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Civil Adjudication in Cyber Law

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I. INTRODUCTION

Due to massive online activities and huge data exchange over internet unpredicted situations emerges every other day ranging from commercial transactions to cyber torts and from breach of IPR's to unauthorised access. A desperate legal framework is required to cope up with it and work in consonance with emerging issues. The Information Technology Act, 2000 aims to supply legal framework so legal sanction is provided to any digital or electronic records and different processes dole out by digital or electronic transactions. The IT Act, 2000 endeavours to improve outdated laws and ways to cope with cyber issues. We are in need of provisions which can provide fearless online transactions. This act is attempted to provide such required legal framework.

This article is runs into three parts. The first part discusses kinds of civil issues and cases which needs civil adjudication. Second part is dedicated to jurisdiction of courts in cyber civil adjudication, and is followed by conclusion.

Most of the civil cases reported in India falls into only three categories. The first category belongs to cyber torts. In second category it involves commercial transactions over internet, involving the element of IPR's. In the last all the civil actions provided in IT Act itself can be put into.

II. THE CYBER TORTS

Tort has emerged as an instrument through which all those who have suffered injuries are compensated. By means of tort law, humanity compensates whoever has endured injuries because the evil method of other people. Humanity acknowledges a concern in individualised external security, some interest in defending legitimate and individual property, and a concern in securing several impalpable interests, such as individual privacy, loved



ones kin, repute, and individualism. Law of Tort offers solutions for breach of these sheltered interests. Also wrongful impediment with others' concern rights, which includes power to preserve trademarks, patents, copyrights, along with other assets subsequent to intellectual processes.

A simple tort is understood to be a civil wrong not necessarily originate from a breach of contract; a violation of legislative duty that in fact proximately leads to injury or injury into another. A serious resource when making a decision tort instances will be the Restatement of the Law of Torts. Tort law acknowledges that many acts are wrong due to the fact they trigger injuries to others. A tort act is basically a civil action by which one individual provides a personal suit versus one other to acquire damages or another remedy regarding the injury. Cyber Tort is a tort committed in cyberspace.

Any mischievous act over internet or on unauthorised computer, not termed as crime, call for civil action, even sometime along with criminal actions. Now if the actions are not straight rather twisted are cyber tort. No doubt there genus is

conventional tort and most of the time are dealt in the same manner. Unauthorised access is no different from trespass and the same remedies can be availed through civil adjudication. Similarly introducing virus into systems or Trojan attack damages the computer and needs someone to make up for it. But stealing electronic information is Theft and apart from criminal proceedings it may require civil action for loss occurred due to data loss. The next logical step further would be damaging the content of the stored data, which might cause loss of the owner, also termed as computer vandalism. These acts may take the form of the theft of a computer, some part of a computer or a peripheral attached to the computer or by physically damaging a computer or its peripherals.

In this type of phase of Information Technology, Data has turned out to be an Commercial Advantage, Data is a considerable raw-material to BPO's, Technology and IT Companies. Data has as well end up being a valuable resource and certainly armament for Corporates to trap bigger segment holds. Owing to the essential of Data with this great new time, its security and surveillance has started to become a huge challenge to most of the sectors. The piracy & of data is a threat, confronted by the IT participants, that invest millions to round out or spend money on data out of your current market.

Their revenue relies on the safety and security from their data. However section 43 of IT Act, 2000 provides compensation for data theft and data digging, but that limits itself into curtailed some of money, but losses due to data theft can go even go beyond trillions. Another thing to be noted that curtailed some of money remains due upon the mercy of adjudicator and a wise lawyer.



Harassment through emails is not a new concept it is more like harassment by letters. Harassment on line can happen in more than a few methods. One of the forms will possibly contain conveying annoying, obnoxious, intimidating or obscene e-mails. One other means includes electronic mess up or bombarding exactly where the victim is shot numerous trash e-mail messages. A type of bombarding includes the conveying of computer viruses to the victim.

