jurisdiction, territory and monetary parameters. The Criminal Procedure Code provides for the creation of the Magistrate Courts- First Class, Second Class- above them Sessions Court in the district level. These courts have specific powers of punishment. These courts are subordinate to the High court of the State. The State Laws and Civil Procedure Code or Criminal Procedure Code will determine the setting up of the subordinate courts.

6.2 OBJECTIVES

After reading this unit you will be able to understand the following:

- Structure of judicial system in India
- Jurisdiction of various Courts in India
- Jurisdiction of Civil courts in India
- Jurisdiction of Criminal courts in India
- Criteria of accepting foreign judgment
- the jurisdiction of the Indian Courts over Foreign residents or citizens
- provision regarding Execution of decrees outside India
- Jurisdiction and Information Technology Act, 2000

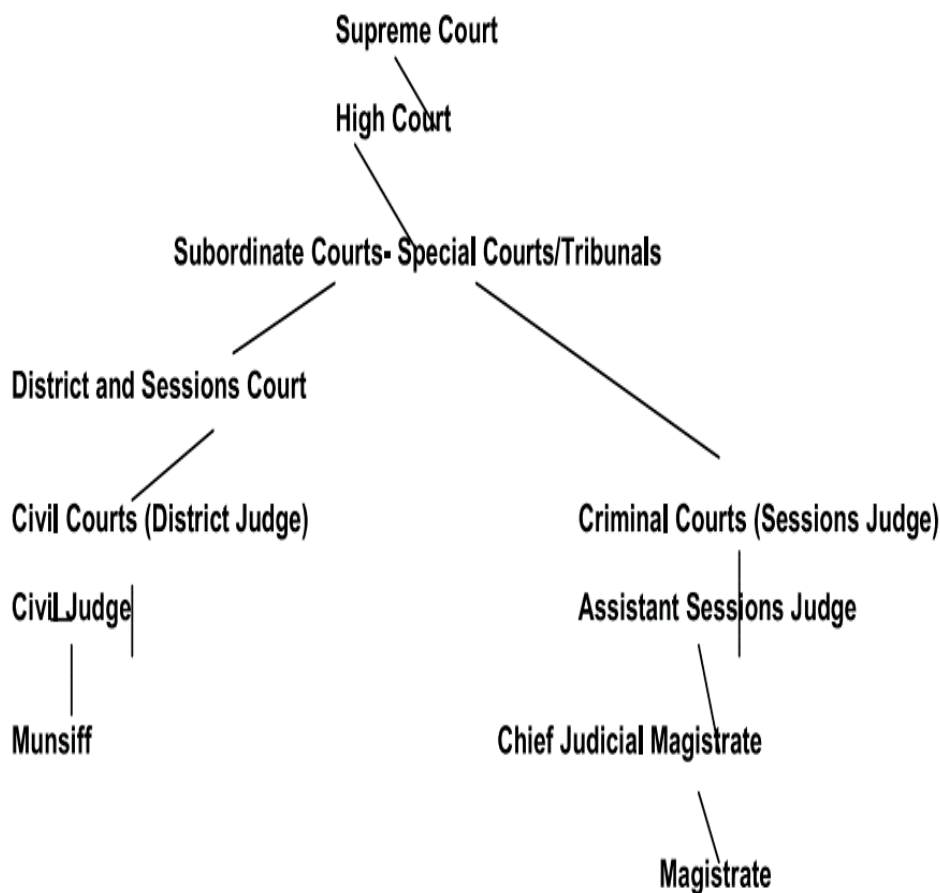
6.3 SUBJECT

6.3.1 STRUCTURE OF JUDICIAL SYSTEM IN INDIA

The Supreme Court is the apex court in India. Each state has its High Court. These are conferred with original and appellate jurisdiction to adjudicate on any issue arising between citizen and the State, State and other States or between a State and the Union. On the basis of Jurisdiction, territory and monetary parameters the Courts are structured as civil and criminal. The Criminal Procedure Code provides for the creation of the Magistrate Courts- First Class, Second Class- above them Sessions Court in the district level. These courts are subordinate to the High court of the State.

