



**DETERMINATION OF JURISDICITON
IN CYBERSPACE ISSUES –
EVOLUTION AND PRESENT TREND
IN INDIA**

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ABSTRACT

Determination of jurisdiction, especially in cyberspace issues is important issue to be pondered upon and decided so that the forum court having jurisdiction can be looked onto for justice. There has been a lot of confusion with regard to question of jurisdiction in cyberspace as the cyberspace is borderless and covers the entire world. Various tests have been devised over the course of time to determine jurisdiction in cyberspace. An analysis as to which test fares better is an objective of this research paper.

This research paper aims to highlight the various tests that have evolved with the advent of time in the courts to determine personal jurisdiction of court in forum state, starting with the evolution in the courts of US and how they have been opted in India. The research paper discusses at length about the aspects of the various tests and an analysis is drawn out and their efficiency has also been put to test. It also highlights the drawbacks/ de-merits of the tests enunciated over time.

The research paper focusses not only on the various tests but also on the present trend that is being followed by the courts in India and also discusses recent judgement that has put to rest the uncertainty with regard to the test that has to be opted by the courts when trying to assert jurisdiction. At the end, the research

paper also highlights the need of time and the solution that can be opted in this regard.

There is a need to have a certain specific law to determine jurisdiction in matters arising out of cyberspace. At present there is no particular specific law available in India, and the courts have to look into the provisions of CPC and CrPC while asserting jurisdiction. Technological advancements are taking place on a daily basis which would mean that disputes are going to get more and more complex and the tests that have been devised are going to fail soon.

INTRODUCTION

In the past few decades, the immense impact of information technology being a transnational character has become a drastic threat to the administration of justice. On this aspect, a fundamental question arises as to what will be the jurisdiction of the courts to adjudicate disputes between the parties transacting on the Internet. A widely recognized view that is gaining ground realities is that the existing law of jurisdiction is redundant to the cyber space and requires a complete overhaul with different set of rules to govern jurisdiction over the internet, which is free from the shackles of geographical boundaries.

Computer based communications happen across geographical borders creating a new medium for the human interaction/ activity which in turn weakens the feasibility of applying laws based on geographical boundaries on these communications/ interactions. The cyberspace needs law of its own because cyberspace is borderless and is not based on any territorial jurisdictions. The issue of jurisdiction has come to forefront with the advent of internet, for internet is not



bound by geographical boundaries.¹ For example, a single transaction may in itself include three boundaries: the law at the place where user resides, law governing the nation where server hosting transaction is located, law applicable to nation where the person or business with whom transaction takes place.

There is no uniform international/ state law governing the application of law on internet or cyberspace. The courts by their judicial decisions have devised various tests to determine jurisdiction, in cases of dispute in transactions/ communication on internet, over the course of time.² At first, the courts will apply to the forum all procedural laws, and then factors linking the issue to the laws of forum state. The tests evolved till date are not free from subjectivity and lack in one area or the other.

The law relating to determination of jurisdiction in domestic as well as international transaction over the internet has developed in the USA. Before deciding a case, the courts have to determine whether they have personal jurisdiction to adjudicate upon that matter or not.³ The power to adjudicate upon a matter, a pre-requisite to jurisdiction, is the question in issue which has to be determined by applying one of the various tests evolved. These tests are very important to understand in order to delve into the various approaches used by courts to determine jurisdiction in India.

Indian courts do not have own tests to determine jurisdiction and have followed that have evolved in the USA. Indian courts have focused on the target based approach test, though different circumstances may require application of different test.

VARIOUS TESTS TO DETERMINE JURISDICTION

1. Long Arm Statute
2. Minimum Contacts Test
3. The Effects Test
4. Zippo Sliding Scale Test
5. Target Based Approach Test

LONG ARM STATUTE

A statute can be extended in its territorial application to even apply to persons resident outside the jurisdiction of that particular act. In order to have application of this long arm jurisdiction, there must be territorial and reasonable nexus with applicability of law. Long arm statute is used to bring in within its jurisdiction a permanent establishment which carries on business in another jurisdiction. Long arm statute sets out the basic guidelines for exercise of court's power to govern conduct by non-citizens. Long-arm statutes differ from region to region and from nation to nation. For establishing personal jurisdiction in a forum state, a person who is not resident there must fit not only under the ambit of the state's long-arm statute, but jurisdiction of the forum state must also be valid.⁴

The first and foremost step of the forum court is to apply long arm statute, if any, to see if it

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<<https://nsuworks.nova.edu/cgi/viewcontent.cgi?article=1301&context=ilsajournal/>>

² Rossenblatt, Betsy. "Principles of Jurisdiction" <<https://cyber.harvard.edu/property99/domain/Betsy.html>> Accessed 3 May 2020

³ Id.