The third usual kind comes up in live Internet relay chat sessions, message boards or live broadcast or by way of instant messaging. Online harassment may also be indirect. The harasser might pretend the victim and dispatch insulting or deceitful e-mails in the victim's name. The sufferer could be subscribed to emailing lists without the need for their own subscribe. When using the consequence that countless undesirable e-mails are obtained regularly. Invasive threads regarding the victim will possibly show up or the wrongdoer can potentially unfold evil gossips in regards to the victim online. The harasser will probably even disperse provoking or modified graphics of the sufferer to websites or supply your information online.

Cyber stalking is rather a concept which has emerged very recently. As a matter of fact Cyber Stalking is about prolonged use of the net, e-mail, social networks, instant messaging or associated digital devices and gadgets to bother, hassle or frighten women is expanding. It generally entails malicious e-mails, post or content, unwelcome messages or calls, property damage, strolling and sticking around. It involves keeping an eye constantly on someone in cyber space which causes them inconvenience. Sending undesired messages, following on facebook, chat rooms etc. are examples of cyber stalking. Several stalkers likely to severe treating.

Pornography over internet is another issue which requires civil adjudication apart from criminal cases. Recently it witnessed the high raise in child pornography. Polluting through indecent exposure-Pornography on the net may take various forms. Pornography over internet includes hosting porn website and providing pollutant for downloading and distribution of such content. Though pornography per se is not a crime but still it corrupts adolescent and motivate them in certain way.

Defamation over internet is very common these days. Twitter, facebook, whatsapp etc. are social platform which are massively known for cyber defamation. However, cyber defamation does not differ from the regular defamation only difference lie with the involvement of internet. Email bombing is also a tort, as sending mails to anyone is no crime but annoying them by sending endless e-mails is definitely not a straight action, leaving defamation behind it. Some time it may cause enhanced response time by server and even denial of services. In that case civil action is called for. Similarly



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find about people is fine as far as you are not digging data about them and then misusing it for dubious purposes.

Perhaps one of the most significant concerns with reference to cyber torts is in fact who exactly really should be carried out accountable, the party performing the violation or maybe service provider. Additional inquiries entail problems with evidence. How, by way of example, can it really be turned out that any on the net defamatory statement was "published", which requires a third party see or hear it? How is it that the identification of the individual who might create the remark be found out? Can an ISP be compelled to expose the very source of a mysterious remark?

III. E-COMMERCE AND ECONOMIC TRANSACTIONS

The second category of cyber civil adjudication is commercial transaction, which in context to this article means internet transaction involving physical goods and services or transmission of digital information over cyber space. E-Commerce is not only related to making use of network derived technological advances to practice business. It is often related to proceeding transactions to completely electronic habitat by means of adjustment within their effective treatments, re-engineering their internet business technics, combining these for their company and companions away from their ordinary frontiers. Electronic Commerce has brought to the forefront an authentic success in terms of enterprises are performed. There exists a archetype move from paper to completely digital enterprises. Networking and messaging across internet is very important when it comes to the new state of affairs wherein you can find globalisation of vendors, and of marketplaces. Information Technology has produced a fresh industrial evolution. It is actually the internet which accepts globalisation of markets gracefully. A business coupled with the net is straight away worldwide in cater to and access with no extraneous cost.

Most of the time, it referred as e-commerce, having the no face character is more important to get regulated by cyber laws. However success of e-commerce does not depends upon connectivity and access alone, but it hugely depends upon protected transactions backed by law. E-commerce especially e-payment in the light of prevailing trend in cyber frauds poses a challenge for all.