On the Civil side, the Civil Procedure Code will provide for the creation Court, the Sub-Divisional Court, and the District Court. Here again the pecuniary and territorial jurisdiction will vary based on the hierarchy of the courts.

Figure1. Structure of Indian Judicial system



Apart from these civil and criminal court set up there can be special courts for specific categories of adjudication like the Sales Tax Tribunals, Central Administrative Tribunal, State Administrative Tribunal, Motor Vehicles Compensation Tribunal and like others. The High Courts and Supreme Courts have civil, criminal and writ jurisdiction. The President with the advice of the council of ministers makes the appointments to the higher judiciary.

In this system the Civil Procedure Code determines the jurisdiction of the various court

structures based on the nature of the claim, value of the subject matter and the territorial limits where the dispute arose. Such jurisdiction is clearly spelled out by specific laws and also expressly prohibits jurisdictions by specific laws. One such example is that of the Income Tax Tribunal are the only forums to decide about the disputes of income tax and hence special jurisdiction in that regard. The High Court of the State assumes jurisdiction over the entire State and the hierarchy of courts like the District Sessions Court in criminal side and the Civil Courts -District Judge on the civil side and the lower courts of Munsiff and Chief Judicial magistrate in respective civil and criminal sides will exercise jurisdiction based on the territories. The Courts also exercise jurisdiction based on the value of the suit decided by the Suits Valuation Act.

On the special courts or the tribunals, there could be formation new tribunals where the pending cases in the regular courts will be transferred if they are found fit to be adjudicated under the tribunal. These tribunals have judges and also subject specialists designated as ‘judges’ and are not bound by the procedures and technical requirements of the regular courts. On the criminal side, the jurisdiction operates on the basis of the authority and territorial demarcation conferred on the various courts by the Criminal Procedure Code. Certain judgments like the death penalty have to be confirmed by the High Court if passed by the session’s court.¹

6.3.2 JURISDICTION OF VARIOUS COURTS IN INDIA

In Indian context, the jurisdiction issue is uniform as the statutes are enacted for the entire country and for all states. With the advent of the internet and the transmission of information and transacting of business across borders, a host of issues have cropped up on the legal front. The traditional approach to jurisdiction invites a court to ask whether it has the territorial, pecuniary, or subject matter jurisdiction to entertain the case brought before it. With the internet, the question of ‘territorial’ jurisdiction gets complicated largely on account of the fact that the internet is borderless.

6.3.2.1 JURISDICTION OF CIVIL COURTS IN INDIA

(1) Pecuniary jurisdiction: It limits the power of the court to hear cases up to a pecuniary limit only. As Section 15 provides "nothing herein contained shall operate to give any Court jurisdiction over suits the amount or value of the subject matter of which exceeds the pecuniary limits of its ordinary jurisdiction."

(2) Subject matter jurisdiction: Sections 16 to 18 deal with suits relating to immovable property. Clauses (a) to (e) of section-16 deal with the following five kinds of suits, viz;

(a) suits for recovery of immovable property;

(b) suits for partition of immovable property;

¹www.nalsarpro.org/CL/Modules/Module%201/Chapter2.pdf · PDF file

(c) suits for foreclosure, sale or redemption in case of mortgage of or charge upon immovable property;

(d) suits for determination of any other right to or interest in immovable property;

(e) Suits for torts to immovable property.

If the property is situated within the jurisdiction of more than one court. Section 17 of the Code provides for this contingency. It says that where a suit is to obtain a relief respecting, or damage for torts to, immovable property situated within the jurisdiction of different courts, the suit can be filed in the court within the local limits of whose jurisdiction any portion of the property is situated provided that the suit is within the pecuniary jurisdiction of such court. This provision is intended for the benefit of suitors and to prevent multiplicity of suits.

A case may, however, arise where it is not possible to say with certainty that the property is situating within the jurisdiction of the one or the other of several courts. In such a case, one of these courts, if it is satisfied that there is such uncertainty, may after recording a statement to that effect proceed to entertain and dispose of the suit.