⁴ Rossenblatt, Betsy. "Principles of Jurisdiction" <<https://cyber.harvard.edu/property99/domain/Betsy.html>> Accessed 3 May 2020



permits exercise of personal jurisdiction. This gives rise to a conflict that states may have concurrent jurisdiction by virtue of their respective long arm statute. The application of long arm statute to jurisdiction issues arising out of the internet transactions/communications is quite speculative, but this has given way to the evolution of various tests to determine personal jurisdiction in matters relating to internet.

It is an extension of application of an act of a country to non-residents/ residents which has caused sufferance/ impact on the forum state, such as offence committed outside forum state, or offence committed in the forum state. It is generally and primarily used in offline transactions. All the other tests are based in this tests as they follow the principle of reasonable territorial nexus. It is the foundational principle governing personal jurisdiction as it sets out the importance of territorial nexus.

Section 75 of the Information Technology Act, 2000 read with Section 1(2) of the said act is an example of long arm statute which provides that the provisions of the act shall apply for offences or contravention committed outside India. This extends the applicability of the act as provided under Section 1(2), save as otherwise provided, to any offence or contravention thereunder that is committed outside India by any person, irrespective of the nationality, domicile, status, etc.⁵

⁵ Information Technology Act, S. 75
<<https://indiankanon.org/doc/576992/>>

⁶ 326 U.S. 340 (1945)

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<<https://www.everycrsreport.com/reports/R44957.html>>

MINIMUM CONTACTS TEST

This test was evolved in the case of *International Shoe Co. v. Washington*,⁶ wherein determination of jurisdiction of forum state court over a defendant who does not reside or carry business within its jurisdiction was dealt with. In this instant case, the business was carried out in Washington through salesman by a company registered in Delaware. Washington enacted a legislation imposing compulsory tax in nature of contribution to Unemployment Compensation Fund on the companies operating there. The company refused to pay tax on ground that it did not have a Permanent Establishment there. The court concluded that the court of Washington had jurisdiction on account of minimum contact established.

It was held that in such cases, in order to invoke the jurisdiction of the forum state court, the plaintiff in order to invoke jurisdiction has to establish before the court that the defendant has sufficient 'minimum contacts' with the forum state.⁷ In other words, the defendant must have purposefully availed the privilege of conducting activities or concluding commercial transactions in the forum state or must have purposefully directed its business activities in the forum state.⁸

The minimum contacts test as laid down in the case of *International Shoe Co. v. Washington* can be understood in a manner so as to perform two distinct functions. First of

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<<http://www.kentlaw.edu/cyberlaw/docs/rfc/usview.html>>



all, protection of the defendant from litigation in a far located and inconvenient forum. Secondly, to ensure that the states do not extend their jurisdiction than that is provided or prescribed. The minimum contacts test/purposeful availment test, has to establish the following essentials to satisfaction⁹:

- a. Purposeful availment of the privilege of transacting business in forum state
- b. Cause of action must have arisen in the forum state
- c. Reasonable nexus and fair exercise of jurisdiction

The applicability of this test is rather narrow and would apply to cases similar to that of *International Shoe* case, i.e. where business carried out in another jurisdiction through some intermediary such as salesman, and would not be applicable to cases involving remote torts or goods moved after purchase¹⁰, or internet defamation and non-commercial transactions. The minimum contacts test formed the basis or foundation for the other tests that evolved over a period of time, because it is an essential feature to be established while determining jurisdiction.

ZIPPO TEST

The Zippo Sliding Scale Test was formulated in the case of *Zippo Manufacturing Co. v. Zippo Dot Com, Inc.*¹¹. The plaintiff, a manufacturer of certain products, namely, Zippo Manufacturers, was registered in Pennsylvania. The defendant, “Zippo.com”, was provider of news service through internet registered in California. Trademark infringement along with dilution was claimed in the courts of Pennsylvania. The

jurisdiction was based on theory of specific personal jurisdiction as under Minimum Contacts Test. The Zippo Sliding Scale Test was evolved wherein 3 kinds of websites were recognised for determining jurisdiction, namely, Active (highly interactive), Mixed Interactive, and Passive websites. It was observed that only the websites which were interactive could be sued in another jurisdiction, while the passive websites could not be sued. This led to an issue where the passive websites could easily bypass the jurisdiction of forum court to entertain matters with respect to such websites.