FDI, VAT and GST concerns most Indian e-commerce companies such snapdeal and flipkart. The communications sector has grown to be incredibly considerable and is actually claiming to increase tremendously very soon. In contrast to several other communication media, The net is encouraging a chance to access information, in

aggressive market and exposition solutions of top notch standard. E-commerce supplies a unique method of



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implementing, controlling and operating business transactions making use of contemporary information technology. It must revamp the classic means of business. Altogether, this is actually an enterprise practice that includes use of computers, computer systems or computer networks.

E-commerce crops up in quite a lot of styles and between several institutions available in the market. Try to ask yourself the best way to tax it. As the net has crossed frontiers how may the conditions of actual physical existence and significant nexus parameters of taxation be satisfied. Because of the originality of e-commerce, taxation encounters more than a few troubles. Additionally it is troubled that in case this is often left untaxed, it certainly will give cause to a parallel economy. However in Indian context they are not any different cases from the regular one to enforcement officers.

IV. CYBER AND IPR

Next important issue to the cyber adjudication is IPR related issues. The existing copyright and patent laws are not completely in consonance with the ever rising software and technological advancements. The Intellectual Property Rights contributes an essential part in Information Technology and its possible there by within the contract formulation of software design and Internet enterprise.

The concept of Computer software is extremely broad and consists of Preparatory layout resources, e.g. flowcharts, diagrams, specifications, forms and reports layout, designs for screen display, etc.; Computer's executable codes; Softwares' developmental tool, e.g. database developmental system, compiler, reports generator, etc.; Informations saved on computer media, e.g. typical functions namely literature, artistic works, music, etc. stored digitally, Database and data files; Computer output e.g. Sound, print-out, computer file or data, electronic signals; Screen displays; Manuals and guides; and Programming languages. Reckoning on the essentials along the function, software is guarded as artistic or literary work. In India, a Computer program is protected as a literary work. However the debate is still on globally as to under which head of Intellectual property computer program should be protected, copyright or patent.

However for the purposes of this article they are specified as Industrial designs, Scientific discoveries, Literary, artistic, and scientific works, Inventions in all fields of human endeavor, Performances of performing artists, phonograms, and broadcasts Trademarks, service marks, commercial names, and designations. All other rights resulting from intellectual activity in the industrial, scientific, literary, or artistic fields.



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Copy right, patent and trademark are terms which concerns most to Information Technology. In Indian perspective computer software is specified within copyrights of the IPR regime however in United States software comes along with patents regime. It is often categorised just like a 'literary work' in contrast with an 'invention' that will

operate a mechanical function.

To defend the professional interest, it is crucial to put together a successful property administration and preservation mechanism keeping in mind the substantial number of enterprise and commerce occurring within the Cyber Space. At present it is imperative for any company to produce a great and collaborative IP management mechanism and protection strategy. The everlooming threats in the cybernetic world can thus be watched and restricted. Different alternatives and legislations happen to create by the law-makers to increase the cost to in redeeming a protected formation towards such cyber-threats. However it may be the duty of the intellectual property right owner to invalidate and lower such mala fide acts of offender if you take upbeat actions.

To care for the intellectual property rights within the Indian position, India has described the publication of constitutional, administrative and jurisdictive explanation if they mean the patent, copyright, industrial designs, trademark, or another region of the intellectual property rights. Around the time of the year 1999, the government approved necessary legalities dependent on overseas processes to defend the intellectual property rights. This significant difference really needs to be borne in your mind in production of agreements according to domestic and worldwide procedures. Once again the IPR varies considering the type of computer software division. In some situations of the intellectual property rights are vested in the software user.

V. DECIDING THE JURISDICTION IN CIVIL PROCEDURE

'Jurisdiction' is the concept connoting the power of hearing or determining a case vested in an appropriate court, in any legal system. A complex process in the very onset of judicial system created and institutionalised the Courts, while doing so bringing them the appropriate powers and jurisdiction. The process of adjudication runs through this jurisdiction. In Indian perspective, the Constitution has got provisions to formulate Supreme Court, the top court for the nation along with a High Court in all State. This sort of institutions are conferred with original and appellate jurisdiction to adjudicate on all matter developing between citizen and the State, State and other States or between a State and the Union. Other than all of this additionally they engage in civil and criminal writ jurisdiction.