Section 19 of CPC states "Where a suit is for compensation for wrong done to the person or to movable property, if the wrong was done within the local limits of the jurisdiction of one court and the defendant resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of another court, the suit may be instituted at the option of the plaintiff in either of the said courts."

Section-20 of CPC states "every suit shall be instituted in a court within the local limits of whose jurisdiction-

(a) the defendant, or each of the defendants where there are more than one, at the time of commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, as aforesaid acquiesce in such institution; or

(c) the cause of action, wholly or in part arise.

Explanation-I. A corporation shall be deemed to carry on business at its sole or principal office in India or, in respect of any cause arising at any place where it has subordinate office, at such place.

In interpreting the above three components of the section, the first and second components are much clearer and in case of the Internet specially, the third component of the 'cause of action' needs to be analysed. A cause of action whether wholly or partly will determine the validity of the suit under section 20 (c) of the Code of Civil Procedure. If interpreted the following points will emerge:

1. Cause of action as a complete bundle of material facts for the plaintiff to institute a suit and failure to produce such facts will fail the case of the plaintiff.
2. Cause of action will constitute even the smallest fact constituting such an action and not necessarily any defined portion of the cause of action
3. Cause of action will constitute the facts and circumstances of each case.
4. Cause of action if arises partially in different places, the plaintiff is vested with the choice to initiate and claim for jurisdiction
5. Cause of action based on the principle of some part of it arising in India will lead to the jurisdiction of Indian Courts over a non-resident foreigner.

The decision of the Apex Court in the case of Oil and Natural Gas Commission V. Utpal Kumar Basu and others help us to find a better answer of aforesaid plea in relation to cause of action. It was a case where the petitioner learnt about tenders being invited for a particular project at Hazira in Gujarat from advertisements appearing in the Times of India in circulation in West Bengal, by reading it at Calcutta, submitted its offer from Calcutta, made representations and also sent fax messages from Calcutta and received reply thereto at Calcutta. A writ petition was filed before the Calcutta High Court on the plea of part of cause of action having arisen at Calcutta. In view of the aforesaid facts, holding lack of jurisdiction on the part of Calcutta High Court, which it had assumed by passing impugned order, while allowing the appeal, the Supreme Court laid down in the following terms; '... merely because it read the advertisement at Calcutta and submitted the offer from Calcutta and made representations from Calcutta would not in our opinion, constitute facts forming an integral part of the cause of action. So also the mere fact that it sent fax messages from Calcutta and received a reply thereto at Calcutta would not constitute an integral part of the cause of action.' Where the cause of action arises from contract, and the parties have not effectively selected the governing substantive law, the relevant criteria in choice-of-law analysis are (1) the place of contracting, (2) the place of negotiation of the contract, (3) the place of performance, (4) the location of the subject matter of the contract and (5) the location of the parties.

6.3.2.2 CRITERIA OF ACCEPTING FOREIGN JUDGMENT

As discussed earlier the jurisdiction of Civil Courts in India is based on pecuniary, subject matter and territorial aspects where the pecuniary aspect is based on the valuation of the dispute in terms of money, subject matter deals with specified disputes allocated to specified courts and territorial aspect is based on the 'residence' and 'cause of action' but again subject to the pecuniary and subject matter parameters of the dispute to be adjudicated. In this context due to the unitary and uniform structure of laws throughout the country one can easily dismiss the complexity of Internet Jurisdiction issues as it is dealt in United States. However, Internet being a global phenomenon the jurisdiction issues of those who reside outside India and vice versa of those who reside in India will assume importance in case of adjudication and

effectiveness of the same.²

A foreign judgment is not conclusive in certain circumstances in India. In this context section 13 of Civil Procedure Code (CPC) deals on foreign judgments in following way-

A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title except-

- a. Where it has been pronounced by a court of competent jurisdiction;
- b. Where it has been given on the merits of the case;
- c. Where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognize the law of India in cases in which such law is applicable;
- d. Where proceedings in which the judgment was obtained are opposed to the natural justice;
- e. Where it has been obtained by fraud;
- f. Where it sustains a claim founded on a breach of any law in force in India.