Professor Michael Geist, a Canadian academician, has pin-pointed a few drawbacks in the Sliding scale test. The middle category of “partially interactive” websites is a controversial shady area that caters unpredictable results, and so the test has to undergo continuous changes in order to cope with the ever changing technology, and discouraging the development of websites which are interactive by nature. The category of interactive websites is so that it grants jurisdiction to a forum court solely on the basis of whether a website could affect the residents in the forum state, not taking into account whether it was actually done or not.¹²

The Sliding Scale test was welcomed by various courts as striking a balance between a lawless internet and a stringently regulated internet. The basic disadvantage of this test is that a passive website could not be expected to foresee being sued in multiple jurisdictions over the world, whereas an interactive one should expect such an outcome on account of the contact established.

⁹ *Cybersell, Inc. v. Cybersell, Inc.*, 130 F.3d 414 (9th Cir. 1997)

¹⁰ See *Calder v. Jones*, 465 U.S. 783 (1984)

¹¹ 952 F Supp 1119

¹² See Michael Geist, Long Arm of the Law Needs New Guidelines for the Internet.



After the Zippo test was devised, courts increasingly became reluctant to assert jurisdiction merely on the basis of website being accessible. Foreseeability was also factored in by the courts while determining the nature of website for the purpose of jurisdiction. This test is subjective and the same facts and pleadings may lead to two different courts due to subjective interpretation by the judges.

The courts have always faced an issue in determining the degree of interactivity of website that in order to establish personal jurisdiction. Website used for mere exchange of files or information with persons over the internet has been held not to be sufficiently 'interactive' for the purpose of forum court to assert jurisdiction.¹³ The Zippo test is static in nature, so is ineffective for technological advancements are happening on a daily basis. The Zippo test has become outdated and is rarely used.

EFFECTS TEST

The Minimum Contacts test was not applicable to all kinds of cases, and *supra* test, namely, effects test, was evolved in the case of *Calder v. Jones*¹⁴, as a response to the Minimum Contacts Test. It is particularly applied in cases which involves tort or defendant's website is either in nature passive or can be said to be only modestly active or not interactive under the Zippo test. The effects test highly depends on subjectivity. The defendant's intent to inflict

or cause injury within the jurisdiction of forum court is determined by the facts and circumstances of each and every case, along with the accessibility of the defendant's website in the forum state.

This test does not focus merely on the degree of interactivity between forum resident and non-forum defendant, but rather on the effects intentionally caused within the forum by a defendant's website located outside the forum state. This test is better in the sense that passive websites or less interactive websites cannot bypass this test unlike the Zippo Test.

In the *Calder* case, Florida residents wrote and edited an article in an American Newspaper called *National Enquirer* which defamed Jones, a movie actress resident in California. The *National Enquirer* had a wider circulation in the state of California. The Supreme Court held that the facts were such that they involved something more than foreseeability. The circumstances were sufficient to establish that such act by defendants was aimed at California and would have an impact in California, hence the defendants could have reasonably foreseen being sued in California.¹⁵

The category-specific rule would also promote freedom of expression on the Internet by permitting the posting of information on websites without automatically triggering out-of-state jurisdiction in a defamation suit.¹⁶

¹³ See *Desktop Technologies v. Colourworks Reproduction & Designs Inc.*, 1999 WL 98572 (E.D. Pa. 1999).

¹⁴ *Supra* note 6

¹⁵ Rice, Denis T. "An Assessment of the Effects Test in Determining Personal Jurisdiction in Cyberspace" *The Business Lawyer*, vol. 58 no. 2 (2003) pp. 607,

JSTOR, <<https://www.jstor.org/stable/40688135>>, Accessed May 2, 2020 at 9:32 am

¹⁶ "A Category-Specific Legislative Approach to the Internet Personal Jurisdiction Problem in U.S. Law" *Harvard Law Review*, Vol. 117, No. 5 (Mar., 2004), pp. 1635, The Harvard Law Review Association, <<https://www.jstor.org/stable/4093261>>, Accessed on May 02, 2020 at 10:00 am