However, the courts are further divided into two streams as civil and criminal based upon different prerequisites. Civil judicial system, primarily run by Code of Civil Procedure, 1908 creates Judicial Magistrate Junior Division and Senior Division. Here again the pecuniary and territorial jurisdiction will vary based on the hierarchy of the courts. Further to this subject matter jurisdiction vested in different tribunal created by legislations.

CPC not only confers different jurisdictions upon different civil courts but it expressly bars such jurisdiction not to be exercised by any other court in original. Scheme of IT Act, 2000 clearly brings forward that civil jurisdiction is vested upon Adjudicating Officer if matter is below Rs. 5 crore but no other court per se.¹

This is much clearly laid down in IT Act, 2000 that subject matter jurisdiction lays with Adjudicating Officer. However a pecuniary condition is also attached to this, as stated above, that it should be below Rs. 5 crore. The act clearly addresses subject matter jurisdiction and pecuniary jurisdiction so far.²

However, Territorial Jurisdiction draws huge attention and which is not addressed

properly. Act attempts to focus light upon sections 46, 48, 57 and 61 to see through adjudication process and the appellate procedure connected with, but fail to go very far as this is something which is not easy to take cognizance upon. Major problem lies as it is borderless, geography agnostic, territory free and generally spread over territories of several jurisdiction? It calls for uttermost attention to civil adjudication.

Since the Act fails to show us a clear path as to territorial jurisdiction, we are bound to look CPC for help. In India, jurisdiction flows in uniformity unlike USA and others. Nevertheless civil jurisdiction normally rests upon principle of *lex loci delicti* or law where the wrong is done, usually invoked in cases of torts. While claiming any property it lies with *lex situs* or law of physical location. There are few other principles based upon principle of obligation and equity.

Normally CPC speaks for the plaintiff to choose its own forum. But generally in CPC jurisdiction arrives at where the defendant resides or place where cause of action arose. However this is rather complex situation to decide running it with cyber transactions. High probability of landing in different jurisdictions cannot be over ruled. But most of the time, it is argued that all these complications can be avoided by explicit provisions. This complexity of extra territorial operations can find answer in following



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sections of CPC.

The developing legal challenge relating to "jurisdiction" in connection with transactions all over the internet can certainly disregard the legal elements engaged with the implementing and enforcing of foreign decrees. Despite exercise of jurisdiction, the Courts could possibly be incapable of assist the plaintiff in obtaining remedy if and when the domestic and local laws of the nation apprehensive to numerous exclusions when it comes to the enforcement of foreign judgments or decrees in the country.

A foreign verdict must be ultimate in order to every subject hence precisely settled upon amongst the parties or between parties with those people or even a affirmation litigating by the exact title excluding, in which it needs not to be pronounced by a Court of competent jurisdiction; or at which it must typically not been supplied toward the merits of the case; or in which seems like on the face of the hearing to remain by means of an erroneous idea of international law or a refusing to acknowledge the law of India in situations through which these kinds of law is applicable; or where the cases where in verdict was acquired are hostile to natural justice; or where it has proven to obtained by fraud; or where it sustains a claim founded on a breach of any law in force in India.³

By this provision 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. Thus any transaction over internet has potential of cognizance throughout country. Is can be seen clearly that even when a judgment or a decree is passed by a foreign Court in opposition to an Indian defendant, the verdict or decree is probably not enforceable against him on account of the procedure of S. 13 of CPC. It is typically spotted that, the injured party needs to come to the Indian courts to either obtain the foreign judgment performed within S. 44A or file a whole new suit upon the judgment for its enforcement. Therefore by acquiring a decree in the foreign Court, the injured party is just prevents the

inconvenience of leading evidence in the Indian Courts but goes a significantly bigger threat under S. 13.