By these provisions it is implied that foreign judgments are binding if the above exceptions are taken care in the adjudication. Here again any explicit acceptance of the jurisdiction of any foreign court by an Indian citizen or a corporation is bound by that as the individual or corporation has taken.

The aforesaid clauses from (a) to (f) underlines under what conditions a foreign judgment shall be taken as conclusive. It was observed by the Supreme Court in *Smita Conductors Ltd. V. Euro Alloys Ltd.* that a foreign award cannot be recognized or enforced if it is contrary to (1) fundamental policy of Indian law; or (2) the interest of India; or (3) justice or morality.

It is obligatory to know that provisions as contained in section 13 and section 14, CPC would apply when a suit is brought on a foreign award. Under section 14, CPC "the Court shall presume, upon the production of any document purporting to be a certified copy of a foreign judgment, that such judgment was pronounced by a court of competent jurisdiction, unless the contrary appears on the record; but such presumption may be displaced by proving want of jurisdiction. " Also, under section 44A of CPC, there is a provision for execution of decrees passed by courts in reciprocating territory.

6.3.2.3 JURISDICTION BY CONSENT

If the contracting parties consent specifically to have a jurisdiction of a particular country, it

²www.nalsarpro.org/CL/Modules/Module%201/Chapter2.pdf · PDF file

would be binding on the parties and cannot later turn the argument that the court has no jurisdiction on general grounds. Connected to this is the general principle that the court cannot pass an ex- parte decree against a party who did not appear or contest in such litigation. This often leads to the notion that mere non-appearance will allow the defendant to get away with the proceedings. But there are various instances where Indian Courts have interpreted section 13(d) of CPC to uphold natural justice and thus mere procedural loopholes cannot be taken as excuse for violation of substantial aspects of natural justice to let the offender to get away and has enforced jurisdiction in such cases.

Added to this section 13 of CPC states that a judgment of a foreign court is in violation of the Indian Law it cannot be sustained, in substance it can be stated that any judgment of the foreign court on an Indian citizen if it satisfies section 13 of the CPC can be upheld in Indian Courts. Such analysis leads to the conclusion that any legal transaction carried out in Internet has the potential of litigation in the country where such services are provided and are subject to the legal regime of such country. It can take effect in Indian jurisdiction as long as they meet the requirements stipulated in section 13 of the CPC.

On the flip side, of the jurisdiction of the Indian Courts over Foreign residents or citizens again, can be dealt under the section 19 of the CPC. It is understood that in cyber transactions the damage or injury is caused to the movable property. Here under section 19 of CPC, allows for filing a suit for the compensation of the wrong done to the person or to the movable property. Such a suit is instituted either at the place of residence or the place of business activity of the defendant or at the place of the wrong committed. The specific clause of such suit and its jurisdictions is spelled out in section 20 of CPC.

Further to the above provisions such executions of decrees outside India assumes importance and the following sections have to be borne in mind:

Section 45. Execution of decrees outside India. - So much of the foregoing sections of this Part as empowers a court to send a decree for execution to another Court shall be construed as empowering a Court in any State to send a decree for execution to any Court established by authority of the Central Government outside India to which the State Government has by notification in the Official Gazette declared this Section to apply.

Section 44A. Execution of decrees passed by Courts in reciprocating territories. -

- (1) Where a certified copy of a decree of any of the superior Courts of any reciprocating territory has been filed in a District Court, the decree may be executed in India as it had been passed by the District Court.
- (2) Together with the certified copy of the decree shall be filed a certificate from such superior Court stating the extent, if any, to which the decree has been satisfied or adjusted and such certificate shall, for the purposes of proceedings under this section, be conclusive proof of the extent of such satisfaction or adjustment.
- (3) The provisions of s 47 shall as from the filing of the certified copy of the decree apply to the proceedings of a District Court shall refuse execution of any such decree, if it is

shown to the satisfaction of the Court that the decree falls within any of the exceptions specified in clauses (a) to (f) of s 13.