This doctrine was applied in the *LICRA v. Yahoo!*¹⁷ Case. In the present case, some Nazi memorabilia was being offered for sale on a web page hosted by Yahoo! US through Yahoo France and accessible in France. Sale of such Memorabilia material in France was an offence punishable under the French law. A suit was filed in the courts of France, which ordered Yahoo! to take down such material/ access from the website of Yahoo! France. The French court used the approach of effects test to establish jurisdiction and asserted power to implement orders beyond France. It observed that by providing access in France to participate in the sale, defendant had committed a wrong within the forum state, France. The court also considered the effect such an access would have on the public at large in France and how they were targeted.¹⁸

In effects test, the focus is on the likelihood or knowledge of harm. The mere possibility of being accessed in France did not alone determine the question with regard to jurisdiction, but also the effect of such objectionable item on public at large in France was taken into account by the court while asserting jurisdiction over the matter. The effects test is subjective in nature just as the Zippo test, and the question pertaining to jurisdiction is decided on the basis of the set of facts presented before the court. The same set of facts might lead to altogether different conclusions and inferences. All the courts are not equally rigorous while deciding the issue of jurisdiction of forum court. It is generally used in the cases involving tort or where the

website of the defendant is passive or moderately interactive in nature.

TARGET BASED APPROACH

A stricter/ tighter approach based version of the effects test is targeting effects approach and is a more clearer and filtered approach to determine jurisdiction. With the advent of time, various tests such as Zippo Test have failed in one way or the other by providing a grey area for bypassing these tests. Since, the effect can be felt in several jurisdictions, it does not necessarily mean that courts in all such forum state will have jurisdiction. To meet present requirements, a target based approach in combination with effects test is used to determine and establish personal jurisdiction of the forum court.

In developing criterion for determination of whether a website has targeted the residents in forum state, it must be carefully ensured that it is technology neutral. Furthermore, the criterion must have no bias towards consumers or producer, in any manner whatsoever, while deciding whether a customer base located in the forum state has been specifically targeted by a website located outside.¹⁹ Targeting basically means effects within the territory of the forum state.

In order to establish the jurisdiction of the forum court, even when a long arm statute exists, the plaintiff would have to show that the defendant ‘purposefully availed’ of jurisdiction of the forum state by ‘specifically targeting’ customers within the forum state. According to Schultz, a middle path had to be

¹⁷ Tribunal de grande instance [T.G.I.] [ordinary court of original jurisdiction] Paris, May 22, 2000 and November 22, 2000, No RG:00/0538 (Fr.).

¹⁸ Muralidhar, S. “Jurisdictional Issues in Cyberspace.” Indian Journal of Law and Technology,

vol. 6, 2010, pp. 17, IJLT, <<http://ijlt.in/wordpress/wp-content/uploads/2015/08/1.pdf>> Accessed May 3, 2020 at 3:40 pm

¹⁹ Supra note 17 at 18



chosen between the too narrow ('subjective territoriality') and the too broad ('effects') jurisdictional bases for better managing transborder externalities.²⁰ This middle path was 'targeting.' Schultz defines targeting to mean "in essence that the activity must be intended to have effects within the territory of the state asserting jurisdiction."²¹

The law in India was quite uncertain until recently, when the Delhi High court put it to rest in the case of *Banyan Tree Holding Ltd. v. A. Murali Krishna Reddy*,²² wherein it was observed that a passive website with no intention of targeting audience outside the state where it is located cannot be subjected to jurisdiction of the forum court. The court overruled *Casio India Co. Ltd. v. Ashita Tele Systems Pvt. Ltd.*²³ case, and affirmed the *India TV Independent News Service Pvt. Ltd. v. India Broadcast Live and Ors.*²⁴ decision, and also held that it to be a step closer to determining jurisdiction. The court in *India TV* did not have the occasion to look into the finer aspects of jurisdiction based on nature of website and intention of host website to specifically target viewers outside its jurisdiction, and the effect thereon.²⁵

In the *Casio Ltd.* decision, the plaintiff was the fully owned subsidiary of Casio Japan which owned the trademark "Casio" with regard to products in India and the defendant had got domain names deceptively similar to the brand, Casio in its name. The court concluded that wherever the websites were accessible, the courts could assert jurisdiction

at that place, and actual deception in a passing off action need not be shown and a likelihood of same would suffice. In *India Tv* decision, the courts opted for a newer approach. The plaintiff was a news channel, India Tv, which had got the trademark for same in 2002 and had a domain name 'www.indiatv.com' The defendants residing in Arizona hosted a website by the name of 'www.indiatvlive.com' which was deceptively similar to that of plaintiff and a passing off action was brought against them in Delhi. While determining the issue of jurisdiction, the courts held that to assert jurisdiction, it has be established that the defendant had purposefully availed the jurisdiction of Delhi, and whether there existed sufficient connection and if it would be reasonable, in the absence of any long arm statute. Only when sufficient connection was shown the court held that the audience in India was targeted and had effect on them.