Consequently it will probably be advisable for a foreign complainant to set claims in India itself if and when the defendant is in India. Since internet deals would entail even more of documentary evidence understanding that comparatively leading of evidence may not be that burdensome, it certainly is advisable to stay clear of the risk under S. 13 and file claims in India itself.

Toward the exactly opposite, of a given jurisdiction of the Indian Courts well over alien residents or residents again, can easily be handled by the



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section 19 of the CPC. It has been believed that often in online deals the damage or online abuse is due to the mutable} property. Right here under s 19 of CPC, permits for submitting a suit for the damages of the wrong done to the individual 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.⁴

The specific clause of such suit and its jurisdictions is spelled out in sec 20 of CPC. Subject to the limitations aforesaid, 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 the 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, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or (c) the cause of action, wholly or in part, arises.⁵

CPC as facilitates a legal procedure to transmit a verdict for implementation into another court must be translated as very influential in any State to dispatch a verdict for execution to whatever court discovered from the expert of the Central Government to the external India to which the State Government has by briefing in the dedicated Gazette confirmed this section to apply.⁶

Where a certified copy of 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 if it had been passed by the District Court. 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. The provisions of section 47 shall as from the filing of the certified copy of the decree apply to the proceedings of a District Court executing a decree under this section, and the 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 section 13.⁷ Thus the issue of civil jurisdiction up to an extent can be addresses by IT Act, 2000 together with CPC 1908. Though, a workable



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solution still required to counter extra territorial jurisdiction, but yet till then the

combination of two could hold some water.

VI. WHAT IS REQUIRED?

The ways we all are dependent upon the internet, disputes are bound to occur, whether criminal or civil. Now it depends upon the legislation to bring out such a mechanism which could work smoothly and could address the current and futuristic issues. Since cyber law is very novice as to development and maturity, however it is welcoming initiative when it required most. As mentioned above that it is yet to achieve maturity few loophole needs to plug in. First and far most being lack of public debate and awareness. It seems that it was passed in such a hurry and it fails to achieve the desired purpose.

Moreover most pinching, as to civil adjudication is in its preamble itself cyber laws drops the hints that they are targeted at aiding commercial transactions and not to deal with cyber torts. The recent cases including Cyber stalking cyber harassment, cyber nuisance, and cyber defamation have shown that the IT Act, 2000 has not dealt with those offences. Unambiguous definitions and lack of uniform laws across the globe is need of hour. Cyber torts are universal in nature and it should be able to pull down globally.

Lack of awareness is another concern which blocks the swift and smoothing sailing of civil cyber adjudication. Most of the time cybercrimes are unreported and when it comes to civil cases only handful of people in the country is aware that cyber law exists beyond cybercrimes. Victim compensation is rarely observed and civil damages are even negligible.

One field where it fails is breach of IPR. It fails to appreciate concerns of IPR and not even remotely addressed intellectual property rights and makes no provisions whatsoever for copyrighting, trade marking or patenting of electronic information and data.

Jurisdictional issues and extra territorial application of cyber law is often is the biggest impediment for instituting of civil suits. Universal nature of cyber laws have vanished the territorial boundaries and an ever growing demand for extra territorial jurisdiction is immediately needed. Execution part is also more of confusing and seems unfruitful in consonance with extra territorial jurisdiction. Lastly, cyber savvy adjudicators are most required to avoid delays in civil adjudications. An effective and practical adjudication is totally depends upon such adjudicators.

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¹ Sec 43 IT Act, 2000.

² Ibid.

³ Sec 13 Code of Civil Procedure, 1908.

⁴ Sec 19 Code of Civil Procedure, 1908.

⁵ Sec 20 Code of Civil Procedure, 1908.

⁶ Sec 45 Code of Civil Procedure, 1908.

⁷ Sec 44A Code of Civil Procedure, 1908.

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