Explanation 1. - 'Reciprocating Territory' means any country or territory outside India which the Central Government may by notification in the Official Gazette, declare to be a reciprocating territory for the purpose of this section; and 'Superior Courts' with reference to any such territory, means such courts as may be specified in the said notification.

Explanation 2. - 'Decree' with reference to a superior Court means any decree or judgment of such Court under which a sum of money is payable, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty, but shall in no case include an arbitration award, even if such an award is enforceable as a decree or judgment.

6.3.2.4 JURISDICTION OF CRIMINAL COURTS IN INDIA

On the criminal side of jurisdiction the following sections are pertinent to analyse the implications of cyber-crimes, which will be dealt in detail in the fourth module. The important sections to be kept in mind at this stage are:

1 .Section 177 of Criminal Procedure Code: Ordinary place of inquiry and trial-

Every offence shall ordinarily be inquired into and tried by a court whose local jurisdiction it was committed.

Section 178 of Criminal Procedure Code: Place of Inquiry or trial:

- (a) When it is uncertain in which of several local areas an offence is committed, or
- (b) Where an offence is committed partly in one local area and partly in another, or
- (c) Where an offence is a continuing one, and continues to be committed in more local areas than one, or
- (d) Where it consists of several acts done in several different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas.

2. Section 179 of Criminal Procedure Code: Offence triable where act is done or consequence ensues. - When an act is done by reason of anything, which has been done, and of a consequence, which has ensued, the offence may be inquired into and tried by a court within whose local jurisdiction, such thing has been done or such consequence has ensued.

3. Section 182. -Offence committed by letters. - (1) Any offence which includes cheating may, if the deception is practiced by means of letters or telecommunication messages, be inquired into or tried by any Court within whose local jurisdiction such letters or messages were sent or were received: and any offence of cheating and dishonestly inducing delivery of property may be inquired into or tried by a Court within whose local jurisdiction the property was delivered by the person deceived or was received by the accused person.

6.3.3 JURISDICTION AND INFORMATION TECHNOLOGY ACT, 2000

Section 13 of IT Act of 2000 is of relevance on the jurisdiction of the Internet or cyberspace.

The sub-sections (3) (4) and (5) deal with the cause of action clause, which is of significance in Internet transactions to determine the jurisdiction.

Section 13 (3)- Save as otherwise agreed to between the originator and the addressee, an electronic record is deemed to be dispatched at the place where the originator has his place of business, and is deemed to be received at the place where the addressee has his place of business.

Section 13 (4) -The provisions of sub-section (2) shall apply notwithstanding that the place where the computer resource is located may be different from the place where the electronic record is deemed to have been received under the sub-section (3)

Section 13 (5)- For the purposes of this section: -

(a) If the originator or the addressee has more than one place of business, the principal place of business shall be the place of business;

(b) If the originator or the addressee does not have a place of business, his usual place of residence shall be deemed to be the place of business;

(c) "Usual place of residence" in relation to a body corporate, means the place where it is registered."

Interpreting these clauses it is abundantly clear that it is not mere jurisdiction the issue the effect of such jurisdiction and enforcing the decrees needs reciprocal arrangements. Apart from this on the issue of arbitration in Internet, the Foreign Awards (Recognition and Enforcement) Act of 1961 based on the New York Convention of 1958, by India allows arbitration and recognition of foreign awards.