The present case was filed in Delhi, and neither parties were located within its territorial jurisdiction. The plaintiff, Banyan Tree Holding, was a company located and registered in Singapore, involved in the hospitality business. It was contended that the words 'Banyan Tree' had been used by them since 1994, and that they also maintained 'www.banyantree.com' and 'www.banyantreespa.com' since 1996. The main contention of the plaintiff was that these websites were accessible in India and they had created a name for themselves. The plaintiff came to know that the defendants,

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<https://indiankanoon.org/doc/151685239/?type=prin>

²¹ Thomas Schultz, "Carving up the Internet: Jurisdiction, Legal Orders, and the Private/Public International Law Interface", 19 EUR. J. INT'L L. 779 (2008).

²² CS(OS) 894/2008 (High Court of Delhi, 23rd November 2009) (India).

²³ 2003 (27) P.T.C. 265 (Del.) (India)

²⁴ 2007 (35) P.T.C. 177 (Del.) (India)

²⁵ http://nja.gov.in/Reading_Material/P-940%20Reading%20Material.pdf



who were located in Hyderabad, had initiated a project under the name of Banyan Tree Retreat. It was contended that the name was deceptively similar to that of the plaintiff's business. The plaintiff invoked the jurisdiction of the Delhi High Court on the ground that the defendant's website 'www.makprojects.com/banyantree' was accessible in Delhi, even though neither of them had a place of business in Delhi.²⁶

A passive website or posting advertisement or mere hosting of website in forum state does not result in a commercial transaction.²⁷

The courts have given a concept of passive plus website, wherein a website is not only to be shown to be accessible at a particular place but it is also to be shown that the audience where it was accessible was targeted. It was also observed that all general procedural laws pertaining to jurisdiction need to be satisfied and mere access to website is not sufficient. It is to be established before the court that the defendant purposefully availed itself of such jurisdiction by showing that such defendant targeted the audience with the purpose/intention of concluding a commercial transaction at the place where jurisdiction is asserted by the plaintiff, and as such caused injury to the plaintiff in the course. In the absence of even one of these elements, the court would fail to assert jurisdiction in accordance with this test. This was clearly established in the *Banyan Tree Holding* case. The Indian Courts have the approach to adopt a combination of sliding scale, and effects test, thus showing a passive plus or interactive website targeting at the plaintiff.

²⁶ Supra note 13 at 28

ANALYSIS AND WAY FORWARD

Various tests devised by the courts over a period of time to determine personal jurisdiction have been discussed in detail above. On an analysis of these tests, it can be seen that no test devised till date is full-fledged in the sense that it does not serve the first and foremost purpose of being universal and objective in nature. The above stated tests are highly subjective and the interpretation of these tests depends on the application judicial mind and reasoning, which in turn may lead to several inferences.

Also, there is no specific law, international or state law, that deals with jurisdiction pertaining to regulation of disputes arising in cyberspace. There is only one provision under the IT Act, 2000, i.e. Section 75 read with Section 1(2), to assert extra-territorial application of jurisdiction. While asserting jurisdiction, the courts have to apply the general law with respect to jurisdiction, i.e. Sections 6, 9, 15-20 of CPC and Section 179 of CrPc to establish whether a forum court has jurisdiction or not. Long arm statute test and Minimum contacts test though are not free from demerits, serve as a foundational block for the other tests as the principle laid therein is so intrinsic for the purpose of determining jurisdiction of forum court.

There were speculations on whether accessibility of a website in a particular place is sufficient for the forum court to assert jurisdiction. The decision laid down in *Banyan Tree Holding* case, clearing the earlier uncertainty, has opened up new chapter to the arena of jurisdiction as the internet today is not limited and is being used

²⁷ <<https://www.vakilno1.com/legal-news/delhi-hc-web-page-facebook-not-confer-jurisdiction-court.html>>



widely for various commercial purposes. The ambit of the expression “cause of action” in this decision of Delhi High Court would tighten the scope of application of jurisdiction by the forum court.