One of the interesting provisions of S. 75 of IT Act-2000 which contemplates for offences or contraventions committed outside India. According to this Section, 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. Though India is not one of the signatories to the cybercrime convention, but it has adopted principle of universal jurisdiction to cover both the cyber contraventions and cyber offences under the Act. It has been argued that from the point of view of application, it would be extremely difficult to enforce the jurisdiction of Indian Courts on cyber criminals belonging to different nationalities. Moreover, the Extradition Treaties, which India has signed so far, do not cover 'cybercrime' as an extraditable offence. On the same footing S. 179 of Cr. P.C. defines, when an act is an offence by reason of anything which has been done and of a consequence which has ensued, if the thing has been done in one local area and the consequence has ensued in another local area. In this case, the consequence means only such consequence as is a necessary ingredient of the alleged offence. For instance, 'A' is wounded within the local jurisdiction of court 'X' and dies within the local jurisdiction of court 'Y'. The offence of culpable homicide committed against 'A' may be inquired into and tried by court 'X' or Court 'Y'. Section 179 contemplates a

situation wherein the accused has done an act, prescribed consequence has followed such act, and that the accused is being tried for the offence as result of both the act and the consequence.

6.3.4 CASE LAWS: POSITION IN INDIA

In India, there are a large number of cases where Courts have exercised jurisdiction over non-resident defendants. Recently, Justice Sanjay Kishan Kaul in a hotly contested matter on jurisdiction examined the entire conspectus of the law in different jurisdictions³. The case, *India TV (Independent News Service Ltd) Vs. India Broadcast Live LIC & Others* related to the domain name *Indiatvlive.com* registered and used by the defendants as a domain name for video streaming of Indian television channels. After the commencement of the action in the Delhi High Court, the defendants filed a 'Reverse Domain name Hijacking' action in Arizona against India TV. The court was concerned with two issues, viz, (a) Exercise of jurisdiction over the defendants located in the US, (b) Whether an injunction ought to be granted restraining the defendants from proceeding with the suit filed in the United States?

On this issue the Court followed the principles laid down in *Modi Entertainment Network* and another⁴. In the said case the Hon'ble Supreme Court of India had held as, 'The courts in India like the courts in England are courts of both law and equity. The Principles governing grant of injunction-an equitable relief- by a court will also govern grant of anti-suit injunction which is but a species of injunction. When a court restrains a party to a suit/proceeding before it from instituting or prosecuting a case in another court including a foreign court, it is called anti-suit injunction. It is a common ground that the courts in India have power to issue anti-suit injunction to a party over whom it has personal jurisdiction in an appropriate case. This is because courts of equity exercise jurisdiction *in personam*. However, having regard to the rule of comity, this power will be exercised sparingly because such an injunction though directed against a person, in effect causes interference in the exercise of jurisdiction by another court.'

In so far as the position in this country is concerned, there is no 'long arm' statute as such which deals with jurisdiction as regards non- resident defendants. Thus, it would have to be seen whether the defendant's activities have a sufficient connection with the forum state (India); whether the cause of action arises out of the defendant's activities within the forum and whether the exercise of jurisdiction would be reasonable. The above review also establishes the manner

³Judgment dated 10.7.07 in CS (OS) No. 102 of 2007;MANU/DE11703/2007

⁴*Modi Entertainment Network v. WSC Cricket Pvt Ltd (2003) (4) SCC 341; MANU/SCI0039/2003*

in which the judiciary in India is pro-active and even in the absence of clear statutory provisions, the attempt is to uniform the law and to strike the right balance rather than alienate India from the rest of the world.

The Internet operates in an environment which allows infringements to take place with no clear and convenient jurisdiction in which the right- holder can file suits. The challenge to the legal community posed by such an environment is currently being dealt with at the national and international level. There has been an ongoing effort to form new rules that would apply to the online environment. Some very interesting beginnings have been made in the area of adjudication through the internet itself. Domain name disputes are being settled by online arbitration under the Uniform Domain Name Disputes Resolution policy adopted on August 26, 1999 by The Internet Corporation for Assigned Names and Numbers (ICANN), which has been a through success. Moreover, the disputes pertaining to the same have also been successfully settled by its Alternative Disputes Resolution (ADR) service providers. The, Internet is a place where the infringer is neither domiciled nor has his place of business or property within national territory, the right holder has no choice but to enforce judgment obtained within national territory in a foreign country. At regional 'level, there are proceedings for recognition of foreign judgment, but they are sometimes rather tedious and time consuming. Consequently steps should be taken towards creating an international convention for the recognition of foreign judgments, applicable throughout the world. To protect the democratic rights of the citizens in the borderless world, the courts around the world are struggling to come up with a coherent doctrine of personal jurisdiction for the internet transactions. Though, the application of real world norms in the virtual society is well established, the virtual world should be subjected to a greater degree of control than the real world. However, the principles on which regulation of virtual society should be based necessarily differ from the principles of real world regulation.⁵

6.4 SUMMARY

The term jurisdiction refers to the court's authority to hear a particular dispute. 'Jurisdiction' is the concept where by in any legal system, the power to hear or determine a case is vested in an appropriate court. In Indian context, the Constitution has provided for the creation of Supreme Court-the apex court for the country and a High Court in each State. Such institutions are conferred with original and appellate jurisdiction to adjudicate on any issue arising between citizen and the State, State and other States or between a State and the Union. On the basis of Jurisdiction, territory and monetary parameters the Courts are structured as civil and criminal. The Criminal Procedure Code provides for the creation of the Magistrate Courts- First Class,

⁵Dr. Ravishankar K. Mor, Asst. Prof., Dept. of Law, Yeshwant Mahavidyalaya, Wardha, paper presented at National seminar on cyber law organized by Manikchand Pahade Law College, Aurangabad on 25th August 2013

Second Class- above them Sessions Court in the district level. On the Civil side, the Civil Procedure Code will provide for the creation of Munsiffs Court, the Sub-Divisional Court, and the District Court. Here again the pecuniary and territorial jurisdiction will vary based on the hierarchy of the courts. Apart from these civil and criminal court set up there can be special courts for specific categories of adjudication like the Sales Tax Tribunals, Central Administrative Tribunal, State Administrative Tribunal, Motor Vehicles Compensation Tribunal and like others.

In Indian context, the jurisdiction issue is uniform as the statutes are enacted for the entire country and for all states. The traditional approach to jurisdiction invites a court to ask whether it has the territorial, pecuniary, or subject matter jurisdiction to entertain the case brought before it. With the internet, the question of 'territorial' jurisdiction gets complicated largely on account of the fact that the internet is borderless.

Sections 16 to 18 deal with suits relating to immovable property. If the property is situated within the jurisdiction of more than one court. Section 17 of the Code provides for this contingency. Section 19 of CPC states "Where a suit is for compensation for wrong done to the person or to movable property, if the wrong was done within the local limits of the jurisdiction of one court and the defendant resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of another court, the suit may be instituted at the option of the plaintiff in either of the said courts."

Section-20 of CPC states "every suit shall be instituted in a court within the local limits of whose jurisdiction-

- (a) the defendant, or each of the defendants where there are more than one, at the time of commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or
- (b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, as aforesaid acquiesces in such institution; or
- (c) the cause of action, wholly or in part arises.

In interpreting the above three components of the section, the first and second components are much clearer and in case of the Internet specially, the third component of the 'cause of action' needs to be analysed. A cause of action whether wholly or partly will determine the validity of the suit under section 20 (c) of the Code of Civil Procedure. In this context due to the unitary and uniform structure of laws throughout the country one can easily dismiss the complexity of Internet Jurisdiction issues as it is dealt in United States. A foreign judgment is not conclusive in certain circumstances in India. In this context section 13 of Civil Procedure Code (CPC) deals on foreign judgments.

On the flip side, of the jurisdiction of the Indian Courts over Foreign residents or citizens again, can be dealt under the section 19 of the CPC. It is understood that in cyber transactions the damage or injury is caused to the movable property. Section 45 deals with Execution of decrees

outside India. Section 44A deals with Execution of decrees passed by Courts in reciprocating territories. 'Reciprocating Territory' means any country or territory outside India which the Central Government may by notification in the Official Gazette, declare to be a reciprocating territory for the purpose of this section; and 'Superior Courts' with reference to any such territory, means such courts as may be specified in the said notification.

On the criminal side of jurisdiction the following sections are pertinent to analyse the implications of cyber-crimes, which will be dealt in detail in the fourth module.