The trend followed in the decision of *Banyan Tree Holding* case is not full proof and requires new measures to deal with the issue of jurisdiction in disputes arising in cyberspace as technological advancements are taking place on a daily basis. The target based approach is subjective and as such an international treaty would much appreciated and would facilitate a uniform system of law throughout the world. International treaties would in turn mean enacting of specific state statutes for the purpose of asserting jurisdiction which would lead to a better regulation by controlling the much debated issue of jurisdiction.

International treaty for the purpose of setting up a universal approach to jurisdiction, such as the OECD Model and UN Model on ESU commerce, will be beneficial and would serve the purpose as a framework for enacting state laws. Till the time, some specific statute is enacted or international treaty for this purpose is signed, a harmonious construction of the various tests that have evolved over a period of time, would be the best suited method to determine the issue of jurisdiction.

Unless and until some specific law is enacted in this regard, the speculations would continue to exist and due to this uncertainty the courts would be at a discretion to assert jurisdiction on account of the subjectivity associated with each of the tests used. Till the time some law is enacted, a harmonious construction of various tests evolved must be

used to seek uniformity in determining jurisdiction of forum court.

CONCLUSION

The trend followed by the Indian courts in determining personal jurisdiction is a combination of Effects test with target approach along with Zippo Sliding Scale Test. Although this trend is followed in a large number of cases, the approach to be used depends on the facts on case to case basis. The Zippo test and effects test become vulnerable to subjective results. The approach to be used in India has been clarified in the case of *Banyan Tree Holding (P) Ltd. v. A. Murali Krishna Reddy*²⁸, wherein it has been observed that personal jurisdiction is to be easily established through a series of tests. Mere access to a website at the forum state does not conclude the jurisdiction in the forum court. It has to be shown that either on account of long arm statute or minimum contacts test, the court has jurisdiction. Better so, if it is shown that the website is interactive, the jurisdiction may be established. The jurisdiction in case of passive website may be established with the help effects test. A newer approach of combining target approach with effects test along with Zippo Test is widely recognised for a the facts of case are to be tested through a series of approaches, thereby establishing the jurisdiction successfully. Seeking harmony of various rules may be more productive to seek uniformity in standards for determining jurisdiction. The application of the three tests simultaneously helps us to construe harmoniously the effects, the interactivity test using the concept of

²⁸ Supra note 16



targeting, and can be said to be a middle ground.²⁹

Seeking harmony of various rules may be more productive to seek uniformity in standards for determining jurisdiction. Schultz defines targeting to mean “in essence that the activity must be intended to have effects within the territory of the state asserting jurisdiction.”³⁰ The application of the three tests simultaneously helps us to construe harmoniously the effects, the interactivity test using the concept of targeting, and can be said to be a middle ground. It is something more than effects but less than physical presence.³¹ Even though the test to be used depends on a case to case basis, but a harmonious construction of the three tests appears to be a reasonable and fair approach while determining personal jurisdiction.

There is a need to have a certain specific law to determine jurisdiction in matters arising out of cyberspace. At present there is no particular specific law available in India, and the courts have to look into the provisions of Civil Procedure Code and Criminal Procedure Code while asserting jurisdiction. An International treaty to this effect would be much appreciated as it would lessen the chaos arising out of different state laws. Further, states need to devise specific laws for matters arising out of cyberspace as it is a new medium and requires newer laws for its regulation as well. Technological advancements are taking place on a daily basis which would mean that disputes are going to get more and more complex and the

tests that have been devised are going to fail soon. Only when we have specific laws, the situation regarding jurisdiction can get certain and we can look for a better and smooth functioning, regulation of cyberspace and the better resolution of disputes arising out of it.

At the end, it can be concluded that there is a prime need for some specific legislation pertaining to jurisdiction or international treaty which tends to this issue which will help in a better and smoother application of law which is objective, free from subjectivity, and also universal, if feasible. There will always be discretion available to judges, until some laws are formulated, which might lead to different conclusions and inferences. Until specific laws are enacted, a harmonious construction is best suited to determine the issue of jurisdiction and the judges must work on some fundamentals which make these tests objective, and leave no or less room for subjectivity or discretion available to judges in this regard.

²⁹ Michael A. Geist, “Is There a There There? Toward Greater Certainty for Internet Jurisdiction”, 16 BERKELEY TECH. L.J. 1357 (2001).

³⁰Supra note 14

³¹Supra note 20