1. Section 177
2. Section 178
3. Section 179
4. Section 182. -Offence committed by letters.

Section 13 of IT Act of 2000 is of relevance on the jurisdiction of the Internet or cyberspace. The sub-sections (3) (4) and (5) deal with the cause of action clause, which is of significance in Internet transactions to determine the jurisdiction.

One of the interesting provisions of S. 75 of IT Act-2000 which contemplates for offences or contraventions committed outside India. Though India is not one of the signatories to the cybercrime convention, but it has adopted principle of universal jurisdiction to cover both the cyber contraventions and cyber offences under the Act.

In India, there are a large number of cases where Courts have exercised jurisdiction over non-resident defendants. In so far as the position in this country is concerned, there is no 'long arm' statute as such which deals with jurisdiction as regards non-resident defendants. The Internet operates in an environment which allows infringements to take place with no clear and convenient jurisdiction in which the right- holder can file suits. The challenge to the legal community posed by such an environment is currently being dealt with at the national and international level. There has been an ongoing effort to form new rules that would apply to the online environment. Though, the application of real world norms in the virtual society is well established, the virtual world should be subjected to a greater degree of control than the real world. However, the principles on which regulation of virtual society should be based necessarily differ from the principles of real world regulation.

6.5 GLOSSARY

1. *IN PERSONAM*- *In personam* is a Latin phrase that literally means "against the person" or "directed toward a particular person."

6.6 SAQS

1. TICK THE CORRECT ANSWER:

- (i) The Supreme Court has original jurisdiction on:

- (a) between one State and other State
 - (b) between one State and other States
 - (c) between a State and the Union
 - (d) all of above
- (ii) Which of the following court/courts are subordinate to the High court of the State:
- (a) Session court
 - (b) Magistrate court
 - (c) Civil court
 - (d) All of above
- (iii) The High Courts and Supreme Courts have:
- (a) Only civil jurisdiction
 - (b) Only criminal jurisdiction
 - (c) Only writ jurisdiction
 - (d) All of above
- (iv) In Indian context, the statutes are enacted for the entire country and for all states. It is known as:
- (a) Uniform jurisdiction
 - (b) Varied jurisdiction
 - (c) Both (a) and (b)
 - (d) None of above
- (v) If the property is situated within the jurisdiction of more than one court. The following section deals with condition:
- (a) Section 13
 - (b) Section 15
 - (c) Section 20
 - (d) Section 17

2. True and False statement:

- (i) Civil Procedure Code determines the jurisdiction of the various court structures based on the nature of the claim, value of the subject matter and the territorial limits where the dispute arose. True/False

- (ii) Under Pecuniary jurisdiction the power of the court to hear cases up to a pecuniary limit only. True/False
- (iii) Section 13 of IT Act of 2000 is of relevance on the jurisdiction of the Internet or cyberspace. True/False
- (iv) Section 45 deals with Execution of decrees outside India. True/False
- (v) There are sufficient law deals with cyber-crime in India. True/False

6.10 Suggested reading/reference material

1. http://www.academia.edu/4632726/Cyberspace_jurisdiction_and_Courts_in_India
2. <http://www.mttl.org/volfour/menthe.pdf>
3. www.nalsarpro.org/CL/Modules/Module%201/Chapter2.pdf · PDF file
4. Information Technology Act, 2000
5. Indian Penal Code
5. Civil procedure code
6. Gupta & Agarwal, Cyber Law; Ist edition, Premiere Publishing Company

6.11 Terminal questions

1. Explain the jurisdiction of apex court of India.
2. Enumerate the structure of judicial system in India.
3. Write the short note on the following:
 - (a) Jurisdiction of Civil courts in India
 - (b) Jurisdiction of Criminal courts in India
 - (c) Jurisdiction and Information Technology Act, 2000

6.10 ANSWER

SAQS

1. (i) (d); (ii) (d); (iii) (d); (iv) (a); (v) (d);
2. (i) True; (ii) True; (iii) True; (iv) True; (v) False;